

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration T.A. No.1368 of 1987
(W.P. No.11539 of 1983)

G.P. Pandey Applicant.

Versus

Union of India and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

This is a transferred case under Section 29 of the Administrative Tribunals Act, 1985. The applicant filed a writ petition before the Hon'ble High Court which by operation of law has been transferred to this Tribunal. The applicant has prayed for quashing the order dated 29.7.1983 and 17.8.1983 and a mandamus be also issued restraining the respondents not to revert the petitioner on the basis of punishment from 'Mail Guard Special-A' to Passenger Guard in order to punish the applicant of withholding his promotion for one year.

2. The applicant was working as Mail Guard-A (Special) in the pay scale of Rs. 425-640(R.S.) w.e.f. 8.4.1982 absolutely on the basis of his seniority cum suitability. Due to some reasons or other one officer namely Sri Vinay Mittal was annoyed with the applicant. The applicant has stated in his application that due to some malafide he was annoyed with me but no malafide has been established as such, it is not necessary to make a reference to the same. The applicant was charge-sheeted on a complaint for an alledged act of misconduct. The applicant has

submitted his reply denying the allegations and pleaded that there was no misconduct committed by him against any of the officers. Thereafter the applicant was charge-sheeted on 3.3.1982 on the ground why he did not attain the enquiry held on 28th February, 1982. He filed his reply against it that he has gone out of station but the applicant was awarded punishment of withholding to passes. The applicant filed an appeal against the same and the appellate authority. The appellate authority enhanced the punishment of the applicant withholding of his promotion for one year along with his earlier awarded punishment i.e. withholding two passes.

3. The applicant's grievance is that he made a request in writing that he may be supplied the documents and papers on the basis of which the Senior D.O.S.M. had issued a notice of enhancement on the applicant, but his request was not accepted. The applicant sent a representation to the authorities against non supply of the documents and papers. Thereafter the appellate order dated 29.7.1983 was communicated to the applicant. The applicant has challenged the said order on the ground that no show cause notice for enhancement of the punishment was issued to the applicant. The applicant has been punished twice for the same mistake and he has stated that this punishment is against the Art. 311 of the Constitution of India, and also against the Railway Servants (D & A) Rules, 1968 and no charge-sheet for the major penalty can be issued for the same. The appellate authority had a jurisdiction to enhance the punishment but ~~but~~ the same can be done only after issuing a show cause notice and as a matter of fact a show cause notice was issued to the applicant and the

applicant has been given an opportunity to defend himself, thereafter taking into consideration the legal provisions, his punishment was enhanced. The appellate authority has jurisdiction to do so but in accordance with law and under the legal directions.

4. The averments made in the counter affidavit clearly indicates that there was no necessity of allowing the application for inspection of documents and the supplying of copies of the documents at that stage as the documents were not material or relevant for the said purposes and further the applicant could have moved this application before the authority which conducted the disciplinary proceedings, but which was not done. There is no question of violation of Art. 311 of the Constitution of India in as much as the same has not been violated. Accordingly, we do not find any merit in this application, therefore, the application is dismissed without any order as to costs.

Amrit Singh
Member (A)

JK
Vice-Chairman.

Dated: 26.2.1992
(n.u.)