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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A.No.1662/1995

New Delhi, this the 5th day of October, 1999.

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI S.P.BISWAS, MEMBER(A)

Shri Balwan Singh,
Postal Assistant,
Delhi G.P.O.
New Delhi-110006.

..Applicant

(By Advocate Mr. C.Hari Shanker)

vs.

1. Union of India,
Through the Secretary and Chairman,
Department of Posts (Postal Services Board),
Dak Bhavan, Sansad Marg,
New Delhi-110001.
2. The Chief Post Master General,
G.P.O. Delhi,
New Delhi-110006.
3. The Deputy Chief Post Master General,
G.P.O. Delhi, New Delhi-110006. ..Respondents

(By Advocate Sri S.M.Arif)

O R D E R (ORAL)

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

This application is directed against the order dated 19.11.94 of the 3rd respondent imposing on the applicant a penalty of reduction of pay by 3 steps for a period of 2 years with effect from 1.11.94 without any cumulative effect and the appellate order dated 18.2.95 of the 2nd respondent by which the finding that the applicant was guilty was affirmed but the penalty was reduced to reduction in pay by 3 steps for a period of 1 1/2 years without cumulative effect. The above penalty was imposed on the applicant by the disciplinary authority after issuing a notice under Rule 16 of the CCS(CCA) Rules, 1965 for misconducts which are mentioned in the impugned order as follows:-

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"Shri Balwan Singh while working as Postal Assistant, Saving Bank Branch, Delhi G.P.O. during the period from Aug.93 to April,94 failed to send returns in r/o the following NSC/KVP/IVPs of the period as noted against each to the Audit Office.

1. NSC(Discharge)	8/93 and 10/93.
2. KVP(-do-)	2/94 and 4/94
3. IVP(issue)	1/94 and 5/94.
4. IVP(Discharge)	4/94.

Non-submitting of the above said returns of NSC/KVP/IVPs in time is serious and in contravention of provisions of Rule 405(1)(ii) of P.O.Man.Vol.IV Chapter-8.

Shri Balwant Singh, P.A. Delhi GPO-6 is therefore, alleged to have failed to maintain devotion to duty and also acted in a manner which is unbecoming of a Govt. servant and thereby contravened the provisions of Rule-3(1)(ii) & (iii) of CCS (Conduct) Rules,1964."

2. The applicant has assailed these orders on various grounds. The only ground which is now pressed before us is the discrimination in the matter of penalty on identical misconduct between the applicant and his colleague Shri Pancham Singh. It is alleged that Shri Pancham Singh who was proceeded against under Rule 16 for identical misconduct around the same time, was awarded a penalty of withholding of increment for 3 months without cumulative effect, while the applicant has been awarded a much more severe penalty. This action on the part of the disciplinary authority, according to the applicant, is highly arbitrary, discriminatory and unjustified. It is also contended that though this ground of discrimination was specifically raised in the appeal memorandum, the appellate authority has failed to consider the ground and has rejected the contentions with a cryptic order.

3. We have gone through the pleadings and the documents placed on record.

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4. As the enquiry has been held in accordance with the rules and a penalty has been imposed on the basis of a finding arrived at on the basis of some evidence, the Tribunal will not generally go into the quantum of penalty. It is the prerogative of the disciplinary authority to award a penalty commensurate with the misconduct. Judicial intervention would be justified only if the penalty imposed is shockingly disproportionate to the misconduct established. Such a situation is not obviously available in this case. However we find that the appellate order is cryptic and non-speaking. The applicant had raised various grounds in his appeal memorandum. One of the ground which he had raised was that his colleague Sri Pancham Singh proceeded against almost the same time for identical misconduct, having been given a penalty of withholding of increment for 3 months without cumulative effect, there is no justification for awarding a much more severe penalty to the applicant and that this discrimination is arbitrary and unsustainable. In the appellate order referring to grounds 2 to 9 in the appeal, the appellate authority has merely said that these averments are not relevant. The appellate authority should have considered the grounds and given a speaking order. The appellate authority is under Rule 27 of the CCS(CCA) Rules obliged to consider the grounds raised in appeal and also to determine whether the penalty imposed is commensurate with the misconduct proved, adequate or excessive. We are of the view that this aspect of the matter was omitted by the appellate authority.

5. In the light of what is stated above, we are of the considered view that the interest of justice will be met if the matter is remitted back to the appellate authority for

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considering the appeal afresh in the light of the observations and to pass an appropriate order.

6. In the result, the application is disposed of, setting aside Annexure-Al and remitting back the case to the appellate authority for passing a speaking order taking into account the observations made above. The above exercise shall be completed and the order communicated to the applicant within a period of two months from the date of receipt of a copy of this order. No costs.


S.P. BISWAS
MEMBER (A)


A.V. HARIDASAN
VICE CHAIRMAN

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