

7

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 2705/99

New Delhi: this the 13 day of MARCH, 2000.

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Brij Mohan Sahu,

S/o Shri Ram Prasad Sahu,

Sorting Asstt.

Record Officer Railway Mail Service,

M.P. Division,

Jhansi,

R/o

586 Isai Toal Khati Baba Road,

Jhansi

....Applicant.

(By Advocate: Shri D.P. Sharma).

Versus

1. Union of India
through

Secretary,

Ministry of Communication (Department of Posts),
New Delhi.

2. The Director Postal Services,
O/o The Chief Post Master General,
M.P. Division,
Bhopal.

3. The Superintendent,
Railway Mail Service,
M.P. Division,
Bhopal

....Respondents.

(By Advocate: Shri Rajender Nischal)

ORDER

S.R. Adige, VC (A)

Applicant impugns the disciplinary authority's order dated 27.11.98 (Annexure-A-9) and the appellate order dated 15.9.99. He seeks payment of back wages with interest.

2. Applicant was charge sheeted on 10.10.94 (Ann-A-2) in respect of 2 Articles of charge:

- 1) That on 28.5.92 while working as parcel Sorting Asstt. he had thrown and mixed up the sorted out parcels on the ground

with the foot which were subsequently sorted out by R.B.Prajapati.

ii) That on the aforesaid date and while working in the aforesaid office, applicant assaulted Shri R.B.Prajapati, Parcel Sorting Asstt.No.2 with a stool and started beating him within the office.

3. The Disciplinary Authority's order dated 31.10.95 (Annexure-A3) records that the Enquiry Officer submitted his report on 23.8.95, a copy of which was issued to applicant for representation, if any, within 15 days. In the absence of any representation, and agreeing with the Enquiry Officer's findings that the charges against applicant were proved beyond doubt, the Disciplinary Authority by his order dated 31.10.95 (Annexure-A3) imposed the punishment of reduction of pay by one stage for 2 years, without cumulative effect.

4. Thereupon the appellate authority informed applicant by letter dated 26.2.96 (Annexure-A-4) by virtue of the powers conferred on him, he proposed to revise the order dated 31.10.95.

5. Thereupon by order dated 21.8.96 (Annexure-A-5) the appellate authority observed that on examination of the records relating to the disciplinary case it was noticed that the disciplinary authority had not properly framed the articles of charge against applicant. Accordingly the appellate authority by virtue of the powers conferred on him under Rule 29 CCS(CCA) Rules set aside the penalty awarded vide order dated 31.10.95 and remanded the case back to the disciplinary authority

2

for denovo proceedings from the stage of framing of articles of charge and issue of charge sheet afresh.

6. Thereupon a fresh charge sheet was issued to applicant on 16.10.96 (Annexure-A6) in which in addition to the two earlier charges, a third one of habitual misbehaviour with staff members resulting in 4 previous punishments being awarded, were also included.

7. The Enquiry Officer in his report dated 30.3.98 (Annexure-A7) held the charges against applicant as proved beyond doubt.

8. A copy of the Enquiry Officer's report was furnished to applicant on 7.4.98 (Annexure-A-8) for representation, if any.

9. Applicant has not stated in his OA whether he submitted any representation or not, but in the background of the Enquiry Officer's report, the Disciplinary Authority by order dated 27.11.98 has awarded the penalty of reduction in applicant's pay from Rs.4600 to Rs.4100/- by 5 stages for the next 3 years with cumulative effect, which in appeal has been modified to one of reduction by 3 stages from Rs.4700 to Rs.4400/- for 3 years with cumulative effect.

10. We have heard both sides.

11. Our attention has been invited to Madhya Pradesh(Jabalpur) High Court's order dated 16.4.85 in W.P.No.1824/84 in which it was held that in the letter informing that petitioner that the penalty order had been taken up for review, it was legally

2

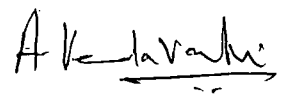
- 4 -

incumbent upon the authorities concerned to inform him of the grounds on which the order was to be reviewed, and give him an opportunity to represent as to why such a review should not be undertaken before actually ordering the denovo enquiry, and failure to do so was sufficient to vitiate respondents' action.

12. In the instant case, admittedly in the order dated 26.2.96 (Annexure-A4) no reasons were given why the appellate authority proposed to review the disciplinary authority's order dated 31.10.95 (Annexure-A3), and no opportunity was given to applicant to represent as to why such a review should not be undertaken, before denovo proceedings were directed by order dated 21.8.96 (Annexure-A6).

13. Nothing has been shown to us to establish that the aforesaid ruling in W.P.No.1824/84 has been stayed, modified or set aside, and its ratio would be squarely applicable to the facts and circumstances of the present case.

14. In the result the impugned orders dated 27.11.98 and 15.9.99 cannot be sustained in law. The OA therefore succeeds and is allowed to the extent that the aforementioned two impugned orders are quashed and set aside. Applicant's back wages should be released to him forthwith. It will be open to respondents to proceed in accordance with law. No costs.


(DR. A. VEDAVALLI)
MEMBER (J)


(S. R. ADIGE)
VICE CHAIRMAN (A).

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