

(14) (Reserve) (Bench No. 1)

CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD.

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Registration No. O.A. 492 of 1986.

K.C.Dubey . . . vs. . . Postmaster Allahabad and
another.

Hon'ble Justice Shri S.Zaheer Hasan, Vice Chairman.

Hon'ble Shri Ajay Johri, Member (A)

(Delivered by Hon'ble S.Zaheer Hasan, V.C.)

This is an application under Section 19 of the Administrative Tribunals Act (No. 13 of 1985) filed by applicant K.C.Dubey challenging the order dated 18.8.1984 passed by Postmaster Allahabad-I reducing the applicant by three stages in the time scale of pay for a period of one year with effect from 18.8.1984.

Applicant K.C.Dubey was working as Packer (Group-D) in the Head Post Office at Allahabad. S.D.Srivastava, to be referred to as the complainant, was working as Sub-Postmaster, City Post Office, Allahabad. The applicant asserted that on 17.10.1984 the complainant was taking away two earthen kunda for his personal use and he also used insulting language. People intervened and the matter was hushed up. On 31.10.1980 the applicant approached the complainant in his office in presence of various employees and said that the Sub-Postmaster had taken away 'dari' and during Diwali he would get the Sub-Postmaster picked up from his residence. He further alleged that the

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the Sub-Postmaster was taking commission from the staff from over time allowance. He also used abusive language against the Sub-Postmaster. For these two charges, the applicant was asked to submit his explanation. He denied those charges. Sri B.K.Sen Gupta was appointed as inquiry officer. Ram Lekhan Verma, S.D. Srivastava, complainant the Sub-Postmaster, H.K.Bahl, Mohd. Isa and A.B.Lal were examined as witnesses in support of ~~mix~~ the ~~in~~ charges. The applicant also led some oral evidence in support of his defence. In his report dated 22.12.1983, Sri B.K.Sen Gupta, Inquiry Officer, held that the charges were not proved. The Postmaster, Sri B.P.Gupta, the disciplinary authority, did not agree with the view taken by the Inquiry Officer and he, vide his order dated 18.8.1984, held that the charges were made out against the applicant. He ordered for reducing three steps for one year only of the applicant with immediate effect. On 28.6.1985 Sri S.K. Sharma, Director, Postal Services, Allahabad while disposing of the appeal preferred by the applicant held that there was a technical flaw in the wording of the operative portion of the order which did not specify at what stage the official would draw pay after the expiry of the period of reduction and whether that would be automatic or subject to a subsequent review. He, therefore, remitted the case back to the disciplinary authority for issuing a fresh order with appropriate clause to this effect.

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On 9.1.1986 Sri S.S.Modak, Senior Postmaster, Allahabad, passed the following order:-

"It is, therefore, ordered that the pay of Sri K.C.Dubey, Packer, Allahabad HO be reduced by three stages from Rs. 232/- to Rs. 223/- in the time scale of pay of Rs. 196-3-223 E.B.-3-232 for a period of one year with effect from 18.8.1984. It is further directed that on the expiry of the period of one year, the reduction will not have the effect of postponing his future increments of pay i.e. he will have the benefit of pay of Rs. 232/- w.e.f. 18.8.85 in other words he will restore his pay of Rs. 232/- w.e.f. 18.8.85".

On 14.2.1986 the applicant filed an appeal against this order of corrigendum issued on 9.1.1986. On 29.5.1986 (vide Annexure-G to the application) the Senior Postmaster narrated all the facts, gave his finding and then passed the following operative portion of the order:-

"I, S.S.Modak, Sr. Postmaster Allahabad HO hereby order that the pay of Sri K.C.Dubey, Packer Allahabad HO be reduced by three stages from Rs. 232/- to 223/- in the time scale of pay of Rs. 196-3-223 E.B.-3-232/- for a period of one year with immediate effect. It is further directed that on expiry of the period of one year the reduction will not have the effect of postponing his future increments of pay i.e. after expiry of one year he will restore his pay of Rs. 232/-. This is in supercession of this office memo of even no. dated 18.8.84 & dtd. 9.1.86."

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This order was passed in supercession of the order dated 18.8.1984 (the first order of punishment) and the order dated 9.1.1986 (the corrigendum). On 14.8.1986 the applicant filed an appeal against this order dated 29.5.1986. On 9.7.1986 (vide receipt filed as Annexure-I to the application) Rs. 345.75 np. were refunded to the applicant. Now, if the calculation is made on the basis of the order dated 29.5.1986, the applicant has to be paid Rs. 540 and instead Rs. 345.75 were refunded to him. So, he has challenged the order passed by the disciplinary authority on 18.8.1984 as well as the order dated 29.5.1986 by which the orders dated 18.8.1984 and 9.1.1986 were modified. He has also challenged the order of refund which has resulted in loss to the applicant as detailed above.

Learned counsel for the applicant contended that the preliminary inquiry is meant for collecting facts and its utility lies in the fact that it clears the brain of the authority whether to drop the matter or to carry it further by launching a full scale disciplinary inquiry; and this is more so because the preliminary inquiry in itself has no legal sanction to become basis of any punishment,

that Statements recorded during the preliminary inquiry behind the back of the Government servant cannot be considered as evidence, but if those statements are proposed to be used they should be brought on record of the disciplinary inquiry so as to be within the knowledge of the Government servant and copies of those statements should be supplied to the Government servant and when the witnesses who were examined during the preliminary inquiry are again examined during the disciplinary inquiry they should be confronted with their

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previous statements and thereafter the case should be decided. ^{If was also stated that} Of course, the provisions of Evidence Act, Cr.P.C. and C.P.C. do not apply to departmental proceedings even then the basic rules of evidence have to be followed and the rule of natural justice cannot be ignored. It was further contended that the statements of H.K.Bahl, Mohd. Isa, and A.B.Lal recorded during the preliminary inquiry do not connect the applicant with the charges and same is the case with their statements made during the ^{of that} departmental inquiry. ^{that} We are left with the statements of the Sub-Postmaster, S.D.Srivastava who was the complainant in the case and of Ram Lakhan Verma, ^{that} Ram Lakhan Verma gave a written statement on 1.11.1980 supporting the allegations made in the charge, ^{that} When he was produced before the departmental inquiry he admitted that he gave the statement dated 1.11.1980, but nothing happened in his presence. ^{that} The Sub-postmaster was the complainant of that case, ^{and} ^{that} he sent a written complaint to his superior officer and lodged a police report also, ^{that} he supported his version during the departmental inquiry, ^{but} he was produced before the Inquiry Officer, ^{but} during the Departmental inquiry he stated that there was no talk about overtime allowance and charge on that score is wrong, ^{and} ^{that} he further admitted that from the conduct ~~of~~ and appearance the applicant K.C.Dubey appeared to be out of his senses and he did say that he would beat with shoe. Since we are remanding this case to the appellate authority for disposing of the appeal, we do not consider it advisable to deal with the aforesaid arguments. They

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might be put up before the appellate authority at the time of ~~hearing~~ ^{arguments} and it will be up to the appellate authority to give a finding and decide the appeal according to law, and write a reasoned order after hearing the applicant.

It is not a case in which the disciplinary authority relied upon the evidence recorded during the preliminary inquiry. Five witnesses examined during the preliminary inquiry were produced during the ^{also} departmental inquiry and the question before the disciplinary authority was as to which version should be accepted and how much reliance should be placed on statements of the witnesses. In other words the evidence led before the inquiry officer was to be appraised and this appraisal has been challenged before the appellate authority. So it is not a case in which there is any illegality apparent on the face of record and we should dispose of this case without asking the appellate authority to dispose of the appeal on merits.

The occurrence took place on 12.10.1980 and 31.10.1980. On 22.12.1983 the inquiry officer held that the charges were not proved. On 18.8.1984 the disciplinary authority held that the charges were proved and it passed the order of reduction of three steps for one year. On 27.9.1984 an appeal was filed and on 28.6.1985 the Director of Postal Services, remanded the case for writing the operative portion of the order correctly. Thereafter on 9.1.1986 a corrigendum was

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issued and probably the mistake was realised. So, on 29.5.1986 the order dated 18.8.1984 (original order of the disciplinary authority punishing the applicant) and the corrigendum were modified; and this so-called ~~several~~^{final} order of punishment dated 29.5.1986 appears to have been passed in compliance of the order of remand passed by the appellate authority on 28.6.1985. Against this order an appeal was filed on 14.8.1986 which we are told is still pending. This application was filed in this Tribunal on 10.9.1986. In short, on 28.6.1985 the appeal was not decided on merits, but the matter was returned back to the disciplinary authority to write the operative portion of the punishment order according to rules. On 29.5.1986 the disciplinary authority repeated the findings dated 18.8.1984, but the operative portion of the order was written in compliance with the order of the appellate authority. Against this order dated 29.5.1986 an appeal dated 14.8.1986 was filed which is still pending.

This application is ~~dismissed~~^{dismissed} with costs on parties with the ~~observations~~^{direction} that the appellate authority ~~to~~^{will} dispose of the appeal and decide the matter finally after taking into consideration the various arguments referred to above, if advanced before it, and write a reasoned order after hearing the applicant. It will also find out whether the operative portion of the order as ultimately passed is correct or not and whether the applicant was ~~rightly~~^{rightly} ordered to pay Rs. 540/- instead of Rs. 345.75np, in an unwarranted manner.

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December 11, 1986. Vice Chairman.

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Member (A).