
(2017) 12 AHC CK 0050
In the Allahabad High Court
Case No : 532 of 2015

**Mohammad Naeem Vs Union Of India Throu Chief Post Master General?
Lko.And Ors.**

Date of Decision : 19-12-2017

Acts Referred:

[Uttar Pradesh Government Servant \(Discipline and Appeal\) Rules, 1999](#), [Rule 121](#), [Rule 9](#)
[Rule 9\(2\)](#), [Rule 9\(4\)](#), [Rule 127](#)

Citation : (2017) 12 AHC CK 0050

Hon'ble Judges : Anil Kumar, Daya Shankar Tripathi

Bench : Division Bench

Advocate : Praveen Kumar, Mahendra Kumar Mishra

Final Decision : Allowed

Judgement

1. Heard Sri Praveen Kumar, learned counsel for the petitioner and Sri S.B. Pandey, learned Assistant Solicitor General of India.
2. By means of this writ petition filed under Article 226 of the Constitution of India, prayer has been made to issue writ in the nature of certiorari quashing the judgment and order dated 17.09.2014 passed by the Central Administrative Tribunal, Lucknow Bench, Lucknow (hereinafter referred to as the "Tribunal") in Original Application No. 329 of 2008 (Mohammad Naeem Vs. Union of India and others) and for quashing the order dated 17.10.2014 passed by the Tribunal in Review Application No. 332/00050 of 2014.
3. Further prayer has been made to issue writ in the nature of certiorari quashing the impugned punishment order dated 23.04.2001, appellate order dated 08.11.2001 and revisional order dated 06.08.2002 and to direct the opposite parties to reinstate the petitioner in service with all consequential benefits.
4. Facts of the present case, as submitted by learned counsel for the petitioner, in brief, are that the petitioner was appointed on the post of Postman in the year 1983.

5. The Senior Superintendent of Post Offices (respondent no. 2) issued a charge sheet dated 04.11.1993 for committing certain misconduct, levelling four charges against the petitioner, which are extracted hereinbelow:- "Article-1.

That the said Shri Mohd. Naeem while functioning as Postman Lucknow Chowk H.O. during the period 12-3-92 to 27-3-92 received Lucknow G.P.O. Money Orders no. 3421/A-4 dt. 12-3- 92 & 3627/A-19 dt. 16-3-92 for Rs. 300/- each alongwith cash for payment to the payees of the MOs. Although these MOs were not paid to the correct payees by aforesaid Shri Mohd. Naeem but these MOs were shown as paid and amount of these MOs was charged as MO paid and accounted for accordingly by him.

Thus it is alleged that said Shri Mohd. Naeem has failed to observe the provisions of Rules 121 and 127 of Postal Manual Vol. VI Pt. III and by non-observing the provisions of said rules he also failed to maintain absolute integrity and devotion to duty as required under Rule 3(1)(i) & (ii) of C.C.S. (Conduct) Rules, 1964.

Article-2.

That said Shri Mohd. Naeem while functioning as Postman Lucknow Chowk H.O. during the month March 92 received 168 MOs for Rs. 2,64,300/- (particularised in article-2 of the annexure-II) alongwith cash for payment to payees of the MOs. He shown all these MOs as paid and accounted for accordingly. On enquiry payees of these MOs were not found residing on the address noted on the MO form and officials of the post office failed to find readily the payees again for enquiry.

Thus it is alleged that said Shri Mohd. Naeem has failed to observe the provision of Rule 127 of Postal Manual Vol. VI Pt. III in payment of money orders and by non-observing the provisions aforesaid rules he also failed to maintain absolute integrity and devotion to duty as required under Rule 3(1)(i) & (ii) of C.C.S. (Conduct) rules, 1964.

Article-3.

That the said Shri Mohd. Naeem while functioning as postman Lucknow Chowk H.O. during the period March 92 received three MOs (particulars of which are given in article 3 of Annexure-II) alongwith cash for payment to payees of the MOs. Although these MOs were not paid to the correct payees by aforesaid Shri Mohd. Naeem, these MOs were shown as paid and amount of these MOs was charged as MO paid and accounted for accordingly by him.

Thus it is alleged that said Shri Mohd. Naeem has failed to observe the provisions of Rule 121 and 127 of Postal Manual Vol. VI Pt. III and by non-observing the provisions of aforesaid rules he also failed to maintain absolute integrity and devotion to duty as required under Rule 3(1)(i) & (ii) of C.C.S. (Conduct) Rules, 1964.

Article-4. That said Shri Mohd. Naeem while functioning as Postman Lucknow

Chowk H.O. received 17 MOs (particularised in article 4 of Annexure II) alongwith cash on 23-3-92 for payment to payees of the MOs. He failed to detect the rubbing and substitution of address of payees of these MOs. He also failed to visit the residence of the payee. He had shown the payment of these MOs on Thumb Impressions without scribe and witnesses with address. He failed to take escort with him on 7- 3-92, 12-3-92, 13-3-92, 16-3-92, 18-3-92 & 26-3-92 despite orders of the APM MO paid.

Thus it is alleged that he has failed to observe the provisions of Rules 121 & 127 of Postal Manual Vol. VI Pt. III and due to above failure he also failed to maintain absolute integrity and devotion to duty as required under Rule 3(1)(i) & (ii) of C.C.S. (Conduct) Rules, 1964." Petitioner submitted reply to aforesaid charges levelled against him and denied the said charges.

6. Learned counsel for the petitioner further submitted that vide order dated 31.12.1996, Sri O.N. Awasthi, retired Senior Superintendent of Post Office, Kanpur was appointed Enquiry Officer in the matter. Enquiry Officer Sri O.N. Awasthi closed the enquiry by means of order dated 08.12.1999. Thereafter Sri K.N. Gupta, retired Senior Superintendent of Post Office concluded the enquiry, without proper service of notice upon the petitioner. Enquiry report dated 28.02.2001/03.03.2001 was submitted by subsequent Enquiry Officer Sri K.N. Gupta, according to which charge nos. 1, 2 and 4 were found to be proved and charge no. 3 was found to be partly proved against the petitioner.

7. A show cause notice alongwith enquiry report was served upon the petitioner, to which reply was submitted by the petitioner, by which several objections were raised against the enquiry report submitted by the Enquiry Officer.

8. By order dated 23.04.2001 passed by the Disciplinary Authority, services of the petitioner were dismissed, relevant portion of the same is extracted hereinunder:- "VERNACULAR MATTER OMITTED"

9. It is pertinent to mention here that out of above four charges levelled against the petitioner, Enquiry Officer has recorded finding regarding charge no. 3 that this charge levelled against the petitioner is partly proved. Relevant portion of the same is extracted hereinunder:- "VERNACULAR MATTER OMITTED"

But the Disciplinary Authority has recorded finding in the impugned punishment order dated 23.04.2001 that this charge is proved against the petitioner. Relevant portion of the findings recorded by the Disciplinary Authority is extracted hereinbelow:-

"VERNACULAR MATTER OMITTED"

10. Against the aforesaid punishment order dated 23.04.2001, appeal was preferred by the petitioner before the Appellate Authority, which was dismissed vide order dated 08.11.2001. A revision was also preferred by the petitioner before the Revisional Authority, which was dismissed vide order dated 06.08.2002.

11. Being aggrieved from the aforesaid punishment order dated 23.04.2001, appellate order dated 08.11.2001 and revisional order dated 06.08.2002, petitioner approached before the Tribunal for redressal of his grievances by way of Original Application No. 329 of 2008 (Mohammad Naeem Vs. Union of India and others), which was dismissed by the Tribunal vide order dated 17.09.2014. Petitioner preferred a Review Application No. 332/00050 of 2014 before the Tribunal, which was also dismissed vide order dated 17.10.2014.

12. Aforesaid impugned punishment order, appellate order, revisional order and the orders passed by the Tribunal are under challenge to this writ petition.

13. Counter and rejoinder affidavits have been exchanged.

14. Learned counsel for the petitioner submits that enquiry was conducted by previous Enquiry Officer and thereafter subsequent Enquiry Officer Sri N.K. Gupta was appointed by the Department without any information to the petitioner regarding change of Enquiry Officer, hence enquiry is vitiated. He further submitted that Enquiry Officer has placed reliance upon the statement of two witnesses namely, Shahid Zaidi and Furkan Ahmad, whose statements were recorded during the fact finding enquiry, behind back of petitioner and both of these witnesses have not been examined during the enquiry proceedings, although their names are mentioned in the charge-sheet served upon the petitioner. No opportunity of cross-examination from aforesaid two witnesses has been provided to the petitioner during the course of enquiry, resulting into denial of proper opportunity of hearing to the petitioner.

15. He further submitted that charge no. 3 framed against the petitioner, has been found to be partially proved by the Enquiry Officer and rest of this charge has not been found to be proved by the Enquiry Officer, while the Disciplinary Authority has recorded finding to this effect that this charge is fully proved against the petitioner. While recording such finding, the Disciplinary Authority did not record any memorandum of disagreement to the findings recorded by the Enquiry Officer and no show cause notice was issued regarding the same to the petitioner, which is mandatory under law.

16. It has been further submitted by learned counsel for the petitioner that the punishment order, appellate order, revisional order, impugned orders passed by the Tribunal in original application and review application cannot sustain in the eye of law and the writ petition deserves to be allowed.

17. Learned counsel for the respondents submitted that the previous Enquiry Officer appointed by the Department to conduct the enquiry, had conducted the enquiry in detail, but he could not conclude the enquiry and submit report due to his illhealth. Hence, Sri N.K. Gupta, subsequent Enquiry Officer was appointed in the matter, which was duly informed to the petitioner. He further submitted that statements of Shahid Zaidi and Furkan Ahmad were recorded during the fact finding enquiry, but these witnesses could not be produced during the course of departmental enquiry, because Shahid Zaidi did not appear in the enquiry in spite

of information given to him and Furkan Ahmad was not found on the given address. But Sri C.P. Mishra (State Witness No. 1) has been examined during the course of enquiry, who has proved the statement of aforesaid two witnesses and opportunity of cross examination from this witness has been provided to the petitioner. His further submission is that proper opportunity of hearing has been provided to the petitioner during the course of enquiry.

18. Learned State Counsel further submitted that a show cause notice alongwith enquiry report has been provided by the Disciplinary Authority to the petitioner to submit his reply and after perusing the material placed on record and considering the enquiry report and reply submitted by the petitioner to the show cause notice, Disciplinary Authority has recorded his satisfaction that all the charges levelled against the petitioner are found to be proved. Hence, enquiry cannot be held to be vitiated only on the ground that no memorandum of disagreement was recoded by the Disciplinary Authority regarding the findings recorded by the Enquiry Officer on charge no. 3. He lastly submitted that the writ petition is devoid of merit and is liable to be dismissed.

19. We have heard the rival arguments advanced by learned counsel for both the parties and perused the material placed on record.

20. The first and foremost argument advanced by learned counsel for the petitioner is that Sri O.N. Awasthi, retired Senior Superintendent of Post Office was appointed Enquiry Officer to conduct the enquiry and thereafter Sri N.K. Gupta, retired Senior Superintendent of Post Office, was appointed subsequent Enquiry Officer, without serving notice to the petitioner in this regard.

21. We find from the record that Sri O.N. Awasthi could not complete the enquiry and submit the enquiry report on account of his illness, due to which Sri N.K. Gupta was appointed subsequent Enquiry Officer, by whom date of 11.01.2001 was fixed in the enquiry proceedings and this date was duly communicated to the petitioner. Hence, the aforesaid argument advanced by the learned counsel for the petitioner, does not find favour with him that inquiry is vitiated on the ground that the petitioner was not informed regarding appointment of subsequent Inquiry Officer.

22. Next argument advanced by the learned counsel for the petitioner is that the Enquiry Officer has placed reliance on the statement of two witnesses namely, Shahid Zaidi and Furkan Ahmad, who were not examined during the course of enquiry and no opportunity of cross-examination from these witnesses has been provided to the petitioner, due to which the petitioner has been denied proper opportunity of hearing to defend himself during the course of enquiry.

23. We find from the record that Enquiry Officer has recorded finding to this effect that Sri C.P. Mishra (State Witness No. 1) has given statement that fraud was committed in money orders of old age pension, for which an enquiry squad was constituted, in which he was member alongwith Sri Ataurrahman and Sri Baijnath and he had recorded statement of Shahid Zaidi (Ext. Ka-2), who had

stated that recipient of money order no. 3421/A-4 Smt. Amna Begum had died before two years and he had recorded statement of Furkan Ahmad (Ext. Ka-3), who had stated that recipient of money order no. 3627/A-19 Smt. Qamar Jahan had died in the month of 10 September, 1990. The Enquiry Officer further recorded findings in his enquiry report that in spite of information given to Shahid Zaidi, he did not appear in the enquiry and notice was sent to Furkan Ahmad by registered post, who was not found on his given address. Accordingly, it is evident that efforts have been made on behalf of State to produce the aforesaid two witnesses during the course of enquiry, but they could not be produced and Sri C.P. Mishra (State Witness No. 1) was produced during the course of enquiry, who proved the statement of aforesaid two witnesses. We also find from the record that opportunity of cross-examination from Sri C.P. Mishra (State Witness No. 1) has been provided to the petitioner during the course of enquiry. Considering the aforesaid facts and circumstances of this case, it cannot be held that no appropriate opportunity of hearing was provided to the petitioner to defend himself during the course of enquiry. Hence, there is no force in the aforesaid argument advanced by learned counsel for the petitioner.

24. As far as argument advanced by the learned counsel for the petitioner that no memorandum of disagreement has been recorded by the Disciplinary Authority against the findings recorded by the Enquiry Officer relating to charge no. 3 is concerned, we find from the record that there are two allegations against the petitioner in this charge. One part of the charge is that three money orders were received to the petitioner, alongwith cash for payment to payees of the money orders, which were not paid to the correct payees by the petitioner and it were shown to be paid and second part of this charge is that provisions of Rule 121 and 127 of Postal Manual, Vol. VI Part III have been violated by the petitioner. Findings have been recorded by the Enquiry Officer that petitioner has violated the provisions of Rule 121 and 127 of Postal Manual, Vol. VI Part III, but in absence of sufficient proof it is not proved that the money orders in question were paid to correct payees or not. We also find from the record that a show cause notice dated 23.03.2001 alongwith enquiry report dated 28.02.2001/03.03.2001 was served to the petitioner for submitting his reply within ten days. It is no where mentioned in the aforesaid show cause notice that any memorandum of disagreement was recorded by the Disciplinary Authority against the findings recorded by the Enquiry Officer regarding charge no. 3. It is also evident from the punishment order dated 23.04.2001 passed by the Disciplinary Authority that he has recorded findings on charge no. 3 that payment of money orders in question to correct payee is doubtful. While doing so, no memorandum of disagreement was recorded by the Disciplinary Authority against the findings recorded by the Enquiry Officer on this point. Accordingly, we find force in the aforesaid argument advanced by learned counsel for the petitioner.

25. Statutory provisions in respect of the disagreement are contained in Rule 9(2) and 9(4) of The Uttar Pradesh Government Servant (Discipline and Appeal)

Rules, 1999, which are extracted here in under:- "9(2) The Disciplinary Authority shall, if it disagrees with the findings of the inquiry-officer on any charge, record its own findings thereon for reasons to be recorded.

9(4) If the Disciplinary Authority, having regard to its findings on all or any of charges is of the opinion that any penalty specified in rule 3 should be imposed on the charged Government servant, he shall give a copy of the inquiry report and his findings recorded under sub-rule (2) to the charged Government servant and require him to submit his representation if he so desires, within a reasonable specified time. The Disciplinary Authority shall, having regard to all the relevant records relating to the inquiry and representation of the charged Government servant, if any, and subject to the provisions of rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in rule 3 of these rules and communicate the same to the charged Government servant."

26. In the event of disagreement, the Disciplinary Authority has to record its own findings and give reasons for the same. In the case of Punjab National Bank and others Vs. Kunj Behari Misra reported in 1998 (7) SCC 84, it has been laid down by the Apex Court that the delinquent employee must be given a hearing before the disciplinary authority records a different finding from the enquiry officer. That charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This law was further followed in the case of Lav Nigam vs. Chairman & Md. ITI Ltd. and another reported in (2006) 9 SCC 440, S.P. Malhotra Vs. Punjab National Bank and others reported in (2013) 7 Supreme Court Cases 251 and Yoginath D. Bagde Vs. State of Maharashtra and another reported in (1999) 7 SCC 739.

27. In the case of Yogi Nath Bagde (supra), it has been held by the Apex Court that before the Disciplinary Authority finally disagrees with the findings of the Enquiry Officer, it would give an opportunity of hearing to the delinquent officer. Relevant paragraph Nos.29 and 31 of the report are reproduced below:- "29. We have already extracted Rule 9 (2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 which enables the disciplinary authority to disagree with the findings of the enquiring authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The rule does not specifically provide that before recording its own findings, the disciplinary authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at the stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for

disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of "not guilty" already recorded by the enquiring authority was not liable to be interfered with."

"31.If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution."

28. In the case of Yogi Nath Bagde's case (supra), law has been laid down that before the Disciplinary Authority finally disagrees with the findings of the Enquiry Officer, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Enquiry Officer do not suffer from any error and that there was no occasion to take a different view. But no memorandum of disagreement has been recorded by the Disciplinary Authority against the findings recorded by the Enquiry Officer on charge no. 3, due to which opportunity has been denied to the petitioner to indicate before the Disciplinary Authority that there is no need to take a different view from the findings recorded by the Enquiry Officer, before passing the final order of punishment. Aforesaid facts and legal propositions have escaped attention of the Appellate Authority, Revisional Authority and the Tribunal.

29. Considering the facts and circumstances of this case and law laid down by the Apex Court in the aforesaid cases of Punjab National Bank (supra), Lav Nigam (supra), S.P. Malhotra (supra) and Yoginath D. Bagde (supra), we are of the considered opinion that the impugned order of the punishment passed against the petitioner, appellate order, revisional order and orders passed by the

Tribunal cannot be sustained in the eyes of law. Consequently, the writ petition deserves to be allowed.

30. Accordingly, the writ petition is allowed. Punishment order dated 23.04.2001, appellate order dated 08.11.2001, revisional order dated 06.08.2002 and impugned judgment & orders dated 17.09.2014 and 17.10.2014 passed by the Tribunal, are hereby set aside.

31. We also provide that the Disciplinary Authority may proceed to pass fresh order from the stage of recording memorandum of disagreement against the findings recorded by the Enquiry Officer on charge no. 3 and pass appropriate order according to law expeditiously, after giving opportunity of hearing to the petitioner.