

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

O.A. NO. 177 of 1994
T.A. NO.

DATE OF DECISION 6.3.1997

Shri Sunil Das

(PETITIONER(S))

Mr. J.L.Sarkar

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

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

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE-CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

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 ?



Judgment delivered by Hon'ble Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 177 of 1994.

Date of decision : This the 6th day of March, 1997.

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

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

Shri Sunil Das,
Postmaster,
Agartala H.P.O.
799 001

.....Applicant

By Advocate Mr. J.L.Sarkar.

-versus-

1. The Union of India, represented by
the Secretary, Department of Posts,
Ministry of Communication,
Dak Bhawan, Samsad Marg,
New Delhi-110 001

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

3. The Director of Postal Services,
Tripura State,
Agartala-799 001

4. The Postmaster,
Agartala H.P.O,
799 001

.....Respondents.

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

O R D E R

BARUAH J. (v.C.).

The applicant was working as Postmaster at Dharmanagar. He was thereafter posted at Imphal Head Post Office. In April, 1992 he proceeded on 12 days casual leave and on 2.5.1992 he resumed his duties after availing of the leave. On 15.5.92 the applicant went to the Treasury at bout 03 a.m. However, he did not find

.....the

the Assistant Treasurer as he had already left office and did not return to his duties thereafter. Because of this, he could not check and verify the balances of the stamps and stationaries entrusted with him. Next two days being holiday and Sunday, on 18.5.92 the case was investigated by a team of Inspectors of the Post Offices under the order of Superintendent of Post Offices and on verification of the balances, the stamps and stationaries worth Rs. 1,19,492.20p was found short. The Assistant Treasurer (Stamps) Ingobi Singh informed the Superintendent of Post Offices and gave a statement in writing regarding shortages of the said postal stamps and owned the responsibility for such shortage. Thereafter, a case was registered against him. Later on 21.5.92 the Assistant Treasurer I Singh resumed his duties and few days thereafter he credited a sum of Rs. 19000/- voluntarily at Imphal Post Office and thereafter, he deposited various amount from time to time and thus sum of Rs. 24,500/- in total deposited including the recovery of Rs. 1200/- per month from salary for the months of May and June, 1992. On 2.6.92 the Superintendent of Post Office of the Director of Postal Services, Manipur-Imphal requested the Deputy Commissioner to take action under provision of law. Accordingly the Deputy Commissioner directed the S.D.O. Imphal for taking necessary action under the provision of law. On 10.3.94 the Director of Postal Services, Agaltala issued a chargesheet under rule 16 of the CCS (CCA) Rules, 1965 against the applicant for alleged non-observation of Departmental Rules. On 21.3.1994 he submitted his written statements. In his reply, he denied the charges and also demanded an enquiry for the ends of justice. However, on the basis of the representation the

applicant was imposed punishment for recovery of Rs. 9000/- in 36 instalments. Before the punishment was awarded the applicant also demanded an enquiry. This was, however, not allowed. The authorities straightway proceeded to punishment to the applicant. Before imposition of punishment a notice was issued to show cause as to why punishment should not be awarded. The applicant submitted by Annexure-2 representation dated 21.3.94 gave his reply. In concluding paragraph of the said representation the applicant specifically mentioned :

" if the objections are not convincing a statutory enquiry may kindly be held for ends of justice".

However, according to the applicant in spite of his request, the authorities did not make an enquiry. Being aggrieved the applicant preferred an appeal before the appellate authority namely, Postmaster General, North Eastern Circle, Shillong (Annexure-B to the application). In the appeal the applicant took the ground regarding enquiry in ground No. 4 which is quoted below :

"THE ORDERS WERE PASSED WITHOUT HOLDING STATUTORY INQUIRY AS DEMANDED BY THE APPELLANT OR WITHOUT ASSIGNING REASONS REFUSING TO HOLD INQUIRY".

The appeal is dismissed. Hence the present application.

2. We have heard Mr. J.L.Sarkar, learned counsel appearing on behalf of the applicant and Mr. S.Ali, Sr. C.G.S.C. appearing on behalf of the respondents.

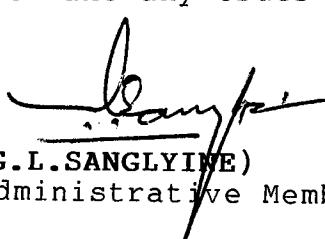
3. The contention of Mr. Sarker is that the applicant was denied opportunity of his case being enquired into which he was entitled to. In the written explanation he had demanded an enquiry. This was also denied to him and as a result the entire action of the respondents is vitiated by an error of

law. Mr. Sarker further submits that the appellate authority also without proper application of its mind dismissed appeal. Learned counsel has pointed out that in ground No. 1 of the Memo of appeal as quoted above, the applicant had very categorically stated that the entire action of the respondent was without jurisdiction and contrary to the provision of law in as much as the applicant was denied the opportunity of getting his case enquired by an enquiry officer. Mr. Sarker has drawn our attention to the Govt. of India's instructions for holding an oral enquiry when demanded by the delinquent officer. This instructions of the Government of India very clearly shows that Rule 16 (i) of CCS (CCA) Rules 19-20 confirms the discussion of the disciplinary authority whether to hold enquiry in the manner laid down under Sub rule 3 (2) of the Rule 14 or not. In the said rule in every case in which the disciplinary authority is of the opinion that such an enquiry is necessary, an enquiry should be held. Of course these instructions also very clearly indicates that the authority is not always bound to accept the request of the delinquent employee for conducting enquiry. The Govt. instructions is on a directory in nature. The enquiry officer however, may refuse to make enquiry as requested by the delinquent employee but in such case the authority must give reasons why the request for making enquiry is refused. The Government instructions also indicates that disciplinary authority shall apply its mind to the applicant's request. If it is not done it will be considered as denial of natural justice. These instructions of the Govt. of India has a statutory force, besides it can be regarded as a profess norm of the Government, and therefore, there should not be departure unless there is some cogent reason for not following the said instruction. In the present case the

...applicant

applicant requested for conducting enquiry at the time of the reply to the show cause notice that if his submission was "not convincing a statutory enquiry may kindly be held for the ends of justice". But on perusal of the order passed by the disciplinary authority we do not find as to why the request of the applicant was not acceded to. In the grounds of appeal also it was specifically mentioned that the entire proceeding was vitiated for not holding any enquiry by the disciplinary authority. Learned counsel for the Respondents has submitted the request for holding enquiry was not unequivocal. However we do not find this contention acceptable. We are therefore not in agreement with the conclusion arrived at by the appellate authority while rejecting the prayer for holding an enquiry. It ought to have decided as to whether it was the disciplinary authority who was to decide whether the enquiry should be made or not. If the request for enquiry is refused by the disciplinary authority, grounds must be shown as to why it was so refused. Therefore we are of the opinion that the applicant has right to get his case enquired by a statutory enquiry. This was not done without any reasonable ground. The action of the Respondent are arbitrary and not informed of reason. In view of the above the impugned order of punishment and the appellate order cannot sustain in law. Accordingly, we set aside the same and send back to the disciplinary authority to consider whether the applicant was entitled to get his case enquired. If in the opinion of the disciplinary authority that the applicant is not entitled to get his case enquired the reasons must be recorded and this must be done as early as possible at any rate within 3 (three) months from the date of receipt of this order.

4. With the above directions, the application is disposed of. Considering the facts and circumstances of the case, we do not make any order as to costs.


(G.L. SANGLYINE)
Administrative Member


(D.N. BARUAH)
Vice-Chairman