

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.575/96

Date of order: 3/12/2011

Banwari Lal Sharma, S/o Sh.Kedar Nath Sharma,
terminated EDBPM O/o Supdt.of Post Offices Bharatpur
...Applicant.

Vs.

1. Union of India through Post Master General, Deptt. of Post, Rajasthan Circle, Jaipur.
2. Director Postal Services, Rajasthan Eastern Region, Jaipur.
3. Superintendent of Post Offices, Bharatpur.

...Respondents.

Mr.Vinod Goyal, Proxy of Mr.Virendra Lodha - Counsel for applicant

Mr.Mukesh Sharma, Proxy of Mr.S.M.Khan - for respondents.

CORAM:

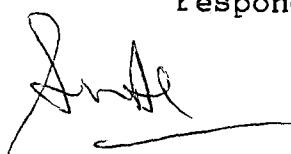
Hon'ble Mr.S.K.Agarwal, Judicial Member.

Hon'ble Mr.A.P.Nagrath, Administrative Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer to quash and set aside the impugned order dated 22.9.93 read with order dated 20.1.94 and to reinstate the applicant in service with all consequential benefits including promotion etc.

2. Facts of the case as stated by the applicant are that the applicant was appointed as EDBPM on 1.9.75. He was placed under suspension w.e.f. 4.2.83 and was served with memorandum of charge-sheet in February 1984. The applicant submitted his reply and enquiry officer was appointed who submitted the enquiry report on 3.2.85 (Annex.A6) to respondent No.3 who made a reference to the Enquiry Officer



to give complete enquiry report. The Enquiry Officer, thereafter, submitted a fresh report dated 18.1.86 (Annex.A7) holding that both the charges are fully proved. On the basis of this enquiry report, the disciplinary authority passed the order of removal of the applicant from service vide order dated 7.10.86. The applicant filed appeal against this order which was rejected vide order dated 17.3.87. Thereafter, the applicant filed review petition which was also rejected vide order dated 16.9.88. The applicant challenged the above orders before this Tribunal in O.A No.94/90 and this Tribunal vide order dated 5.7.93 set aside the impugned order of removal dated 7.10.86, appellate authority's order dated 17.3.87 and the order of reviewing authority dated 16.9.88 and it was further observed that it shall not preclude the disciplinary authority for passing a fresh order after considering the enquiry report (Annex.A6) in accordance with law and fresh order be passed within 3 months of this order. If no such order is passed within the aforesaid period of 3 months, the applicant shall be immediately reinstated. Upon this order, copy of enquiry report Annex.A6 was sent to the applicant. The applicant submitted his representation and after considering the representation as furnished by the applicant, the impugned order of removal from service dated 22.9.93 was passed. Against this order of removal, the applicant filed an appeal which was also rejected. Therefore, the applicant has challenged the order of removal as well as the order passed by the appellate authority and prayed for all consequential benefits including promotion.

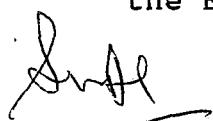
3. Reply was filed. In the reply, it is stated that in accordance with the orders of this Tribunal dated 5.7.93, a



copy of the enquiry report (Annex.A6) was sent to the applicant vide letter dated 29.7.93. The applicant filed representation which was received on 25.8.93 and after considering all the relevant documents of this case, the applicant was awarded with the penalty of removal from service vide order dated 22.9.93. The applicant filed appeal against the said order dated 22.9.93 and the appellate authority rejected the appeal vide order dated 20.1.94. It is stated that the applicant has challenged the order dated 22.9.93 and 20.1.94 by filing the present O.A on 13.8.96, after 2 years and 8 months. Therefore, this O.A is hopelessly time barred. It is also stated that since the earlier enquiry report was not complete, therefore, it was ordered again for giving complete enquiry report and the Enquiry Officer submitted his final enquiry report and on the basis of this enquiry report, the disciplinary authority imposed the penalty of removal from service. It is stated that the charges against the applicant were proved in the enquiry report submitted by the Enquiry Officer hence the order of removal imposed upon the applicant is perfectly legal and valid and the applicant has no case.

4. Heard the learned counsel for the parties and also perused the whole record.

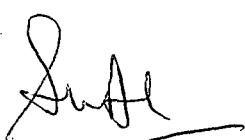
5. It appears that the enquiry officer submitted his report Annex.A6 on 3.2.85 by which the enquiry officer found that charge No.1 was not proved fully and charge No.2 was not proved. In subsequent report dated 18.1.86, the enquiry officer held that both the charges were proved. In O.A No.94/90, this Tribunal held that there is no provision in the rules under which the disciplinary authority may ask the Enquiry Officer to submit a fresh report on the basis of



the same enquiry. Therefore, the order of removal dated 7.10.86, order of appellate authority dated 17.3.87 and order of reviewing authority dated 16.9.88 were quashed and set aside and an opportunity was given to the disciplinary authority for passing a fresh order, after considering the enquiry report dated 3.2.85 (Annex.A6).

6. On a perusal of the record, it also appears that after passing the order in O.A No.94/90, the disciplinary authority in compliance of the order dated 5.7.93, sent a notice alongwith enquiry report to the applicant vide letter dated 29.7.93 against which the applicant submitted his representation. Thereafter, the disciplinary authority again passed order of removal of the applicant from service on 22.9.93. The applicant challenged the order of removal before the appellate authority who rejected the appeal. Therefore, the applicant filed this O.A.

7. In O.A No.94/90, the disciplinary authority was given an opportunity to proceed against the applicant on the basis of the enquiry report dated 3.2.85 (Annex.A6). As per this enquiry report, the enquiry officer held that charge No.1 was not fully proved and charge No.2 was not proved. Therefore, the disciplinary authority was at liberty to accept the enquiry report or to disagree with the same. In case of disagreement, it was incumbent upon the disciplinary authority to record the reasons of disagreement and after recording such reasons of disagreement, the same should have been sent to the delinquent employee so as to explain his position regarding the disagreement. But in this case, it appears that the disciplinary authority has not complied with the settled legal provisions by which reasons of disagreement are to be recorded and communicated to the



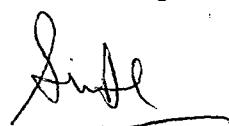
delinquent.

8. In Punjab National Bank & Ors Vs. Kunj Behari Misra, JT 1998(5) SC 548, it was held that if the disciplinary authority does not agree with the findings of the enquiry officer, the disciplinary authority while disagreeing with the findings of Enquiry Officer shall record the reasons of disagreement on every Articles of charge and reasons of such disagreement must be communicated to the employee concerned to make his representation before passing the order of termination.

9. In State Bank of India & Ors Vs. Arvind K. Shukla, 2001(1) SC SLJ 127, it was held that the disciplinary authority is required to record its tentative reasons for disagreement and to give the delinquent employee an opportunity to make representation before it recorded its ultimate findings. Hon'ble Supreme Court in this case also relied the decision in Institute of Chartered Accountants' case JT 1997 (6) SC 607 and held that the view expressed in S.S.Kaushal 1995(5) SLR 18 and M.C.Saxena case JT 1998(2) SC 103 do not lay down the correct law.

10. In CSHA University & Anr. Vs. B.D.Goyal, 2001(2) SC SLJ 233, it was held that the disciplinary authority has to record reasons in writing before disagreeing with the findings of the enquiry officer.

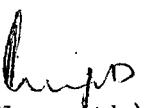
11. In the instant case, it appears that the disciplinary authority failed to record the reasons of disagreement before arriving at the ultimate finding of termination of the applicant from service and those reasons of disagreement have not even been communicated to the applicant. Merely sending notice alongwith the enquiry report dated 3.2.85 is not sufficient compliance of law as



laid down therefore in such situation the order of dismissal from service dated 22.9.93 and the order of appellate authority dated 20.1.94 rejecting the appeal of the applicant are not sustainable in law.

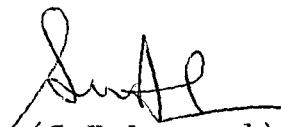
12. We, therefore, allow this O.A and quash the impugned order dated 22.9.1993 passed by the disciplinary authority and order dated 20.1.94 passed by the appellate authority and direct the respondents to reinstate the applicant in service within a period of one month from the date of passing of this order. The applicant shall also be entitled to all consequential benefits including promotion if any.

13. No order as to costs.



(A.P.Nagrath)

Member (A).



(S.K.Agarwal)

Member (J).