

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1600/2003

New Delhi this the 17th day of February, 2004

Hon'ble Shri Bharat Bhushan, Member (J)

Shri Vishnu Sarup
S/O Shri Ram Chand Sharma,
working as Postal Asstt. in
the Sarojni Nagar, H.O., New
Delhi, resident of New Delhi
Address for service of Notice
C/O Shri Sant Lal, Advocate,
CAT Bar Room New Delhi.

..Applicant

(By Advocate Shri Sant Lal)

VERSUS

1. The Union of India, through
the Addl. Secretary, Deptt. of Posts,
(Member Personnel)
Dak Bhawan, New Delhi.
2. The Director Postal Services (P),
O/O CPMG Delhi Circle, Meghdoot
Bhawan, New Delhi.
3. The Senior Postmaster, Sarojni Nagar,
head Office, Sarojni Nagar, New Delhi.

..Respondents

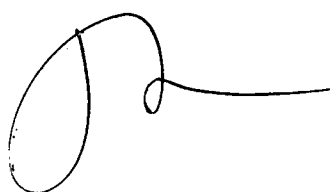
(By Advocate Sh. Gyanender Singh proxy counsel
for Shri Arun Bhardwaj)

O R D E R

Hon'ble Shri Bharat Bhushan, Member (J)

It is a case where the disciplinary authority had imposed the penalty of recovery of Rs.50,400/- in 36 instalments of Rs.1400/- per month from the salary of the applicant. However, this penalty was reduced to an amount of Rs.12000/- by the Revisional Authority. Hence, the challenge before me in the present OA are the aforesaid orders imposing penalty.

2. The case of the applicant is that he had joined as Postal Assistant (PA) w.e.f. 8.11.1989 and was





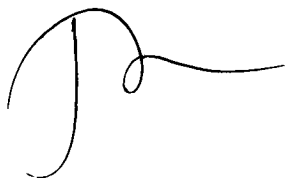
posted at Sarojni Nagar Head Post Office, New Delhi. In May, 1995 he was sent on deputation without his consent to the Saving Bank Control and Internal Checking Organisation. And during that period because of the failure on his part to carry out physical verification in the S.B.Section a loss of Rs.65000/- was detected for which the penalty as stated above was imposed on the applicant. The grievance of the petitioner is, that, the disciplinary authority had imposed the penalty of recovery of huge amount of Rs.50,400 to be recovered from the salary of the accused without holding any enquiry and proving the charges against the applicant. His submission is, that, even his request for supply of relevant documents which are necessary for submitting his defence had also not been supplied. The perusal of the records show that after dismissal of the appeal by the appellate authority against the impugned punishment order, the applicant had preferred a revision petition on 16.11.1998 to the Revisional Authority i.e. Member (P) of Postal Services Board, New Delhi (Ann.A.8) for revision of the impugned order and appellate authority's order but since no decision had been taken for a period of about 3 years. The petitioner had earlier filed OA 1932/2002 before the Central Administrative Tribunal which was disposed of vide order dated 25.7.2002 at the admission stage itself with a direction to the Revisional authority to decide the appeal/petition dated 16.11.1998 within a period of one month by passing a reasoned and speaking order from the communication of

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the order. So, it was only on 5.9.2002, that the Revisional Authority decided the revision petition and modified the punishment order and reduced the penalty amount from Rs.50,400/- to Rs.12000/- to be recovered in 24 instalments of Rs.500/- per month. Feeling aggrieved by this order, the applicant has filed the present OA.

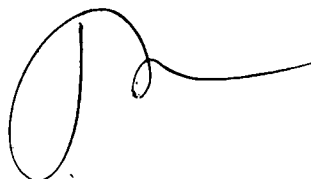
3. In the counter filed by the respondents it was pointed out that a fraud of Rs.65,000/- took place in May and June, 1995 in S.B.Section and the applicant at that time was working in SBCO. The enquiry conducted at Circle level revealed that the withdrawal of total amount aggregating to Rs. 65,000 had not been accounted for in the ledger cards, meaning thereby that the applicant had not carried out the prescribed check while working as PA SBCO Branch. They have also contended that the disciplinary action against all the involved persons in such fraudulent withdrawals were taken and recovery orders had also been issued after adopting proper procedure and the applicant was just one of such persons against whom the action was being taken.

4. Heard the learned counsel for the parties and perused the records. At the outset, the learned counsel for the petitioner has taken the plea that the respondents in transferring the applicant on deputation post to SBCO and Internal Checking Organisation had acted in a illegal manner and against the rules by ordering him to work on deputation against his wishes and without his consent. His submission is that the applicant had no knowledge about the work, functioning



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and rules and regulations of the said Organisation but insptite of that he was sent over there and with no helping hands at his disposal. While making his submissions that nobody can be sent on deputation without his consent, He has placed reliance on the Supreme Court judgment in the case of **State of Punjab and Ors Vs. Inder Singh and Ors** (1998(1) ATJ 200) wherein it had been held that there can be no deputation without the consent of the person so deputed. Learned counsel has next argued that the charge levelled against him by the disciplinary authority vide order dated 22.4.1997 was also quite vague and unspecific. His contention is that in the statement of imputations of mis-conduct it was simply mentioned that there was fraudulent withdrawals of Rs.65000/- but it was not mentioned as to who are the persons actually involved in the commissions of such criminal act. His further submission is, that, no negligence or violation of any rules on the part of the applicant has also been brought on record. Similarly, assailing the orders of the disciplinary authority imposing the penalty effecting recovery of amount from his salary., the learned counsel submits that the enquiry held at the back of the applicant is no enquiry in the eyes of law. Thus, on the aspect of conducting an inquiry under the circumstances, he has placed reliance upon the judgement of the Hyderabad Bench of the Tribunal in **Ch.Venkateswara Rao Vs UOI & Ors**(1990(3)SLJ 379) wherein it had been held the penalty of recovery from pay cannot be imposed without holding an enquiry. In another case of **V.Srinivasarao Vs. State of Karnatka** reported in 1990(2)ATLT 9 (SN) the Hon'ble Karnatka



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High Court has held that if the nature of the charge/charges is such that a finding of guilt can be recorded only after holding regular inquiry then conducting of such inquiry becomes mandatory and the disciplinary authority is bound to form opinion accordingly. In this regard learned counsel has also drawn my attention towards sub rule 3(23) of Rule 14 of the CCS(CCA) Rules, 1965 which according to him has been laid down in Rule 16(1) (b) ibid, thereby explaining the manner in which the regular enquiry has to be held. According to him the disciplinary authority has not cared to follow such rules and by not doing so he has committed illegality and thereby vitiating the enquiry all together. In this regard, learned counsel has placed reliance upon the judgement of the Madras Bench of the Tribunal in the case of **P.M.Dorairaj Vs. G.M. Ordnance Factory Trichy and Anr.** (1990(10 ATLT228) in which was held that "....We are of the opinion that disciplinary authority has not followed the procedure laid down in Rule 16(1)(b) of CCS (CCA) Rules,.He has also failed to record reasons for dispensing with the enquiry. Hence, we hold that this order is bad in law and has to be set aside. Learned counsel has further submitted that the copies of statement of witnesses recorded during the preliminary enquiry had also not been supplied to the applicant in spite of his repeated requests. According to him, supply of such copies was necessary in order, to offer him an opportunity to effectively cross examine the witnesses and by not doing so they have acted in a illegal manner. In support of this he has referred to





the case of S.Govindarasu Vs. Supdt.of Post Offices Nagapattinam and Ors(1989(10)ATC 86), the Madras bench of the Tribunal has observed as under:-

"...Where previous statements given by certain persons are to be used for the purpose of arriving at the guilt of the govt.servant copies of such statements have to be furnished to the Govt.servant and opportunity is to be afforded to him to cross examine the deponents. Without conduct of an oral inquiry in the manner laid down in Rule 14 it will not be possible to place reliance on such statements. As such in cases of such nature necessarily the disciplinary authority is to hold an inquiry in the manner laid down in Rule 14 though the proposal is to impose a minor penalty".

5. Learned counsel has next contended that in the present case where more than one persons were involved then as per the provisions of Rule 18 of the CCS(CCA) Rules, 1965, departmental action against all such person is required to be taken in a common proceeding and by not doing so in the instant case they have acted against the conduct rules.

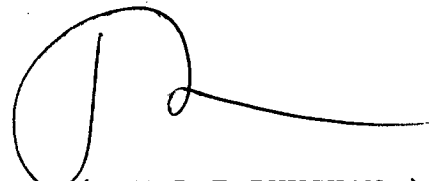
6. Learned counsel for the respondents on the other hand has contended that there was no infirmity either in the order passed by the disciplinary authority or the revisional authority. His submission is that all the documents including the report and statement of witnesses were shown to the applicant during the Circle level enquiry. But of course there is nothing on record to suggest that before passing the order of imposing penalty the applicant at any time had either been given an opportunity of perusing the documents or that copies thereof had been supplied to him. Moreover, I am inclined to agree with the contention of the applicant

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that the charges levelled against the applicant by the disciplinary authority vide Memo.F-3/96-97 dated 28.2.1998 are vague and unspecific and they do not stipulate as to who and in what manner the applicant was at fault for fraudulent withdrawals of Rs. 65,000/- by some other persons. Similarly so far as the recovery from the payment of the applicant without holding an enquiry is concerned the same has also held to be not proper as referred to by the applicant in the case of Ch.Venkateswara Rao's case (supra). This being the case, the charges cannot also be sustained in view of the Karnatka High Court ruling in V.Srinivasarao's case (supra) relied upon by the applicant.

7. In view of aforesaid discussion, I hold that the impugned orders passed by the respondents are bad in law and the same are hereby quashed and set aside. The recovery already affected from the applicant is ordered to be refunded to him within two months from the date of receipt of the copy of this order.

No costs.


(BHARAT BHUSHAN)
MEMBER (J)

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