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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, ::: GUWAHATI-5.

O.A. NO. 57 of 1994  
T.A. NO.

DATE OF DECISION 19.2.19

Shri H. Budha Chandra Singh

(PETITIONER(S))

Applicant in person

ADVOCATE FOR THE  
PETITIONER (S)

VERSUS

Union of India

RESPONDENT (S)

G. Sarma, Addl. C.G.S.C.

ADVOCATE FOR THE  
RESPONDENT (S).

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

*M. G. Chaudhary*

Judgment delivered by Hon'ble Vice-Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 57 of 1994.

Date of decision : This the 19th day of February, 1996.

The Hon'ble Justice Shri M.G.Chaudhari, Vice-Chairman.

The Hon'ble Shri G.L.Sanglyine, Member(A).

Shri H.Budha Chandra Singh,  
Son of Shri H.Tomchoubi Singh,  
Resident of Wangkhei Thambalkhong,  
Imphal-795001 (Manipur State)

.... Applicant

Applicant in person (Absent).

-versus-

1. Union of India,  
Secretary, Ministry of Communication,  
Govt. of India,  
New Delhi-110001.

2. The Postmaster General,  
North Eastern Circle,  
Shillong-793001.

3. The Director Postal Services,  
Manipur Division,  
Imphal-795001  
Respondent

....Respondent

By Advocate Mr. G.Sarma, Addl. C.G.S.C.

ORDER

CHAUDHARI J. (V.C.).

The applicant has desired that we should decide the application on the basis of the records and his personal attendance may be dispensed with.

He is not represented by any Lawyer.

Mr. G.Sarma, Addl. C.G.S.C. for the respondents

Although Mr. G.Sarma has produced some records that unfortunately does not contain all the record and evidence of the enquiry hence we have carefully gone through the record as is available to us and have heard Mr. G.Sarma

.. The applicant

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2. The applicant was working as Sub Postmaster Saikul Sub Post Office at the material time. A disciplinary enquiry was commenced against him under Rule 14 of the CCA Rules, 1965 vide Memorandum issued on 30.9.91/1.10.91. He had been placed under suspension by order dated 26.6.91 as the enquiry was proposed to be held. The statement of Article of Charges contained V heads. Firstly it was alleged that he had failed to maintain absolute integrity and devotion to duty which resulted in infringement of the provision of Rule-3(1) (i) (ii) of CCS (Conduct) Rules 1964 inasmuch as he had not credited to Government Account an amount of Rs. 51691.45 as required under Rule 4 (1) and 23 of P&T Financial Hand Book Volume-I and Rule 23 (2) of P & T Manual Volume VI Part I causing a loss of sum of Rs. 51,691.45 to the Government. It was alleged that the applicant had misappropriated the amount of said shortage cash. Secondly, it was alleged that the applicant had failed to show certain transactions in the long book and S.O.S ledger as required under Rule 10 and 14 of S.B. Manual in account of which the Government sustained a loss and did not credit an amount of Rs.52000 made in the pass book on 31.8.89 and thereby had violated Rule 4 of FHB Vol I and thus he had failed to maintain absolute integrity and devotion to duty and had violated provisions of Rule 3 (1) (i) (ii) of CCS (Conduct) Rules, 1964. Thirdly, it was alleged that as many as 115 V articles had been received at the said Post Office on different dates but although the articles were delivered after recovering the value and commission from the addresser the applicant had failed to issue V.P. Money Orders in favour of the same and had thus violated provision of Rule 227 of P & T Manual Volume-VI Part-I and thereby a loss of Rs. 34,427/- was sustained by the Department. It was alleged that the applicant had thus infringed Rule 3 (1) (i) (ii)

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CCS (Conduct) Rules, 1964. Fourthly, it was alleged that applicant had allowed withdrawal from 3 accounts with pass book and had thus acted contrary to Rule 33 of SB Manual Volume I which resulted in causing a loss amounting Rs.1500.00 to the Department and thus the applicant breached Rule 3 (1) (ii) of CCS (Conduct) Rules, 1964. Lastly, it was alleged that the applicant had absented himself from duty on different dates specified in the charge abruptly without any information and thus because of the unauthorized absence he had violated the provisions of Rule 152 and 153 of P & T Manual Volume-III and had acted in a manner which was unbecoming of a Government servant and infringed provisions of Rule 3 (1) (iii) of CCS (Conduct) Rules, 1964. The applicant, Postmaster, Imphal Head Office was appointed as enquiry officer.

3. The applicant has a grievance that he was not given fair opportunity to defend himself nor to get legal assistance and therefore the enquiry is vitiated by violation of principles of natural justice. The enquiry officer however has stated in his report that the applicant neither participated in the enquiry nor availed of the chance given to him for defending himself nor submitted any brief or argument refuting the charge brought against him either orally or in writing though opportunity was given to him to do so. He also did not question the authenticity of documents which were offered for inspection and formed part of the evidence at the enquiry. He has also noted that although opportunity was given on each and every occasion of hearing, the applicant did not avail of the same. He further noted that the applicant did not put any reason nor explain the circumstances under which the documents were maintained without denying his handwriting. He further noted that since the presenting officer was a departmental officer permission

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engage a legal practitioner was not allowed to the applicant

After examining the evidence documentary as well as oral recorded at the enquiry the enquiry officer held inter alia that the Article of Charge No. I was partially established to the extent of violation of provision of Rule 23 (2). That the Article of Charge No. II ~~is~~ is partially established to the extent of infringement of Rule 10 and Rule 14 of the Manual but violation of Rule 4 of FHB was not sustained. That Article of Charge No. III could not be brought into home, that Article of Charge No. IV was established but that Article No. V of the Charge has not been established.

The findings were recorded by the enquiry officer in his report dated 14.9.92.

4. The disciplinary authority however disagreed with the findings of the enquiry officer to the extent the enquiry officer had held that Article I was not fully established, that Article No. II was not fully sustained, that Article No. III was not proved and that Article No. V was not established and instead held that all the charges were wholly proved. Consistently with that view he passed the impugned order of removal of the applicant from service on 26.3.93.

5. The applicant preferred an appeal to the Postmaster General, N.E. Circle, Shillong who after recording that he had gone through the history of the case, made parawise comments on the appeal preferred by the applicant. On the appeal memo, the Service Book, CR Dossiers, and other relevant records carefully, confirmed the punishment of removal from service and has rejected the appeal by order dated 15.7.93 which is also impugned in this O.A.

.... Aggrieved

6. Aggrieved with the aforesaid order the applicant has presented the instant O.A. on 21.3.94 and inter alia prays that the impugned orders may be set aside and he may be ordered to be reinstated with all benefits, that the period of his suspension be directed to be treated as on duty and such other orders as may be necessary in the interest of justice may be passed.

7. The respondents have resisted the application by filing a written statement. The applicant has also filed a rejoinder in answer to the written statement.

8. The charge levelled against the applicant was of a serious nature since it related to alleged misappropriation of Government money. The charge had therefore to be clearly established. In arriving at that conclusion the vital distinction between misconduct resulting from misappropriation of money which is a serious act and mere irregularity in not following the prescribed procedure had to be carefully borne in mind. We however find that the orders passed by the authorities are not clear and lead to confusion as to whether the charge of misappropriation has in fact been established or not. It is needless to emphasize that since the question of misappropriation of money was involved the enquiry took shape of a quasi criminal proceeding and the burden was entirely upon the department to establish the charge beyond doubt irrespective of the attitude of the applicant towards the enquiry and his pleas. That there has been a deficiency in the proceedings can be demonstrated in the following manner.

9. While rightly enumerating the ingredients required to be proved in connection with Charge No. I the enquiry officer has mentioned one of these to be as follows

...."(e) that,

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"(e) that, the aforesaid amount of shortage not credited to the Govt." (Para 8.2(3) under charge No. I relating to non crediting Rs. 51,691.45).

After holding that a sum of Rs. 51,691.45 was the shortage between the previous working day's closing balance and amount found on verification the enquiry officer after examining the evidence on record has recorded the finding as follows :

"The amount had already been credited to the appropriate head and thereby became a part of the balance. In this particular case, the shortage amount is in comparison between the balance on the last working day and the physical verification on the opening of next working day. Thus it stands that the amount was brought into the appropriate head on or before the closing of the last working day and thereby formed the office balance. Had this amount not been credited to the Govt. account, the balance of the office might have been lessened by the amount, and there would have been no shortage on verification. Therefore it is crystal clear that the shortage amount was actually credited to the Govt. account earlier than the date of verification and as such this point stands unproved."

Consequently he has held that the Charge No. I was only partially established to the extent of violation of provisions of Rule 23 (2) of the P & T Manual Vol. VI but the provisions of FHB Volume I has not been violated. It is difficult to read this finding to hold that the allegation of misappropriation of the amount has been established.

The above finding was reversed by the disciplinary authority and the only reason given by him is as follows :

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"Why I dis-agree with I.O. in this point? Because at the time of physical verification of cash and stamp balances the ASPOs has clearly mentioned that he has charged a sum of Rs. 51,691.45p under UCP which was supposed to be the mis-appropriated amount by the charged official and the remaining balance of Rs. 630.70 was the balance of the S.O. on the closing of 20.6.90. The charged official has admitted in his deposition exhibits No.S-12(2) dated 18.7.90 that the amount of Rs. 51,691.45 was short in his office balance. So the charge framed against the charged official in Article No. I is (stand) proved. The charged official had violated the Provision of Rule 23(2) of P & T Man.Vol. VI Part-I and thereby attracted the Rule 3 of CCS (Conduct) Rules, 1964."

This reasoning is slip shod and unsatisfactory. The Disciplinary Authority has not discussed as to why the conclusion of the enquiry officer that the shortage amount was actually credited to the Government Account earlier to the date of verification was wrong. He has not demonstrated by reference to any evidence that factually the amount was not credited or that it was credited after the verification and as to how it amounts to misappropriation. The conclusion of the Disciplinary Authority which amounts to holding that the charge of misappropriation is proved thus cannot be accepted as a legal finding.

10. Similar is the situation in respect of the conclusion of the enquiry officer on Article No. III which again related to a sum of Rs. 34,427.00 which it was alleged <sup>loss</sup> was a/sustained by the department. The enquiry officer had held that violation of Rule 227 (1) has not been proved. Thus he held that the allegation of non-issuance of V.P. money Orders in lieu of V.P. articles was not established. The Disciplinary Authority while reversing this conclusion has stated that "nobody prevented the charged official from giving correct statement. It reveals his fickle mind and further if he denies the statement which he had given already he should have appeared before the I.O. in person and denied the charges. This clearly shows that the charged official

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..... had



2 had delivered the V.P. articles received at his office and realised the value and commission but did not bring into the account and misappropriated the amount and thus Article III also stands proved." This can hardly be described as legal reasoning based on evidence to prove the charge. The state of mind of the applicant was not the criteria but it had to be established by reference to the evidence. Since the enquiry officer has held otherwise it was incumbent upon the Disciplinary Authority to deal with the evidence in support of his conclusion which he has failed to do.

11. The above two aspects are sufficient to hold that the order of the Disciplinary Authority is not proper and it cannot be held to be an order legally passed. We do not therefore propose to deal with the conclusions he has drawn on other points.

The disciplinary authority since he was inclined to reverse the material findings recored by the the enquiry officer ought to have in all fairness given an opportunity to the applicant of beingg heard. That was not done and therefore the applicant had no opportunity to project his point of view on the conclusions drawn by the enquiry officer. Having regard to the manner in which the Disciplinary Authority has reversed the findings of the enquiry officer on material charges we think that the failure to give an opportunity to the applicant to make his submissions also vitiates the order.

12. The appropriate authority to take notice of the above infirmities in the order of the Disciplinary Authority and to rectify them was the Appellate Authority. However the Appellate Authority has passed a stereo-type order simply confirming the order passed and penalty imposed by the Disciplinary Authority. The Appellate Authority was the final

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... authority

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authority on facts and when the Disciplinary Authority had not agreed with the conclusions of the enquiry officer he should have himself analysed the evidence to be satisfied or otherwise about the correctness of the approach of the Disciplinary Authority and ought not to have mechanically confirmed that order. He should have appreciated that the reversal of the conclusion of the enquiry officer on the point of misappropriation of money had a very serious consequence in so far as the applicant was concerned and it was therefore necessary to critically examine the evidence and arrive at a fair conclusion.

13. We are not satisfied with the order of the Appellate Authority which we cannot describe as an order passed with full application of mind to the evidence and factual aspects of the case. It is not the function of the Tribunal to sit in appeal and reappraise the evidence. That <sup>was</sup> ~~is~~ the task of the Appellate Authority who was expected to do so. Since he has not done so we are constrained to remand the case for a fresh decision in the interest of justice.

14. It appears from the application filed by the applicant dated 4.1.92 to the Director of Postal Services, Manipur for re-examination of the case (Annexure-VIII) that a Criminal Case had been instituted against the applicant in the Court of Special Judge, Manipur at Imphal bearing Criminal Misc.(B) Case No. 10 of 1990 in connection with F.I.R. Case No. 20(7)90 Saikul Police Station under Section 409 I.P.C. and 5(2) I.P.C. upon the complaint lodged by the Postal Department. From the context it appears that the case possibly related to the same subject matter of alleged misappropriation of money. Neither party however has apprised us about the nature or stage of that proceeding. If that case

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related to the same subject matter the decision of the Criminal Court or if the case be still pending then the pendency of the case also would be a relevant factor to be considered which does not appear to have been considered by the authorities below.

In the result following order is passed :

1. The appellate order passed by the Post Master General, North Eastern Circle, Shillong dated 15.7.93 Annexure II rejecting the appeal of the applicant against the order of removal from service is hereby quashed and set aside.
2. The order passed by the Disciplinary Authority namely the Director of Postal Services removing the applicant from service dated 26.3.93 (Annexure XV) is also quashed and set aside.
3. The case is remanded to the Director of Postal Services, Manipur at Imphal for passing a fresh order on merits on the basis of the evidence in the case and after giving an opportunity of being heard to the applicant. While passing the order the authority shall have due advertence to the observations made above in the judgement. It shall also ascertain the position as regards the Criminal Case and will consider its impact on the allegations made in the instant case. The Disciplinary Authority shall pass a reasoned order and communicate it to the applicant.

The applicant if aggrieved with the decision of the Disciplinary Authority will be at liberty to file an appeal in accordance with the law to the Appellate Authority.

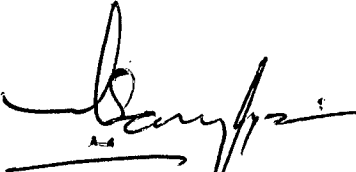
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The Disciplinary Authority shall pass the fresh order as expeditiously as possible but within a period of three months from the date of receipt of the copy of this order.

The question of suspension is left open to be decided by the appropriate authority of the respondents if necessary in the light of this order.

The O.A. is partly allowed in terms of the aforesaid order. No order as to costs.

A copy of the order shall be sent to the applicant directly as soon as the judgement is signed.

  
(G.L.SANGLYINE)  
Member (A)

  
(M.G.CHAUDHARI)  
Vice-Chairman

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