

CENTRAL ADMINISTRATIVE TRIBUNAL
AT INCIPAL BENCH:
NEW DELHI.

REGN. NO. C.A. 1284/87.

DATE OF DECISION: 7.1.1993

D.P. Vasudeva.

... Petitioner.

Versus

Union of India & Ors.

... Respondents.

COURT: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R. ADIGE, MEMBER(A).

For the Petitioner.

... Shri B.B. Srivastava,
Counsel.

For the Respondents.

... None.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

The petitioner was working as a Chief Parcel Clerk in Muradabad. A disciplinary inquiry was initiated against him and the statement of imputation was served on him. The allegations are that two unauthorised persons named Sarvashri Haroon and Aishi Lal were filling up forwarding notes sitting just near the Parcel Clerk on duty for all the parties and the rest three four unauthorised persons were seen attending the parties on arrival at Parcel Office with luggage etc. The petitioner instead of sending those unauthorised persons out was actually functioning on their directions. To verify these facts, a discreet watch was kept for about two hours on the staff on duty on 4.2.1985 from 14.00 to 16.00 hrs. It is then that ~~these~~ ^{day by} aberrations were noticed. A surprise check was conducted on another/the Vigilance Team at 18.00 hrs and they also found the same unauthorised persons sitting near the Parcel Clerk and the remaining three other unauthorised persons were found weighing the parcels. All these persons were found to be touts, who were demanding extra money for sending parcels on quick service basis. It is only after gathering this ^{information} that the inquiry was initiated by

serving statement of imputation containing the said information. The petitioner gave a reply on consideration of which the disciplinary authority passed the impugned order on 21.8.1986 holding that the explanation offered by the petitioner is not acceptable and the presence of some touts near the parcel office has been accepted by the petitioner on the 4.3.1985 and that the petitioner should not have permitted such conduct on the part of the touts. After holding the petitioner guilty, the penalty of withholding one increment in the scale of Rs.455-700 falling due on 1.1.1987 was imposed for a period of three years without postponing the future increments. The petitioner was told that he can prefer an appeal. He says that he preferred the appeal ^{as} but the same was not disposed of within a period of six months. He approached the Tribunal u/s 19 of the Administrative Tribunals Act.

2. The principal contention of the learned counsel for the petitioner is that the penalty has been imposed without holding any inquiry whatsoever. But it is necessary to point out that the penalty imposed on the petitioner is a minor penalty falling under Rule 6(iv) of the Railway Servants (Discipline & Appeal) Rules, 1962. So far as procedure for imposing of minor penalty is concerned, the same is regulated by Rule 11 of the Rules. The said Rule provides that before imposing a minor penalty, the Railway servant should be informed in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal. It further provides that holding an inquiry in the manner laid down in sub-rules(6) to (25) of Rule 9, which speaks of imposition of major penalty is a matter of discretion of the disciplinary authority. If he is of the opinion that the disciplinary inquiry is necessary, he may do so. If he forms the opinion that the facts do not justify a regular inquiry, he can proceed to dispose of the matter on consideration of

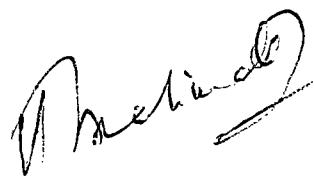
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the representation submitted by the Railway servant. Sub-rule(2) of Rule 11 further provides that the disciplinary authority ought to hold a regular inquiry as laid down in sub-rules (6) to (25) of Rule 9 when withholding of increments is likely to affect adversely the amount of pension or special contribution to Provident Fund payable to the Railway servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period. The case of the petitioner does not fall under these explanations. Hence, the disciplinary authority was not under an obligation to hold an inquiry. It had discretion to dispose of the matter only on consideration of the representation of the petitioner. Having regard to the minor nature of the misconduct and the circumstances of the case, it is not possible to take the view that the disciplinary authority acted arbitrarily in deciding not to hold a regular inquiry in this case. The disciplinary authority, in our opinion, was justified in disposing of the matter on consideration of the representation made by the petitioner.

3. It was next contended by the learned counsel for the petitioner that the case put forward by the petitioner was not considered and the impugned order is not a speaking order. A bare perusal of the order makes it clear that there is no substance in the contention that the order is not a speaking order. The order adverts to the explanation offered by the petitioner and that it is not accepted. Further, it is stated that presence of some touts near the parcel office has been accepted by the petitioner in the statement made by him on 4.3.1985. In view of the admission by the petitioner himself in the statement accepting the imputation of permitting touts to function in the parcel office, the disciplinary authority justifiably held the charge in this case duly proved. We are, therefore, satisfied that the impugned order is a speaking order and the explanation offered by the petitioner has been considered and the petitioner held guilty primarily on the admission of the petitioner himself made in his

statement on 4.3.1985. Hence, the impugned order does not call for interference.

4. For the reasons stated above, this petition fails and is accordingly dismissed.



(V.S. MALIMATH)
CHAIRMAN

In folio
(S.R. ADIDE)
MEMBER(A)

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