

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of decision : 29.04.2002

O.A. No. 255/1997.

Vijay Singh Raghav s/o Shri Ram Kumar Singh aged 46 years, R/o Khor Bassi Tehsil Behror District Alwar.

... APPLICANT.

v e r s u s

1. Union of India through Secretary, Sanchar Bhawan, Ashok Marg, New Delhi.
2. Chief Post Master General (Raj. Circle) Office of the Chief Post Master General, Jaipur.
3. Director (Postal Services) Jaipur Region, Jaipur.
4. Superintendent (Post Offices) Postal Department, Alwar.

... RESPONDENTS.

Shri Balvinder Singh, counsel for the applicant.
Shri Arun Chaturvedi, counsel for the respondents.

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Hon'ble Mr. Justice O. P. Garg, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R D E R :
(per Hon'ble Mr. Justice O. P. Garg)

The applicant was EDBPM, Bassai Khohar (Gandala) Alwar. He was departmentally proceeded against under Rule 8 of the EDA (Conduct and Service) Rules, 1964. The following five charges



were framed against him.

"(1) During the visit of ASPOS Behror Sub Division to the B.O. on 27.2.92, he found a shortage of cash and stamps to the tune of Rs. 638.60 (Rupees Six hundred thirty eight and paise sixty only). It was alleged that the official Shri Vijay Singh Raghav violated the provisions of Rule 11 of B. O. Rules.

(2) That one Shri Phool Chand, holder of the S.B. Account No. 791066 standing open at Khohar B.O. handed over Rs. 1500/- to Shri Vijay Singh, the then B.P.M. Khohar on 10.6.91 for depositing in his account. But Shri Vijay Singh did not credit this amount into the Government account, thereby violating the provisions of Rule 131 and 165 of the Branch Office rules.

(3) Shri Phool Chand, the holder of the SB A/c no. 791066 did not withdraw the amount of Rs. 900/- from his account on 22.4.91 but Shri Vijay Singh Raghav, the then B.P.M. Khohar showed a withdrawal of Rs. 100/- from the aforesaid account on 22.4.91 and therefore, violated the provision of rule 134, 135 & 165 of the B.O. rules.

(4) Shri Jale Singh s/o Shri Narayan Prajapat, holder of R.D. Account no. 513722 handed over cash of Rs. 100/- to Shri Vijay Singh, the then B.P.M. on 1.5.91 for depositing the monthly instalments from May, 1991 to Sept. 1991 at the rate of Rs. 20/- p.m. But Shri Vijay Singh did not credit the amount in government account and thereby violated the provisions of Rule 131 of Branch Office rules.

(5) That Shri Laxmi Narain and Shri Kalu Ram, handed over Rs. 5000/- (Rupees five thousand only) to Shri Vijay Singh, the then B.P.M. Khohar B.O. alongwith SB-3 and SB-103 (pay-in-slip) for opening of an S.B. Account (Joint-B.). But Shri Vijay Singh, the then B.P.M. opened the account for Rs. 500/- only and defalcated Rs. 4500/-. Moreover, he made the entry of the interest in the pass book of the account himself instead of sending it to its account office, thereby violating Rule 129, 130, 144 and 165 of the Branch Office rules."

(Signature)

2. The Enquiry Officer found the applicant guilty only with regard to the allegations contained in charge No. 1 and that too partially. He found the applicant not guilty of charges No. 2,3,4 &5. The Disciplinary Authority passed an order of punishment dated 19.08.1996, removing the applicant from service. The applicant preferred an appeal which was finally decided by the Competent Authority by order dated 15.01.1997, affirming the order passed by the Disciplinary Authority in so far as it related to punishment inflicted upon the applicant. The applicant has challenged the order of punishment of removal from service dated 19.08.1996 and the order of the Appellate Authority rejecting his appeal dated 15.01.1997, by means of this Original Application under Section 19 of the Administrative Tribunals Act, 1985.

3. A detailed reply has been filed by the respondents.

4. Heard the learned counsel for the parties.

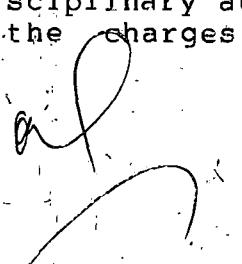
5. After having heard the learned counsel for the parties, we find that the Appellate Authority has totally disagreed with the findings and the conclusions arrived at by the Disciplinary Authority. By a detailed order passed by the Appellate Authority, a categorical finding has been

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recorded that the applicant was guilty of all the charges which were framed against him. Learned counsel for the applicant pointed out that the Appellate Authority, before deciding the appeal and holding the applicant guilty of all the charges, did not afford a reasonable opportunity of hearing to the applicant. It was pointed out that the finding, that the applicant was guilty of all the charges, was recorded without giving notice to the applicant or an opportunity to make a representation. Learned counsel for the applicant pointed out that Hon'ble the Supreme Court in the case of Punjab National Bank and Others vs. Kunj Behari Misra, 1998 SCC L&S 1783, has observed that the principles of natural justice have to be followed, before recording the finding that the delinquent employee is guilty of all the charges. We may profitably quote the observations made by Hon'ble the Supreme Court in the said decision, which read as under :

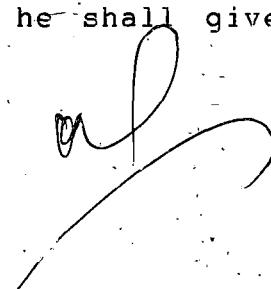
"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."



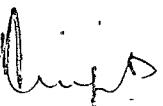
6. A reference was also made to the decision of the Principal Bench in the case of Ex S.I. Bhola Ram Meena vs. Additional Commissioner of Police 2001(1) ATJ 373 to fortify the submission that the Appellate Authority was obliged to issue a notice to the applicant in order to enable him to make a representation in the wake of disagreement reflected by the Appellate Authority with the findings of the Enquiry Officer and the Disciplinary Authority.

7. In the backdrop of the law as cited above, we find that the order passed by the Appellate Authority suffers from a serious infirmity inasmuch as they found the applicant guilty of all the charges and dismissed the appeal without giving a reasonable opportunity to the applicant to make a representation.

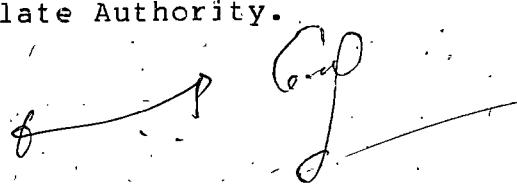
8. In view of the above, we partly allow this Original Application to the extent that the order passed by the Appellate Authority dated 16.01.1997 (Annexure A-2), shall stand quashed. The Appellate Authority is directed to decide the appeal filed by the applicant afresh. If the Appellate Authority disagrees with the findings recorded by the Disciplinary Authority, he shall give a notice in



writing to the applicant to make a proper representation. The appeal shall thereafter be decided after taking ~~xxx~~ into consideration the representation which may be made by the applicant and giving him an opportunity of personal hearing, within a period of six months from the date, this order is produced before the Appellate Authority.


(A. P. NAGRATH)

MEMBER (A)


(JUSTICE O. P. GARG)

VICE CHAIRMAN