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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 230 of 1994.

Date of decision : This the 4th day of July, 1997.

Hon'ble Justice Shri D.N.Baruah, Vice-Chairman.

Hon'ble Shri G.L.Sanglyine, Administrative Member.

Md. Mamtazuddin Ahmed,
alias Md. Mantaz Ali,
Ex. Extra Departmental Delivery Agent,
under Deptt. of Post, resident of
Village Simelibari, Mandakata,
Dist. Kamrup, Assam.

Applicant

By Advocate Mr. B.K.Sharma.

-versus-

1. Union of India, represented by the
Secretary to the Govt. of India,
Ministry of Communication,
New Delhi.
2. The Director General of Posts,
Department of Posts,
New Delhi.
3. Sr. Supdt. of Post Office,
Guwahati -1.
4. Sub Divisional Inspector of Post Offices,
East Sub-Division,
Guwahati-1.

Respondents

By Advocate Mr. S.Ali, Sr.C.G.S.C.

O R D E R

BARUAH J. (V.C.).

In this application, applicant has challenged Annexure-5 order dated 19.1.1993 passed by the disciplinary authority i.e. the Sub-divisional Inspector of Post Offices, East Sub-Division, Guwahati-1 - the Respondent No. 4, imposing penalty on the applicant by way of removal from service and also the appellate order Annexure-7 dated 17.11.1993. The facts are :

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2. At the material time the applicant was Extra Departmental Delivery Agent. In the month of September, 1990 he was placed under "put of duty" by Annexure 1 order dated 21.9.90 issued by the 4th Respondent. Thereafter, in the month of October, the 3rd Respondent served on the applicant Annexure 2 Charge Sheet directing the applicant to submit written statement within 10 days from the date of receipt of the aforesaid Memorandum of charges. Pursuant to that the applicant filed his statement in his defence against the chargesheet. The authority not being satisfied with the explanation decided to hold departmental enquiry. Therefore the Assistant Superintendent of Post Offices, Guwahati Sub-division West was appointed enquiry officer. The enquiry officer thus appointed held enquiry and submitted his report on 23.10.1992 holding interalia that the charges levelled against the applicant were not proved. However, 4th Respondent - who was the disciplinary authority did not accept the enquiry report. He thereafter imposed penalty of removal of the applicant from service by Annexure-5 order.

3. Being aggrieved and dissatisfied with the said order of removal the applicant submitted an appeal before the appellate authority namely, Sr. Superintendent of Post Offices - the 3rd Respondent. The appellate authority by Annexure-7 order dated 17.11.93 confirmed the order passed by the disciplinary authority. The applicant therefore has approached this Tribunal by filing this present application.

4. We have heard Mr. B.K.Sharma, learned counsel appearing on behalf of the applicant and Mr. S.Ali, learned Sr. C.G.S.C.

.....5. Mr. Sharma

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5. Mr. Sharma submits that the disciplinary authority acted without jurisdiction by imposing the penalty of removal without following the well established procedure of law. Mr. Sharma further submits that the disciplinary authority misdirected himself by imposing penalty of removal from service without making proper enquiry. Learned counsel further submits that disciplinary authority may disagree with the findings of the Enquiry Officer and in that case he is required either to appoint another officer or he may make enquiry himself.

6. In the present case Disciplinary Authority disagreed with the findings of the enquiry officer and accordingly rejected the enquiry report. However, Disciplinary Authority, thereafter without making any enquiry whatsoever, passed the impugned order of removal. According to Mr. Sharma the Disciplinary Authority having held that the enquiry was not conducted properly as mentioned in his order, ought not to have imposed penalty without making enquiry whatsoever. Learned counsel also submits that Appellate Order was equally bad in as much as the Appellate Authority did not address itself to the points raised. Those points were not at all discussed by the Appellate Authority in the impugned Annexure-7 order. The Appellate Order accordingly to the Learned counsel was not a speaking order and the same was passed mechanically. On the other hand, Mr. S. Ali, Learned Sr. C.G.S.C. supports the impugned order. He submits

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that the Disciplinary Authority had every right to disagree with the conclusion arrived by the enquiry office. We do not disagree with the contention of Mr. Ali. But after having disagreed, it was the duty of the Disciplinary Authority to make fresh enquiry either by another enquiry office or by himself. Unfortunately, in this case, this had not been done.

7. The Disciplinary Authority rejected the findings of the enquiry officer by observing :

"I O could have established the truth or otherwise, bringing Shri Nagendra Nath Baruah as witness within his enquiry purview. But he did not call him. It is said to be inherent lacuna on the part of the I O."

Having said so he disagreed with the finding of the enquiry officer but while coming to his finding he did not call Sri Nagendra Nath Barua as witness even though in the opinion of the Disciplinary Authority, the examination of the said witness was necessary to come to a just finding. Unfortunately, the Disciplinary Authority did not take pain for bringing the said witness. That itself is serious lacuna on the part of the Disciplinary Authority. Similarly in his aforesaid order at para (iii) he said thus :

"He (the I O should have called one Shri Nausal Ali the witness in from of whom, the singature of payess was obtained in M O acknowledgement. But this was not done by the I O to find out the actual truth."

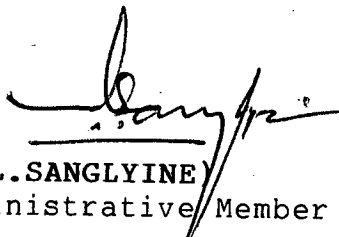
7. By saying so the Disciplinary Authority wanted to say that the actual position could have
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been made clear if Shri Nausal Ali was examined. But the Disciplinary Authority for reasons best known to him did not call him also. Therefore we have no hesitation to hold that the Disciplinary Authority jumped to the conclusion regarding the guilt of the applicant without proper materials and passed the impugned order. In our opinion, such punishment cannot sustain in law. We have also seen the Annexure 7 Appellate Order. We agree with Mr. B.K.Sharma that the Appellate Authority did not address itself to the points raised before him. Therefore Annexure 7 Appellate order also cannot sustain. Accordingly the order of removal Annexure-5 passed by the Disciplinary Authority and Annexure 7 Appellate Order are set aside.

9. The Application is accordingly allowed.

10. Considering the entire facts and circumstances of the case, however, we make no order as to costs.


(G.L.SANGLYINE)
Administrative Member


(D.N.BARUAH)
Vice-Chairman