

RESERVED ON 19.04.2024

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**ALLAHABAD BENCH ALLAHABAD**

Dated: This the 07<sup>th</sup> of MAY 2024

PRESENT:

**Hon'ble Mr. Justice Om Prakash VII, Member (J)**

**Hon'ble Mr. Mohan Pyare, Member (A)**

**Original Application No. 330/00406/2013**

Nawab Bind

. . . Applicant

By Adv: Shri B.N Singh

**V E R S U S**

1. Union of India through the Secretary, Ministry of Communication and Information Technology Department of Post Dak Bhawan, New Delhi.
2. The Supdt. Of Post Offices, West Division, Varanasi.
3. The Director Postal Services Allahabad Region, Allahabad.

. . . Respondents

By Adv: Shri Vidyapati Tripathi

**ORDER**

**Hon'ble Mr. Justice Om Prakash VII, Member (J)**

The present Original Application has been filed by the applicant under section 19 of Administrative Tribunals Act, 1985 seeking following reliefs:-

- “(i) To issue a suitable order or direction to call for record and set aside impugned order dated 18.07.2011 and 31.12.2012 Annexure No. A-1&2.*
- “(ii) To issue a suitable order or direction to the respondents to reinstate in service to the applicant with all consequential benefits.*
- “(iii) To pass such other and further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*
- “(iv) To award cost of the petition in favour of the applicant”.*

2. The brief facts of the case are that applicant while working as G.D.S.B.P.M Sarai Rajputani Branch Post Office served a chargesheet dated 26.04.2007 by the respondent No.2 by which applicant put off from duty and after taking statement of Shri Khemraj Bind the applicant was put back in duty vide order dated 10.09.2007. Applicant submitted reply against the chargesheet. Inquiry Officer was appointed and submitted his enquiry report dated 11.04.2011. According to enquiry report, charges were not found proved. Respondent No.2 disagreed with the enquiry report and submitted his disagreement note dated 26.04.2011. Applicant was directed to submit representation against the disagreement note within 15 days. Applicant submitted his representation dated 31.05.2011. Without considering the points raised in the aforesaid representation filed by the applicant, disciplinary authority passed the punishment of removal from service vide order dated 18.07.2011. Being aggrieved against the aforesaid punishment order, applicant filed appeal dated 29.08.2011 before the Appellate Authority, which was also rejected vide order dated 31.12.2012. Hence this OA assailing the impugned orders dated 18.07.2011 and 31.12.2012.

3. We have heard Shri B.N Singh, learned counsel for the applicant and Shri Vidyapati Tripathi, learned counsel for the respondents and perused the records.

4. Submission of the learned counsel for the applicant is that the applicant and complainant Shri Khemraj Bind belongs to same village, who made false complaint against the applicant due to village party politics. Learned counsel further submitted that Shri Khemraj Bind, who is complainant, has been examined in the preliminary enquiry but he has not been examined in the regular enquiry. Learned counsel also submitted that respondents must have examined the complainant in the regular enquiry first then they can examine the other witnesses. He contended that applicant in its reply has stated that the complainant is the pattidar of the applicant and due to rivalry the complainant has filed complaint against the applicant. Learned counsel for the applicant further contended that applicant has not been provided opportunity to cross examine the complainant. He has also pointed out his grievance before the Disciplinary Authority and appellate authority but same was not acceded to.

He next submitted that the penalty of removal from service is extreme one in view of quantum of punishment because the applicant has completed long continuous service and also charges are not proved. The finding of disciplinary authority is perverse and not based on documentary evidence, thus it is not sustainable in the eyes of law. Learned counsel for the applicant further contended that Appellate Authority in its order travelled beyond the memo of charges. Learned counsel has relied upon the following case laws:-

- “(i) *Kuldeep Singh Vs. Commissioner of Police and others reported in 1999 Supreme Court Cases (L&S) 429;*
- “(ii) *Ministry of Finance and another Vs. S.B. Ramesh reported in 1998 AIR (SC 853”.*

5. It has also been submitted by the learned counsel for the applicant that disciplinary authority while passing the order dated 26.04.2011 disagreeing with the enquiry report has not given reason on which point he was not agreed, therefore, there is clear violation of rule. It has also been submitted that disciplinary authority has failed to apply his judicial mind and arbitrarily imposed the punishment of removal from service. The procedure as adopted by the disciplinary authority is not akin to the rules and regulations applicable in the matter. Since procedure has not been followed by the disciplinary authority, thus, order passed by the disciplinary authority is de hors the rule and liable to be dismissed.

6. In rebuttal, learned counsel for the respondents submitted that the complainant in his complaint specifically mentioned that he has not received money order on 14.11.2005 and he has not put his signature in the B.O. Journal. Learned counsel further submitted that in the complaint it was mentioned that when applicant met with Post Master Sarai Rajputani, he told him that although money order had arrived but his money had not yet been arrived, thus complainant contacted senior officer for payment of money order. He also submitted that the fact finding enquiry report has been provided to the applicant during the course of enquiry. Learned counsel also submitted that applicant has cooperated in the enquiry and his statement was recorded and also no pressure tactics was adopted while recording the statement. Learned counsel further submitted that whole disciplinary proceeding has been conducted in terms of Rule 9 of the Railway Servants (Discipline and

Appeal) Rules 1968 and applicant has been accorded full opportunity to cross examine the witnesses as well as to adduce his evidence. Learned counsel for the respondents also argued that if Inquiry Officer has not examined the complainant, no prejudice is caused to the applicant.

7. We have considered the rival submissions of the parties and perused the entire record.

8. From perusal of record, it is evident that initially preliminary enquiry was made in the matter to ascertain the truth, thereafter on the basis of preliminary enquiry, a chargesheet was served upon the delinquent employee/applicant and a final/regular enquiry was concluded. Inquiry officer on the basis of evidence collected during the enquiry did not find the charges framed against the applicant proved. It further appears that disciplinary authority was not in agreement with the report submitted by the Inquiry Officer and prepared a disagreement note and served it upon the applicant. Applicant has also submitted his reply to the disagreement note requesting therein that complainant has not been examined in the matter. Complainant himself has admitted in the preliminary enquiry that amount of the disputed money order has been received timely, thus, disagreement note be cancelled. Disciplinary enquiry did not rely upon the grounds taken by C.O in its reply, issued show cause notice for punishment of removal and subsequently passed punishment of removal of the applicant. For the ready reference relevant portion of disagreement note is quoted as below:-

*“जांच अधिकारी ने अपनी जांच रिपोर्ट में लगाये गये आरोपों को सिद्ध नहीं पाया है। मैंने आरोप पत्र जांच के दौरान प्रस्तुत किये गये अभिलेखों / प्रदर्शों तथा जांच रिपोर्ट का अध्ययन करने पर पाया कि प्रदर्शक-1 में धनादेश के प्राप्तकर्ता श्री खेम राज विन्द पुत्र श्री फौजदार विन्द ने स्वीकार किया है कि उसे संदर्भित दोनों धनादेशों 3190 व 3191 प्रत्येक मूल्य ₹ 3000/- का भुगतान बयान के दिन दिनांक 14.11.2005 तक प्राप्त नहीं हुए और इसी तथ्य को उसने अपने बयान दिनांक 14.4.2007 (प्रदर्श क-2) ने जो दोहराया है। जिसे भुगतान बाउचर दिखाकर लिया गया है”*

It is relevant to quote relevant portion of enquiry report wherein Inquiry Officer has dropped the examination of complainant due to absence of complainant.

“श्री खेमराज विन्द दोनों धनादेशों के प्राप्तकर्ता हैं तथा इनकी शिकायत पर ही मामले की जांच की गई है। लेकिन श्री खेमराज विन्द के दि० 4/6/10, 22/6/10, 31/7/10, 24/8/10, 21/10/10, 31/12/10 को जांच कार्यवाही में उपास्थित न होने के कारण जांच पूर्ण करने में हो रहे अप्रत्याशित विलम्ब को देखते हुए इस अभियोजक गवाह को दिनांक 31/12/10 की जांच कार्यवाही में ड्राप कर दिया गया”

9. If facts disclosed in the aforesaid para recorded by the Disciplinary Authority in the disagreement note is taken into consideration, it is clear that disciplinary authority while forming opinion of disagreement with the enquiry report, has relied upon the evidence of the complainant recorded in the preliminary enquiry. It is a settled legal position that if witnesses have not been examined in the regular enquiry, his earlier statement recorded during the preliminary enquiry cannot be taken into consideration. The view taken by the Tribunal also finds support with the law laid down by the Hon'ble Supreme Court in the case of *Kuldeep Singh (supra) and S.B. Ramesh (supra)*

10. It is pertinent to mention here that complainant was not examined during regular enquiry as would be clear from the enquiry report itself. He was dropped as he did not appear before the Inquiry Officer. Until and unless evidence to be relied upon was confronted during regular enquiry, it could not be relied upon in forming final opinion. Thus, on this sole ground opinion formed in disagreement note vitiates and is against the settled principle of law. If the disagreement note is vitiated, the punishment imposed upon the applicant also becomes illegal. It may also be mentioned here that appellate authority has also not considered this issue in correct prospective.

11. Considering the observations of the Hon'ble Supreme Court in the cases of *Kuldeep Singh (supra)* and *S.B. Ramesh (supra)* as well as submissions of the parties and after perusal of records, we are of the considered opinion that the OA is liable to be allowed. Accordingly, OA is allowed and impugned punishment orders dated 18.07.2011 and 31.12.2012 are hereby quashed. Respondents are directed to reinstate the applicant in service and pay the monthly salary along with arrears of salary treating the

impugned orders as null and void with all consequential benefits to the applicant. It is made clear that respondents may start the enquiry afresh, if so advised, in accordance with law. This order shall be complied with within a period of four months from the date of receipt of a certified copy of this order. There shall be no costs. All associated MAs are disposed of.

**(Mohan Pyare)**  
Member (A)

**(Justice Om Prakash-VII)**  
Member (J)

Manish/-