

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, CIRCUIT CAMP,
BILASPUR

Original Application No.533 of 1999

Bilaspur, this the 17th day of March, 2004

Hon'ble Shri M.P.Singh - Vice Chairman
Hon'ble Shri Madan Mohan - Judicial Member

Prakash Chandra Mishra, aged about 48 years,
S/o Shri Satya Narayan Mishra, Retired Sub Post Master,
Post Office, Goderipara, District Korea(MP)-497555 - APPLICANT
(By Advocate - Shri S.Paul)

Versus

1. Union of India, through Member (P) (Reviewing Authority)
Postal Service Board, Dak Bhavan, Parliament Street,
New Delhi.
2. Director (Appellate Authority), Postal Services,
Raipur (M.P.).
3. Superintendent, Post Offices (Disciplinary Auth.)
Raigarh (M.P.).

- RESPONDENTS

(By Advocate - Shri P.Shankaran)

O R D E R (Oral)

By M.P.Singh, Vice Chairman -

By filing this Original Application, the applicant
has claimed the following main reliefs -

"(ii) set aside the impugned orders dated 31.12.97
Annexure A-1, dated 25.8.98 Annexure-A-2 and
dated 13.7.99 Annexure A-3.

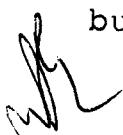
(iii) direct the respondents to provide all consequential
benefits to the applicant as if the impugned orders
are never passed; along with arrears, seniority,etc."

2. The applicant while he was working as Postal Assistant,
had
Ambikapur, he committed some misconduct, for which a charge-sheet
was issued to him on 27.4.1993 by Shri K.L.Sharma, who was the
disciplinary authority at that point of time. An enquiry officer
was appointed to investigate into the charges. The enquiry officer
concluded the enquiry holding charge no.1 as proved and charge
no.2 as not proved. The finding of the enquiry officer was sent to
the applicant to submit his representation. At the same time

the disciplinary authority has recorded a note of disagreement about charge no.2 and held charge no.2 as proved. However, a copy of the note of disagreement recorded by the disciplinary authority was not sent to the applicant to submit his defence. The note of disagreement was recorded only at the time of imposing the penalty on the applicant vide order dated 31.12.1997 (Annexure-A-1). Thereafter, the applicant has challenged the order of the disciplinary authority in appeal and the appellate authority vide its order dated 25.8.1998 (Annexure-A-2) has rejected the appeal. Thereafter, the applicant had filed a revision-petition, which was also rejected by the revisional authority vide order dated 13.7.1999. Hence he has filed this OA claiming aforesaid reliefs.

3. Heard the learned counsel for the parties and perused the pleadings carefully.

4. The learned counsel for the applicant has submitted that the OA is liable to be allowed on two grounds -
(i) the disciplinary authority has himself issued the charge-sheet to the applicant which is in contravention of the instructions issued by the DGP&T's Memo No.6/64/64-Disc. dated 27th January, 1965 (copy placed on record). In the said circular it has been clearly stated that "in a case where the prescribed appointing or disciplinary authority is unable to function as the disciplinary authority in respect of an official, on account of his being personally concerned with the charges or being a material witness in support of the charges, the proper course for that authority is to refer such a case to Government in the normal matter for nomination of an adhoc disciplinary authority by a Presidential Order under the provisions of Rule 12(2) of CCS(CCA)Rules, 1965". In this case, Mr.K.L.Sharma was a prosecution witness and he himself has issued the charge-sheet as the disciplinary authority; and
(ii) The enquiry officer has held only charge no.1 as proved. The disciplinary authority has recorded a note of disagreement but has not sent the same to the applicant to submit his



representation against the note of disagreement holding the charge no.2 as proved. The disciplinary authority has recorded the note of disagreement in the punishment order itself, which is contrary to rules and is not sustainable in law.

Rule 15(2) of the CCS(CCA)Rules,1965 clearly provides that "the Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry,if any, held by the Disciplinary Authority or where the Disciplinary authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement,if any,with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit,if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant". In the instant case, the respondents have failed to observe such a procedure. The learned counsel for the applicant has also pointed out certain procedural irregularities which have been committed by the respondents.

5. On the other hand, the learned counsel for the respondents states that although the charge sheet was issued by Shri K.L.Sharma who was the disciplinary authority at that point of time,however, he was transferred to other department after a couple of months ^{of} ~~of~~ issuing the charge-sheet. The enquiry was held by another officer and another officer has acted as the disciplinary authority in place of Shri K.L.Sharma, particularly at the time of imposing the penalty on the applicant. As regards the note of disagreement, the learned counsel for the respondents has fairly conceded that the note of disagreement was not sent along with the findings of the enquiry officer. However, according to him the charge no.1 is held proved by the enquiry officer and that is enough for imposing the penalty on the applicant by the disciplinary authority. As regards ~~other~~ procedural irregularities, the learned counsel for the respondents has stated that out of 10 defences witnesses 8 or 9 have been examined and it was the remaining one or two witnesses which have not been examined. According to him, the applicant himself is

responsible for not producing the remaining defence witnesses. He has further submitted that all these points have been considered by the appellate authority at great length and also by the reviewing authority before rejecting the appeal and revision-petition respectively. *My* ~~xxxxxxxxxx~~

~~xxxxxxxxxx~~. The learned counsel for the respondents ~~has~~ further submitted that the reliance placed on by the applicant on the instructions of the D.G.P.&T. dated 27.1.1995 is not applicable in the instant case as another disciplinary authority was appointed who conducted the enquiry and has acted as the disciplinary authority and, therefore, that authority cannot be treated as biased.

6. The learned counsel for the applicant has lastly contended that subsequent fair assessment of material on record by the disciplinary authority could not repair the basic lapse in the proceedings, and in this context he has relied on the judgment of the Hon'ble Supreme Court in the case of Tilak Chand Magatram Obhan Vs. Kamala Prasad Shukla and others, 1995 Supp(1) SCC 21. The learned counsel states that in the present case the charge sheet was issued by the disciplinary authority, himself and he was also listed as a prosecution witness. The disciplinary authority was changed after two months on 22.6.1993. On the other hand, the learned counsel for the respondents has contended that the aforesaid decision in the case of Tilak Chand (supra) is not directly applicable in the instant case as another disciplinary authority was appointed, who conducted the enquiry and has acted ~~xxx~~ as the disciplinary authority. In the aforesaid case the appellate authority had repaired the basic lapse in the proceedings.

7. We have given careful consideration to the rival contentions.

8. It is not in dispute that the charge-sheet was issued to the applicant by Shri K.L.Sharma, who was also listed as a

prosecution witness in the charge-sheet. It is also an admitted fact that the note of disagreement recorded by the disciplinary authority was not forwarded to the applicant along with the finding of the enquiry officer, which is contrary to the afore-mentioned Rule 15(2). By recording the note of disagreement, the charge no.2 has been held proved by the disciplinary authority. It is on the basis of this fact that both the charges are proved and the disciplinary authority has imposed the penalty on the applicant, which has increased the gravity of the punishment. Since the respondents have not held the enquiry as per rules and have also denied the opportunity of hearing to the applicant, as stated above, they have violated the principles of natural justice.

9. In the facts and circumstances of the case, we quash the orders passed by the disciplinary, appellate and revisional authorities on 31.12.1997, 25.8.1998 and 13.7.1999 (Annexures A-1 to A-3) respectively. We direct the disciplinary authority to impose any penalty on the applicant other than compulsory retirement, removal and dismissal. The intervening period shall be regularised as per rules.

10. In the result, the OA is disposed of in the above terms. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

rkv.

प्राप्तिकारक नाम लिखें..... जनतापर, दि.....

प्राप्तिकारक का विवर

- (1) रामेश, विजयनाथ, विजयनाथ, विजयनाथ
- (2) विजयनाथ, विजयनाथ, विजयनाथ, विजयनाथ
- (3) विजयनाथ, विजयनाथ, विजयनाथ, विजयनाथ
- (4) विजयनाथ, विजयनाथ, विजयनाथ, विजयनाथ

S. Paul
P. Shankar

Ramendar
22/3/09

22/3/09