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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 705 of 1987

Hanuman Saran Pandey Applicant
Versus
Union of India and Others Respondents

CORAM:

Hon'ble Mr. Justice U.C. Srivastava, V.C
Hon'ble Mr. K. Obayya, Member(A)

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

The applicant was working as Wireless Licencing Inspector w.e.f. 1.3.79 which was a promotional post for him. The applicant proceeded on medical leave w.e.f. 29.12.80 and remained on leave on account of prolonged illness upto 19.12.81. On 19.12.81 when the applicant went to resume his duty, the Post Master Nawab Ganj did not allow the applicant to join the duty and informed him that he has been placed under suspension. The applicant submitted an application to the senior superintendent of Post Offices Kanpur City division for revoking the suspension order which was revoked vide Memo dated 24.12.81 and allowed the applicant to join the duty from 24.12.81 afternoon.

2. On 22.12.87 the applicant was served with the memo of charges vide Supdt. of Posts Kanpur

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City division dated 3.7.81. An Enquiry officer was appointed. The applicant filed an application before the Enquiry Officer requesting that certain documents may be supplied to him for defending the case. The non production of the documents before the Enquiry officer deprived of the applicant in meeting the charge and effective cross examination of witnesses produced in the enquiry on behalf of the disciplinary authority. After close of the enquiry by the Enquiry officer vide letter dated 10.11.82, the presenting officer did not submit his written brief and the Enquiry Officer without informing the applicant submitted ex-parte report without giving opportunity to the applicant to defend himself and the charges framed which are as under:

- (1) That the said H.S. Pandey while functioning as officiating Wireless Licencing Inspector Nawabganj, Kanpur during the period from 1.3.79 to 20.12.1980 did not submit A.E. & statement for the period September 1980, though he was addressed by the P.M.G.U.P. Circle Lucknow vide XR/2245/28 dated 28.11.80, thereby contravened the provisions of Rule 3 of CCS Conduct Rules 1964
- (2) That during the aforesaid period and while functioning in the aforesaid office Shri H.S Pandey was posted as Clerk

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Nawabganj vide Sr. Supdt. of Post Offices, Kanpur City Division Kanpur Memo No. B.I./WII 80-81 dt. 20.12.80 with directions to handover the charge of WII's post to the Postmaster, Nawabganj H.O. but he did not comply with the order referred to herein. He also did not transfer the charge to Shri R.D. Nigam W.I.I. H.N.S. Nagar when deputed for this purpose and acted in a manner unbecoming of a Govt. Servant contravening the provisions of rule (iii) of CCS (Conduct) Rules 1964.

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- (3) That during the aforesaid period and while functioning aforesaid office the said Shri H.S. Pandey inspected only 50 dealers out of 53 during 1980, thereby contravened the provisions of rule 3(iii) of CCS (Conduct) Rules 1964.
- (4) That during the aforesaid period and while functioning in the aforesaid office the said Shri H.S. Pandey refused to take delivery of Kanpur Regd. Letter No. 2366 dt. 5.2.81 addressed to him, when sent through Shri B.P. Shukla Postal Overseer, R.K. Nagar and acted in a manner unbecoming of a Govt. servant violating the provisions of rule 3(iii) of CCS (Conduct) Rules 1964.

Out of the 4 charges framed against the applicant 2 of them were proved against misconduct and consequently awarded punishment withholding of his promotion for



3 years.

3. The applicant filed an appeal against the same. The appellate authority was in view that the charges levelled against the applicant was partly proved and was not found/^{any}justifiable reason to disagree with the findings of the disciplinary authority so far as the allegation of non transfer of charge to the Post master Nawabganj or deliberate evasion of the service of Kanpur R.L. No. 2366 dated 5.2.81 on the part of the applicant are concerned. The orders issued by the President vide memo dated 16.2.85 received by the applicant on 9.5.85 clearly indicates in its para III that the powers of the disciplinary authority were not exercised as he was appointed by the senior Supdt. of Post Offices and the charge of the division was held by the Supdt. of Post offices. The assertion of the Enquiry officer as well as so called disciplinary authority's report that charge no.2 and 4 is incorrect. The disciplinary authority itself was competent to decide the case of the applicant, however with mala fide intention he referred the same to the President of India for appointment of disciplinary authority. It is also wrong to say that the enquiry report could not be supplied with the punishment order, the enquiry officer has committed illegality and the punishment order is liable to be quashed. The appellate authority did not decide the appeal in time. It was contended that the finding which has been proved against the the applicant and the punishment which has been so

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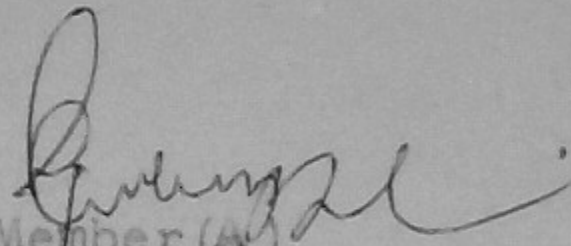
awarded and it was also contended that the copy of the Enquiry Officer's report was not given to the applicant which would have ~~been~~ enabled him to file an effective appeal in support of the contentions raised by the Enquiry Officer for misconduct, the result of which that he has not been able to get promotion.

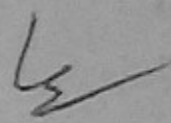
4. The learned counsel made reference to the case A.L. Kalra Vs. Project and Equipment Corporation of India Ltd, 1984 Supreme Court Cases (L&S) 497 & 1984(3) SCC 316. wherein it has been held that " even if the facts alleged in two heads of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct. No reasons were assigned for reaching the finding and while recapitulating evidence self-contradictory positions were adopted and either there was no misconduct or there was some misconduct. The disciplinary authority also did not act in consonance with the rules and upheld the decision of the disciplinary authority without assigning reasons. Therefore the initial order of the disciplinary authority as well as the Appellate Authority are liable to be quashed. As we have found that the Appellate Authority has not passed a Speaking order and also not given any opportunity of personal hearing to the applicant. The Appellate Authority did not apply its mind and accordingly this application is allowed. The order of punishment is liable to be quashed and if the appeal is not decided, let it be decided

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within a period of 3 months from the date of communication of this order taking into consideration of the pleas raised by the applicant. No order as to the costs.


Member (A)


Vice Chairman

Dated: 13th October, 1992:

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