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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION NO. 42 of 1986.

Prasidh Narain Shukla

.... Applicant.

Vs.

Senior Superintendent R.M.S.  
G, Division and another

... Respondents.

Hon'ble D.S.Misra-Member (A)

Hon'ble G.S.Sharma-Member (J)

(Hon'ble D.S.Misra-Member)

This is an application under section 19 of the Administrative Tribunals Act 13 of 1985 against the imposition of the punishment of recovery of Rs.200/- from the pay of the applicant and also against the stoppage of increment for thirty months.

The applicant had been working as Mail Guard 'G'-31 running between Gonda junction and Nepalganj Road Railway Station and was attached to S.R.O.Gonda. The applicant was chargesheeted under rule 16 of the C.C.S and C.C.A Rules, 1965 vide memo dated 13.3.1984 issued by respondent no.1 for contravening the provisions of Rule 3(i)(ii)(iii) and 3(2)(ii) of C.C.S. Conduct Rules, 1964. The applicant submitted his defence- statement dated 18.7.1984 to respondent no.1, who inflicted punishment of the recovery of Rs.2000/- from the pay of the applicant. The applicant submitted an appeal dated 1.9.1984 to respondent no.2 who disallowed the appeal and further

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imposed additional punishment of stoppage of increment of the applicant for thirty months. The applicant has alleged that the two punishment imposed on him were arbitrary and against the principles of natural justice as well as against the departmental rules and orders and are liable to be set aside.

According to the applicant, he worked as mail guard in G.31 section and on the night of 27.2.1984 delivered 79 bags in total to mail agent Gonda, R.M.S. at 1.40 hours. The applicant was called from his residence by the mail agent Gonda R.M.S. at 4 A.M. after <sup>an</sup> interval of about 2.30 hours and was told that he had delivered only 78 bags instead of 79 bags. The account transit bag from Sub Post office Rupaidiha to Bahraich Head office was not received. The applicant repeatedly told that he had delivered 79 bags correctly for which a receipt was also granted by mail agent Gonda R.M.S. but none was prepared to hear the applicant. The mail agent and his co-workers pressured and compelled the applicant to issue a fresh mail list for G.31 out section invoicing 27 bags instead of 28 ignoring the entry of account T.B. from Rupaidiha sub-post office to Bahraich Head Post Office. The applicant was due to proceed on duty with G-31 out-station same day, i.e., 28.2.1984, leaving Gonda junction at 6.00 hours in the morning. Hence the applicant had no time to bring the facts to the notice of the departmental authorities or the police. The applicant <sup>however</sup> reported all the facts in his daily report dated 28.2.1984 for taking necessary action by the departmental authorities. The applicant's contention

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is that the loss was not caused to the Government by negligence or breach of the orders by the applicant. He has further alleged that the loss of the said bag was caused due to negligence of the mail agent, Gonda who granted a clear receipt after having satisfied himself with the number of bags. The applicant has further alleged that in his findings the disciplinary authority has not discussed how the applicant was responsible for *negligence in performing his duty*, frustrating the inquiry. The applicant has further contended that the imposition of further penalty of withholding of increment for 30 months was in violation of Ministry of Home Affairs Memo dt. 19.1.1968, wherein it has been laid down that where stoppage of increment is likely to affect adversely the pensionary entitlement, the procedure of holding the inquiry should invariably be followed. The applicant is due to retire from service w.e. from 31.7.1986 and his pension will be adversely effected by the order of stoppage of increment. It is further alleged that the applicant was not provided a reasonable opportunity to prove his innocence in the oral inquiry under Rule 16(i)(p) of C.C.S. and C.C.A Rules 1965. The applicant has requested that the punishment awarded to him may be set aside.

In reply the respondents have stated that the applicant was placed under suspension on 2.3.1984 pending criminal inquiry as the transit bag of Rupaidiha post office for Bahraich Head Post Office containing account bag amounting to Rs.4000/- was lost from the custody of the

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applicant and Sri Dina Nath Tripathi. The petitioner was given a chargesheet to which a reply was filed on 18.7.1984 (copy at annexure CA-1). It is further stated that the Government Railway Police Gonda had also filed a chargesheet against the petitioner before the Judicial Magistrate Gonda and the said case is still under trial. The respondents have stated that after the scrutiny of the reply of the chargesheet submitted by the petitioner a punishment order was issued on 19.7.84 for the recovery of Rs.2000/- from the applicant. The appeal filed by the petitioner was considered by the respondent no.2, who after going through the facts and circumstances of the case revised the punishment order issued by respondent no.1, and withheld the increment for 30 months with the recovery order. It is further contended that the petitioner should have filed a review petition to the appropriate authority under the provisions of the C.C.A. Rules and Rule 116 of the Post and Telegraph Manuals vol.II and therefore, the application before this Tribunal was not maintainable.

We have heard learned counsel for the parties. The applicant's counsel invited our attention to the statement of imputation of misconduct served on the applicant, the reply furnished to the chargesheet and daily report dt. 28.2.1984 filed by the applicant. The copy of the statement of the imputation of misconduct filed at page 14 of his Paper-book by the applicant reads as follows:

1) That he <sup>he</sup> in an unauthorised way made corrections in Mail List from Rupaidiha



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for Bahraich and prepared fresh mail list for G-31 out dated 28.2.1984 and prepared fresh daily reports of G.31 set/1 dated 27.2.1984 whereas he had already handed over the charge to the mail agent Gonda R.M.S./B dated 27.2.1984 under clear receipt.

ii) That he issued docket telegram giving false information that A/C TB from Rupaidih for Bahraich was not received from Rupaidiha.

(iii) That followed the guidance and instructions of mail agent and mail opener/closer Gonda RMS dated 27.2.1984 and as per the direction changed the R.T. Mail List and Daily report and made corrections as in charge no.1.

Learned counsel for the applicant argued that the applicant in his reply dated 18.2.1984 did not concede shortage of one mail bag and the preparation of a revised mail list and alleged that he had done so under coercion and he referred to his daily report dated 28.2.1984 in support of this contention. The copy of the daily report dated 28.2.1984 is annexure C.A.-3 and the learned counsel for the applicant has urged that the disciplinary authority had failed to take notice of the statement made in the daily report in which it is alleged that he was forced to destroy the previous mail-list, bag memo, daily report, and had prepared fresh report on wrong assurance and force and duress used by the mail agent and other employees present in the office. The respondents in the reply have denied this assertion of the applicant and have stated that if the applicant had any grievance on this scope he should have filed a report with the police. They have also stated that the daily report dated 28.2.1984 was an afterthought and was made after the applicant had ascertained from Rupaidiha that a mail bag had been lost. Learned counsel for the applicant has contended that according to the daily report dated 27.2.1984 (Annexure CA -3), he completed his duty hours

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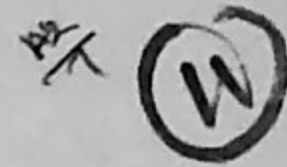


at 1.40 hours on the night of 27th Feb.1984. He was required to perform his next duty again the same day starting at 6.00 A.M. The applicant was woken up at his house at 4.00 A.M. and he had no time to file a report with the police until he returned to Head Quarters after performing duty on 28.2.1984. Learned counsel, however conceded that the applicant did not file a report with the Police even on his return from duty as he was under the impression that necessary action would be taken by the higher authorities on receipt of his report dated 28.2.1984. Respondents have not denied the receipt of this report and themselves have filed a copy thereof but have made no comment as to why they did not take any action on this report. The allegations made in this report were repeated by the applicant in his reply dated 18.7.1984 filed in response to the charge-sheet. Learned counsel for the respondents could not give any satisfactory reply to the arguments of the applicant's counsel that the applicant was not given reasonable opportunity to defend himself as he had made specific allegations of force being used on him to change the report mentioning the persons, who had done so. The respondents have also not denied that the applicant was due to retire on 31.7.1986 and the punishment of stoppage of increment would adversely affect the entitlement of pension to the applicant.

Regarding the failure of the applicant to go in revision and the consequent non-maintainability of the application, we are of the view that the filing of a revision against the appellate order under Rule 29 of the C.C.A. Rules is not mandatory, and the applicant was not bound to file a revision before approaching this Tribunal and in our view there was no bar to the entertainment of this application by the Tribunal.

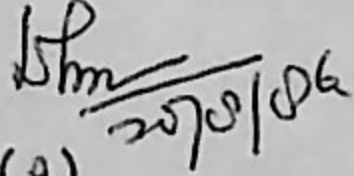
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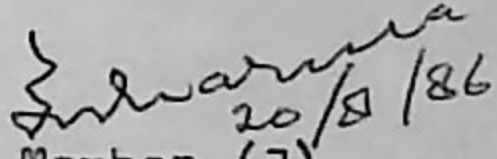




After taking into consideration the facts and circumstances of the case, we have come to the conclusion that the principles of natural justice should have been followed by giving the applicant sufficient opportunity to substantiate the allegations made in his reply and explain his conduct before the imposition of punishment by the disciplinary authority and its subsequent enhancement by the appellate authority.

We accordingly hereby quash the impugned order dated 26.11.1985 passed by respondent no. 2 (the appellate authority) enhancing the punishment awarded by the respondent no. 1 as well as the order dated 19/21.7.1984 passed by the respondent no. 1 directing the recovery of Rs.2000/- from the applicant and direct that the respondent no. 1 will hold de-novo inquiry under Rule 14 of CCS & CCA Rules, 1965 and give a reasonable opportunity to the applicant to explain his defence and conduct. There will be no order as to costs.

  
Member (A)

  
Member (J)

Dated 20-8-1986  
J. Singh.