

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 13th day of February, 2001

Original Application No. 129 of 2001

CORAM :-

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Hon'ble Mr. S. Dayal, A.M.

J.P. Mishra S/o Late Kanhaiya Lal Mishra,
R/o Village & Post-Ajgain,
District-Unnao.

(Sri H.C. Shukla, Advocate)

..... .Applicant

Versus

1. Union of India through
The Director General, Post & Telegraphs,
New Delhi.
2. Post Master General,
Kanpur Region, Kanpur.
3. Senior Superintendent of Post Offices,
Kanpur City, Division Kanpur.
4. S.D.I.(Postal) South Sub Division,
Kanpur City, Kanpur.
5. Hon'ble Member (P)
Postal Services Board,
New Delhi-110 001

(Sri Ratnaker Chaudhary, Advocate)

..... .Respondents

O R D E R (O_r_a_1)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this OA the applicant has challenged the order dated 3-4-1997 by which he has been punished for recovery of Rs.9720/- in 36 instalments of Rs.270/- per month commencing from the month of May, 1997. The

applicant has been further punished by reducing him to the pay scale of Rs.750/- per month for three years w.e.f. 1-5-1997. It was further provided that the applicant will not earn increment of pay during the period of reduction and also on the expiry of this period the reduction will also have the effect of future postponing of his ^{incremental} pay. Aggrieved by the aforesaid order, the applicant ~~has~~ filed an appeal, which was disposed of by order dated 31-7-1997. The appellate authority agreed with the disciplinary authority and only modified the order of punishment so far as it was with regard to reduction of pay and directed that the future increment ^{shall} not be postponed. Therefore, the applicant filed a representation which had been rejected on 26-6-2000. Aggrieved by the said order, the applicant has approached this Tribunal by filing this OA.

2. Learned counsel for the applicant has submitted that before passing the aforesaid order, the applicant was served only with the notice dated 15-1-1997, a copy of which has been filed as Annexure-A-5. It is submitted that in the notice, the applicant was not called upon to show cause as to why the amount of Rs.9720/- may not be recovered from him. The notice was only for terminating the services. Learned counsel for the applicant has submitted that as the applicant was not given any opportunity with regard to financial liability, the order suffers from inherent illegality and violation of principles of natural justice and hence cannot be sustained. Learned counsel for the applicant has also submitted that the appellate authority though has mentioned about the notice in the order, but failed to appreciate the fact of illegality mentioned above.

3. Sri Ratnaker Chaudhary, learned counsel for the respondents on the other hand submitted that the



illegality was committed by the disciplinary authority but as this point was not raised before the appellate authority, the mistake committed cannot be corrected. It is also submitted that as the plea has been waived at the appellate stage, the applicant cannot be permitted to raise the same at this stage of Tribunal. We have considered the submissions of the counsel for the parties. However, we are of the view that as orders are violative of the principles of justice on both aspects, namely, imposition of penalty and imposition of financial liability on the applicant, the proceeding suffers from inherent infirmity, which renders the impugned orders void ab initio and ~~xx~~ such orders cannot be maintained in the interest of justice. The notice was for a major penalty of removal from service. The respondents, however, without following ^{prescribed in rule and apparently given to} any procedure for ~~explanation to be given by~~ the applicant passed the impugned order. The fact remains that the applicant was not given notice either about recovery of the loss suffered by the Government or for the punishment for the alleged misconduct. In the circumstances, the orders cannot be sustained.

4. For the reasons stated above, the application is allowed. The impugned orders dated 3-4-1997, 31-7-1997 and 26-6-2000 are quashed. The applicant shall be refunded the amount deducted from his salary within a period of three months. It shall be open to the respondents to pass a fresh order in accordance with law. There shall be no order as to costs.


Member (A)


Vice Chairman

Dube/