

Central Administrative Tribunal
Principal Bench

O.A.No.750/2002

Hon'ble Shri Govindan S. Tampi, M(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 28th day of January, 2003

Shri Subhash Chander Sharma
s/o L. Shri Kartar Nath
working as a Postal Asstt.
in Patel Asstt. in Patel Nagar, New Delhi
post office. 110 008
under New Delhi Central Postal Dr.
New Delhi
r/o Karol Bagh
New Delhi
Address for service of
notice C/o Shri Sant Lal
Advocate
C-21(B), New Multan Nagar
Delhi - 110 056.

... Applicant

(By Advocate: Sh. Sant Lal)

Vs.

1. Union of India through
The Additional Secretary
Member(D) Department of Posts
Dak Bhawan
New Delhi - 110 001.
2. The Director Postal Services (P)
o/o the C.P.M.G. Delhi Circle
Meghdoot Bhawan
New Delhi - 110 001.
3. The Sr. Supdt. of Post Offices
New Delhi Central Division
Meghdoot Bhawan
New Delhi - 110 001.

.. Respondents

(By Advocate: Sh. Rajinder Nischal through Sh.
G.R.Choubey)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

In this OA applicant impugns respondents' orders dated 24.11.1997, 18.12.1998 as well as 31.1.2001 whereby a minor penalty imposed has been upheld by the authorities. He has sought quashment of these orders with all consequential benefits.

2. Applicant, on the allegations of demand of illegal gratification, has been served upon a minor penalty charge sheet under Rule 16 of the CCS (CCA) Rules 1965. On representation a penalty of reduction in pay by 16 stages for a period of three years has been imposed without future effect vide Memorandum dated 29.11.1996.

3. Applicant preferred an appeal, by an order dated 17.7.1997 ordered for de novo proceedings from the stage of inspection of the documents. Accordingly, on 28.10.1997 documents have been inspected by applicant and he filed his reply.

4. By an order dated 24.11.1997 disciplinary authority imposed upon applicant a penalty of reduction in pay from Rs.4700/- to Rs.4020/- in the pay scale of Rs.4000-100-6000 for a period of three years with effect from 1.12.1997, and further direction that he will not earn increments during the period of reduction without any future effect.

5. An appeal was preferred against the punishment which was rejected on 18.12.1998 and the revision petition made which ^{had} ~~had~~ the same fate by an order dated 22.3.1999, giving rise to the present OA.

6. Although, several contentions have been put forth by learned counsel for applicant, Shri Sant Lal, drawing our attention to Rule 11(v), it is contended that punishment imposed upon applicant comes

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within the category of a major penalty for which a punishment cannot be imposed without following the disciplinary proceedings as laid down under Rule 14 of the CCS (CCA) Rules, 1965.

7. Sh. Sant Lal draw our attention to the averments to this effect in para 5.3 and by referring to the reply filed by respondents, it is contended that the aforesaid para has been admitted as a matter of record.

8. Placing reliance on decision of Division Bench of this Tribunal (Principal Bench) in OA 339/96 Jaswant Singh vs. Union of India & Others, decided on 3.2.2000, it is contended that, in all four, his case is covered by the ratio laid down where similar penalty has been held to be a major penalty, and for want of proceedings under Rule 14 impugned orders have been set aside, however giving liberty to the respondents to act in accordance with law.

9. On the other hand, respondents vehemently opposed the contentions and Shri Rajinder Nischal though had not disputed to the admission in reply to 5.3 of respondents' reply, yet maintained that the penalty is minor for which proper proceedings ~~have~~ been followed.

10. We have carefully considered the rival contentions of the parties and perused the material on record.

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11. The following observations made by the Principal Bench in Jaswant Singh's case supra:

"..... Minor penalties which includes clause (iii) (a) and under the sub-heading of Major Penalties, clause (v). The relevant clauses under Rule 11 are reproduced below:-

"Penalties.

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on the Government servant, namely:-

Minor Penalties-

(i) to (iii) x x x x

(iii) (a) reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension.

Major Penalties-

"save as provided for in clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay."

11. Having regard to the nature of the penalty imposed in this case, relevant portion of which has been reproduced in paragraph 3 above, which includes a direction that the applicant will not earn increments of pay during the period of reduction of his pay for the period of two years, although on expiry of that period the reduction will not have the effect of postponing his future increments, we are of the view that this does not fall within the provisions of Rule 11 (iii) (a) of the Rules. The clarification issued under sub-rule (iii) (a) by the DOP&T O.M. dated 28.5.1992 is only to the extent that the penalty under this clause has been carved out of clause (v) specifically and that it does not constitute a major penalty under clause (v). This position is also made clear under clause (v) which begins with the

expression, "save as provided for in clause (iii) (a)". Much emphasis was placed by Shri K.R. Sachdeva, learned counsel on the clarification provided under clause (iii) (a) of Rule 11 and that this penalty has been taken out of the major penalty provided in clause (v) as a minor penalty only. While that position is not disputed, the facts of this case have to be seen to determine the question whether a major or minor penalty has been imposed on the applicant. In the present case, the applicant's pay has been reduced by 10 stages from Rs.1240/- to Rs.975/- in the time scale of Rs.975-1660 with further directions as mentioned above in para 3. Clause (v) of Rule 11 provides that other than the provisions in clause (iii) (a), reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay is governed under this clause (Emphasis added). In the facts and circumstances of the case, therefore, we are of the view that the penalty imposed on the applicant is a major penalty under clause (v) of Rule 11 for which it was necessary to hold a departmental inquiry under Rule 14 of the Rules. Admittedly, this has not been done by the respondents as their contention is that only a minor penalty has been imposed after following the provisions in Rule 16 of the Rules, thereby depriving him of a reasonable opportunity of hearing."

12. In the light of what has been laid down above, we find that under Rule 11(iii) a minor penalty is *when⁴* a person has been reduced to lower time scale without any stipulation as to withholding of increment during the reduction and once such a stipulation is made, the penalty becomes a major penalty under Rule 11(v) for imposition of major penalty a detailed proceedings are to be held as per Rule 14 of the CCA (CCA) Rules. Admittedly, no disciplinary proceedings have been held against applicant as per Rule 14 ibid as such the impugned ⁴ orders are not sustainable in the *eyes* of law.

13. Accordingly, for the foregoing reasons, OA is allowed. Impugned orders of penalty of appellate as well as revisional are quashed and set aside. However, if so advised, respondents are at liberty to proceed further against applicant as per Rules and in accordance with Rule 14 of the CCS (CCA) Rules, 1965. No costs.

S. Raju
(Shanker Raju)
Member (J)

(Govindan S. Tampi)
(Govindan S. Tampi)
Member (A)

/rao/