

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH,  
ALLAHABAD**

Dated: This the 07<sup>th</sup> day of March 2018.

PRESENT:

**HON'BLE DR. MURTAZA ALI, MEMBER – J**

**Original Application No.552 of 2012  
(U/s 19, Administrative Tribunals Act,  
1985)**

Brij Behari Gupta, aged about 52 years, son of Shri G.D. Gupta, working as Shorting Assistant in Superintendent Railway Mail Service (X. Division Jhansi), Residence of 65 Hazaryana, Jhansi.

.....Applicant

By Adv: Shri A D Prakash/Shri J.P Gupta

V E R S U S

1. Union of India through Chief Post Master General, Lucknow.
2. Director Postal Services, Agra Region Agra (Appellate Authority).
3. Superintendent of Railway Mail Service (X Division Jhansi), (Disciplinary Authority).

..... Respondents

By Adv: Shri R.K Srivastava

**O R D E R**

**BY HON'BLE DR. MURTAZA ALI, MEMBER – J**

The applicant has filed this O.A along with an application for condonation of delay seeking following reliefs (s)-

- "(i) *Set aside the impugned orders dated 7.5.2008, 21.5.2008, 23.5.2008, 26.8.2008 and 8.9.2008 and or*
- (ii) *Further remand all the charge sheet to disciplinary authority to decide the same after giving reasonable opportunity to the applicant after obtaining written defence allowing inspection of relevant documents for the same.*
- (iii) *Issue any other order or direction which the Hon'ble Court may deem fit and proper in the facts and circumstances of the case to meet the ends of justice".*

2. In the application for condonation of delay, it has been stated that due to fear of further harassment by the Disciplinary Authority, the applicant could not approach the Tribunal till the punishing authorities were changed. It has been submitted that due to this reason he could not file O.A. within the prescribed limitation period and he prayed for condonation of delay in filing the O.A. In the objection filed on behalf of respondents, it has been submitted that the cause of action arose in the year 2008 while the instant OA has been filed in the year 2012 which is barred by limitation. It has been alleged that the delay in filing the OA has not been properly explained and prayed for dismissal of said application. The serving of 3 chargesheets within a period of 30 days and punishments awarded within a period of 15 days in all the 3 cases clearly shows that the applicant was working under charged atmosphere and he could

not muster the courage to file OA against his punishment orders lest the disciplinary authority would punish him again on one or the other issue. Considering the facts and circumstances, I do not find appropriate to dismiss the OA on the technical ground of limitation after six years of its filing. As the parties have been finally heard on merits, the delay in filing the O.A is condoned.

3. The brief facts of the case are that the applicant was initially appointed in April 1982 in Group D category and while working as Sorting Assistant in the main office of Superintendent Rail Mail Service X Division Jhansi he was served a memorandum of charge dated 7.3.2008 (Annexure A-6) under Rule 16 of CCS (CCA) Rules alleging that he failed to bring 45 mail bags out of 158 in the office and left them insecure on platform due to which sorting was delayed. The applicant was issued another charge-sheet on 4.4.2008 (Annexure A-7) under Rule 16 of CCS (CCA) Rules alleging that he had failed to file daily report on 11.3.2008 on time. Thereafter he was served another charge-sheet dated 7.4.2008(Annexure A-8) with the allegation that he failed to make immediate arrangement for train duty on 12.3.2008 when Ashok Kumar Sharma had failed to turn up after signing in appearance register. It is further stated that on the applications dated 8.4.2008 and 9.4.2008 seeking permission to inspect the relevant documents, the applicant was

permitted to inspect the documents on 21.4.2008 but he could not attend the office on the said date due to illness. He preferred an application dated 26.4.2008 (Annexure A-9) for giving permission to inspect the documents but it was not considered by the Disciplinary Authority and imposed upon him the penalty of censure on 7.5.2008 (Annexure A-1) in respect of charge-sheet dated 7.3.2008. The Disciplinary Authority also imposed penalty of withholding one increment for one year without cumulative effect vide order dated 21.5.2008 (Annexure A-2) in respect of chargesheet dated 4.4.2008. The Disciplinary Authority further imposed penalty of withholding one increment for six months without cumulative effect vide order dated 23.5.2008 (Annexure A-3) in respect of charge-sheet dated 7.4.2008. The applicant submitted appeals on 1.7.2008 (Annexure A-10) and on 8.7.2008 (Annexure A-11) against the order dated 21.5.2008 (Annexure A-2) and 23.5.2008 (Annexure A-3) respectively mainly on the ground that he was not given reasonable opportunity for submitting his defence.

4. In the reply filed on behalf of respondents, the facts regarding issuance of 3 chargesheets, imposition of punishments thereon and rejection of appeals have not been disputed. It has further been submitted that the applicant was permitted to inspect the relevant/desired documents in all the 3

chargesheets but he neither attended the office on the date fixed nor submitted any medical certificate in respect of his absence. Thus the application submitted by him on 26.4.2008, was not considered by the competent authority. As the applicant did not submit his representations against the chargesheets within stipulated period of time, therefore, finding the charges as proved, he was awarded punishments considering the nature of misconduct committed by him. The appeal submitted by the applicant against the punishment orders dated 23.5.2008 and 21.5.2008 were also considered by the competent authority which were rejected vide order dated 8.9.2008 (Annexure A-5) and 21.5.2008 (Annexure A-2) respectively. It is further stated that the applicant has not filed any revision petition against the appellate orders and he can now submit his revision petition against such appellate orders.

5. In the rejoinder, the applicant has reiterated the averments made in the OA and further stated that the respondents have imposed punishments without giving him opportunity of access to the documents required for submission of written statements. He could not attend the office on 21.4.2008 to inspect the documents due to ill health and submitted an application dated 26.4.2008 for fixing another date but the Disciplinary Authority imposed the penalty without considering his application. It has

also been alleged that he was served charge-sheets for the acts for which he was not obliged to perform. It has also been alleged that the appellate authority has wrongly rejected his appeals without considering his submissions. It has further been alleged that the disciplinary authority did not inform him that his application dated 26.4.2008 for grant of permission to inspect the documents had ever been rejected.

6. Heard Shri Dharmendra Tiwari proxy counsel for Shri J.P Gupta counsel for the applicant and Shri R.K. Srivastava counsel for the respondents and perused the record.

7. The only dispute which is to be adjudicated by this Tribunal is whether the applicant was afforded reasonable opportunity of being heard before awarding punishment upon him. It is not in dispute that on the request of applicant, he was permitted to inspect the relevant documents on 21.4.2008 but he could not attend the office on the date fixed and he had preferred an application dated 26.4.2008 for fixing another date of inspection but the disciplinary authority without giving any further time for filing representations on the charge-sheets, imposed impugned punishments upon him. It is also not in dispute that no formal order was passed or communicated to the

applicant in regard to the rejection of application preferred by the applicant on 26.8.2008.

8. It is the contention of applicant that neither medical certificate was sought by the Disciplinary Authority in respect of absence on 21.4.2008, nor any communication for rejection of his application dated 26.4.2008 was made to the applicant, but the Disciplinary Authority imposed three punishments on 7.5.2008, 21.5.2008 and 23.5.2008, which is against the established principles of natural justice.

9. No doubt, the applicant could not submit his representations within 10 days in respect of charge-sheets dated 7.3.2008, 4.4.2008 and 7.4.2008 and could not inspect the desired documents on 21.4.2008, the date fixed for inspection, but it was the responsibility of disciplinary authority to communicate the order of rejection for inspection of documents sought for by the applicant vide his application dated 26.4.2008. If the disciplinary authority was not satisfied with the submissions of applicant, he could require the applicant to submit medical certificate regarding his absence on 21.4.2008 but it was not at all justified to keep mum on his application dated 26.4.2008 and without giving him any further opportunity for submitting representations, punished him ex-parte. The

opportunity of hearing has certainly been curtailed and applicant has been deprived of fair opportunity of hearing. Thus the action of disciplinary authority imposing the punishment is in gross violation of principles of natural justice and cannot be sustained.

10. In the case of ***Durga Prasad Tewari Vs. State of U.P.*** reported in ***2012 (2) ESC 689 (All) (LB)***, Hon'ble Allahabad High Court has held that whole inquiry is vitiated if the Inquiry Officer was required to furnish certain documents but they are not supplied to the charged official. In the case of ***Chandarama Tewari v. Union of India*** reported in ***1987 (Supp) SCC 518***, it has been held by Hon'ble Apex Court in para 9 as under:

***"It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would be vitiated for the violation of principals of natural justice."***

11. Thus, I am of the considerd view that due to non-furnishing of required documents, the applicant could not reply to the charges levelled against him and the principles of natural justice has grossly been violated by the respondents.

12. In view of the above, the O.A. is allowed and the impugned orders of punishment dated 7.5.2008, 21.5.2008, 23.5.2008 as well as appellate orders dated 26.8.2008 and 8.9.2008 cannot be sustained and accordingly quashed and set aside. However, the Disciplinary Authority is at liberty to conduct the enquiry afresh after affording an opportunity of inspection of documents and after considering the representations so preferred by the applicant on the said charge-sheets. There is no order as to costs.

Member (J)

Manish/-

## APPENDIX

## Applicant's Annexures in O.A

Sl. No.	Particulars	Dates	Annex.
1.	Copy of impugned order.	07.5.2008.	A-1
2.	Copy of impugned order.	21.5.2008	A-2
3.	Copy of impugned order.	23.5.2008	A-3
4.	Copy of impugned order.	26.8.2008	A-4
5.	Copy of impugned order.	08.09.2008	A-5
6.	Copy of charge.	7.3.2008	A-6
7.	Copy of memo of charge.	4.4.2008	A-7
8.	Copy of chargesheet.	7.4.2008	A-8
9.	Copy of application	26.4.2008	A-9
10.	Copy of appeal.	01.07.2008	A-10
11.	Copy of appeal.	8.7.2008	A-11
12	Copy of duty list of mail agent.	7.10.1999	A-12

## Respondents Annexures in Counter Affidavit.

Sl. No.	Particulars	Dates	Annex.
1	Copy of Rule 28 of Postal Manual Vol.VII		CA-1