

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1199/95

New Delhi this the 29th day of November, 1999.

Hon'ble Sh. A.V. Haridasan, Vice-Chairman(J)
Hon'ble Sh. S.P. Biswas, Member(A)

Sh. V.V. Joga Rao,
R/o X-226,
Sarojini Nagar,
New Delhi-110023.

..... Applicant

(through Mrs. Meenakshi Arora, Advocate)

versus

1. Union of India,
Secretary to Govt. of India,
Ministry of Urban Affairs and
Employment, C-Wing, Ist Floor,
Nirman Bhavan, New Delhi-11.

2. Director General of Works,
Central Public Works Department,
A-Wing, Ist Floor, Nirman Bhawan,
New Delhi-11.

3. Director, Directorate of Estates,
C-Wing, 4th Floor, Nirman Bhawan,
New Delhi-11.

..... Respondents

(through Sh. A.K. Bhardwaj, Advocate)

ORDER

Hon'ble Sh. S.P. Biswas, Member(A)

Applicant, an Assistant under the respondents is aggrieved by Annexure-A order dated 30.12.94 issued by Respondent No.1 and communicated by Respondent No.2 on 24.01.95 rejecting his representation against order, dated 18.7.93. By the order of 30.12.94, the applicant has been punished by with-holding of two increments with cumulative effect. Consequently, the applicant has prayed for relief in terms of quashing the aforesaid orders of

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28.9.93 and 30.12.94 and also issuance of directions to respondents to restore his seniority with all consequential benefits including promotion to the post of Section Officer from the date his juniors were promoted.

2. The orders at Annexure-A imposing the penalty was issued pursuant to initiation of disciplinary proceedings against the applicant under Article 16 of CCS (CCA) Rules, 1965.

3. Applicant submits that under paragraphs 117 and 118 of the Central Secretariat "Manual of Office Procedure", it is provided that weekly and monthly statement of arrears need to be prepared to show pending receipts/cases. The Section Officer is required to scrutinize the said report and give directions for expeditious disposal of pending cases, if necessary. Under the circumstances where weekly and monthly statement of pending cases is required to be prepared and be scrutinized by Section Officer, it is not possible that a case or any receipt marked to an Assistant will be pending for over a month without the knowledge of Section Officer. The entire contention of the respondents is false regarding marking the receipts to the applicant. The applicant submits that the said receipts were never marked to him and it is not within his knowledge. The delay, if any, for the disposal of the said 'receipts' is,

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therefore, not attributable to him. The applicant has time and again denied receipt of the two papers in question pertaining to the case of Sh. Swaran Singh as alleged by the respondents.

4. In the counter, the respondents have submitted that all classified papers/files of the Section were kept and maintained by Section Officer of Section-VII himself. The applicant's plea that the two receipts in question, purported to have been marked as confidential, has been delayed by Section Officer is patently false since the provisions of Manual of Office Procedure regarding handling of classified papers by the Section Officer himself applies to only classified papers other than confidential ones in terms of instructions under Chapter-XII, Para-III of Manual of Office Procedure. It was, therefore, justifiably decided by the Disciplinary Authority to chargesheet the applicant on a charge of delaying submission of fresh receipts on two occasions.

5. We have heard the learned counsel for both the parties and perused the records.

6. The chargesheet pertains to failure of the applicant in not processing the representation of Sh. Swaran Singh Assistant, marked to him (the applicant) vide diary No. 55/EC/VII dated 2.1.90 and alleged in-action of the applicant for more than

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14 months till 15.3.91 when it was retrieved and processed. It is essentially a case of delayed submission of the report received from the Directorate of Estates for which the applicant has been held responsible.

7. We find that in para 3.1 of Annexure at R-1 on Instructions Regarding Confidential Documents, it is mentioned that all confidential documents, unless carried by an officer by hand must be sent from one room to another in the office either (i) in a sealed cover addressed by name and marked confidential; and (ii) in locked office boxes. The instructions also provide that there need not be a special Section to deal with confidential paper. It should be kept in safe custody in a locked safe or steel almirah, the key of which should remain in the personal custody of the Section Officer. The safe or container should not be used for storing any unclassified papers. The instructions of the Ministry of Home Affairs also carry details as to how such confidential papers are to move from office to residence or within the different Sections of the same office. It is also seen that the proceedings against the applicant were under Rule 16 of CCS (CCA) Rules, 1965 and as such no regular enquiry as contemplated under Rule 14 of the CCS (CCA) Rules was conducted against the applicant. The respondents have denied promotion to the applicant on the principle that

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during the currency of a penalty, the Government servant concerned should not be promoted. Under the instructions laid down on the subject under adjudication herein, the documents pertaining to Sh. Swaran Singh should have been in the safe custody of the Section Officer himself and kept under lock and key. Ordinarily, the applicant could not be expected to have access to the said documents. In the instant case, the applicant had an access to those papers only on 15.3.91 when the same were given to him for processing. Under provisions contained in Chapter-V(2) of Departmental Security, any instructions/papers of confidential nature shall have to be stored in safe custody in a sealed safe and the key of which should remain in the personal custody of the Section Officer. The respondents have not come out with a specific reply as to how such a confidential letter, at the end of working days, could be left outside the safe lock that was to be ensured by the Section Officer. We also find that no documents have been evidenced to suggest that those confidential two papers were received by the applicant and that he was responsible for not processing them in time. No formal enquiry was held in this case to pin point the responsibility on the part of the applicant. In the absence of unquestionable evidence to establish the guilt on the part of the applicant, it would not be justifiable to hold him responsible for the charges.

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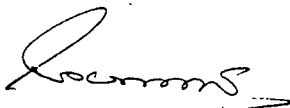
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8. In the background of the details as aforesaid, the O.A. deserves to be allowed on merits and we do so accordingly with the following directions:-

(i) Orders dated 28.09.93 and 30.12.94 shall stand set aside.

(ii) Respondents are directed to restore applicant's seniority as per rules and grant the applicant all the consequential benefits including promotion to the post of Section Officer from the date his juniors were promoted.

(iii) There shall be no order as to costs.



(S.P. Biswas)
Member(A)



(A.V. Haridasan)
Vice-Chairman(J)

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