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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 920 of 1987

C.S. Barodia .... Applicant.

Versus

Union of India & others .... Respondents.

Hon'ble G.S. Sharma, J.M.  
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, C.S. Barodia, who was posted as Sub-Divisional Inspector (Postal) (SDI(P)), Meerut, has prayed for quashing of the orders dated 11.11.1986, 15.5.1986, 2.4.1986 and 30.9.1986 passed by respondents no. 2 and 3. These four orders comprise ~~of~~ <sup>an</sup> order by respondent no.3 withholding his next increment for a period of three years without cumulative effect and the order in appeal passed by respondent no.2 in respect of the above order <sup>and an</sup> rejecting the appeal; <sup>order dated 2.4.1986</sup> passed by respondent no.3 treating the period from 1.3.1986 to 11.3.1986 in respect of the applicant, as dies non, and the appellate order thereof passed by respondent no.2 rejecting the appeal. Briefly, the facts of this case are that respondent no.3 issued a notice dated 11.3.1986 to the applicant asking him to show-cause as to why the period from 1.3.86 to 11.3.1986, during which the applicant was allegedly not traceable, <sup>should</sup> not be treated as dies non. This notice also states that the applicant by an order dated 10.2.1986 was directed to shift his office to ~~an~~ new building at Meerut and whereas other SDIs had shifted their offices to the new place, the applicant failed to comply with the orders despite reminder dated 19.2.1986. According to the applicant, he gave <sup>Q</sup> replies to the above show-cause notice. Respondent <sup>1986</sup>

APR 2

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no.3, however, did not find the explanation satisfactory. The explanation, as regards the period from 1.3.1986 to 11.3.1986, as given by the applicant, was that the city was under curfew and that he had submitted his fortnightly diary for the said period showing the work done by him, denying the allegation of absence from his duty. Respondent no.3, however, held that the area of Maliyana where the applicant was residing was not under curfew during the relevant period and the diary for the first fortnight of March, 1986 of the applicant had not been received in his office till the ~~date~~ <sup>time</sup> of issue of the order dated 2.4.1986. Respondent no.3 held that the applicant had remained absent from duty without valid reasons during the said period and ordered that the same should be treated as dies non. The applicant filed an appeal before respondent no.2, who rejected the same in an elaborate, reasoned order dated 30.9.1986.

2. On 2.4.1986 respondent no.3 issued to the applicant a statement of imputation of misconduct/misbehaviour, alleging that though the applicant was directed to shift his office to a new building and was specifically directed to ensure shifting within five days, he failed to observe the orders inspite of two reminders dated 19.2.86 and 11.3.86, thereby violating Rule 3 of the C.C.S. (C.C. & A.) Rules, 1965 by showing gross disobedience. On 5.4.1986 the applicant gave a reply to this charge-sheet. By an order dated 10.4.1986 respondent no.3 withdrew the charge-sheet dated 2.4.1986 stating that it was being withdrawn without prejudice to fresh memo being issued based on some grounds of charges and evidence. On 11.4.1986 another charge-sheet was issued, the contents of which were the same as the previous one dated 2.4.1986, the only difference being that in this the alleged violation of Rule 3 of CCS (Conduct) Rules, 1964 was stated instead of CCS (CC&A) Rules, 1965, as stated earlier. The applicant gave a reply questioning the validity of the second charge-sheet. By a detailed order dated 15.5.1986, respondent no.3 found the applicant guilty of insubordination in not effecting the shifting of his office, as directed, and withheld the next increment

192

for a period of three years without cumulative effect. The applicant states that he had submitted an appeal on 29.7.1986. Respondent no.2, the appellate authority, rejected the appeal on the ground that the appeal was time barred under Rule 25 of CCS (CC&A) Rules, 1965. It is against the above mentioned two orders of respondent no.3 and the two appellate orders of respondent no.2 that the applicant has come up with this application.

3. Some of the main contentions of the applicant are that he was asked to show cause against the non-shifting of the office by the notice dated 11.3.1986, referred to above and his period of alleged absence was treated as dies non. Consequently, the punishment of stoppage of increment was a second punishment, which is wholly illegal. He questioned the decision as regards the treatment of the period as dies non, on the basis of his submission of his fortnightly diary to respondent no.3 and the entries made therein. He alleges that the entire records of the case were not furnished to the appellate authority. He questioned the authority of respondent no.3 in ordering the shifting of the office and on this basis justifies his failure to obey the said directions.

4. In the counter affidavit filed in reply to the original application and also the supplementary counter affidavit filed on the rejoinder affidavit of the applicant, respondent no.3 avers that the shifting of the office was necessitated by administrative convenience and economy, as certain offices including that of the applicant were located in rented buildings and space was available in the Government building near the Divisional Office of Meerut. It is stated that all other SDIs in that place and another officer also complied with the orders by shifting their offices, but not the applicant, who adopted a belligerent attitude and did not shift the office. It is asserted that the applicant did not submit his diary at all in time and that the diary for the first fortnight of March, 1986 was received on 2.4.1986 afternoon. It is alleged that the applicant

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never submitted a tour programme to his superior officer as required and whatever journey he might have performed without submitting such a programme was as good as absence. It is averred that the applicant could not be contacted during the said period when there was <sup>a</sup> lot of ~~journey~~ <sup>in</sup> disturbance in the city, though the area where the applicant was residing, there was no curfew. The various allegations made by the applicant have been denied and it is stated that action by way of issue of dies-non order is purely an administrative one and had nothing to do with the other disciplinary action taken under Rule 16 of CCS (CC&A) Rules, 1965. The subject matter of the charge-sheet was the failure to carry out the orders to shift the office. It is denied that respondent no.3 was prejudiced or biased against the applicant. It is explained that the first charge-sheet dated 2.4.1986 was withdrawn because it contained typographical error. The first charge-sheet mentioned 'CCS (CC&A) Rules' wrongly. The correct rule was under the CCS(Conduct) Rules, 1964. This technical error was removed by way of withdrawing the first charge-sheet and issuing an amended one. It was clearly mentioned in the order of withdrawal that the charges were being ~~dropped or~~ withdrawn without prejudice to fresh charge-sheet being issued based on the same ground of charges and evidence. It is contended that the applicant has not exhausted all the remedies since he had not filed any petition of review to the Postal Services Board against the orders of respondent no.2. It is asserted by respondent no.3 that he is quite competent under the Rules and Regulations to order the shifting which he has done and that is why the other offices in the same place carried out <sup>the</sup> ~~work~~ instructions and shifted their offices.

5. We have heard the learned counsel for the parties. During the oral arguments, the learned counsel for both the sides reiterated the contentions referred to above. We have very carefully considered these contentions. As regards the action taken in respect of the alleged absence from duty of the applicant during the first half of March, 1986, respondent no.3 has solemnly stated that the applicant

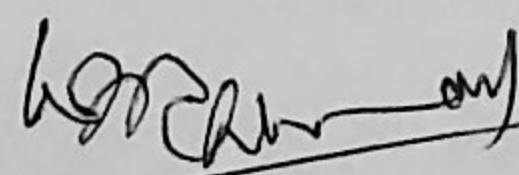
192

was not found in his post inspite of several attempts to ~~conduct~~ <sup>sporadic</sup> contact him during a period when the city was full of ~~periodic~~ disturbance and riots. It is stated that it is during such period of crisis that a senior officer like the applicant should have been present in his post and guided his subordinates. His diary for the first fortnight was never received by respondent no.3 till the afternoon of 2.4.1986. The explanation given by the applicant is that he had done some official tours and submitted his diary promptly at the due time. The appellate authority carefully scrutinised both the sides of the issue and came to <sup>a</sup> reasoned finding that the absence of the <sup>an</sup> applicant from duty without any reason was established. This Tribunal is not ~~the~~ appellate authority, required to go into details of evidence and to reappraise it. Since the applicant has not been able to show anything arbitrary or totally unreasonable in the impugned orders passed, we are unable to interfere in regard to this matter.

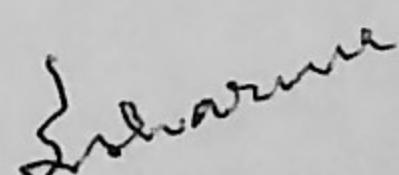
6. The charge-sheet for minor penalty dated 2.4.1986, did contain <sup>a</sup> reference to CCS (CC&A) Rules, 1965 whereas, in the context, what was meant was infringement of the Conduct Rules. This is the only reason for withdrawing the first charge-sheet and issuing the second one. We find that the explanation given by respondent no.3 in this respect is quite acceptable. It cannot be said that any prejudice was caused merely by withdrawing the first charge-sheet and issuing the second one in this case. As regards the question of shifting, the applicant does not deny receipt of directions or orders from his superior officer (respondent no.3) for shifting his office to the new premises. He has also admitted clearly that he had not carried out the directions. The only justification given by the applicant for this failure to obey the orders is that, according to the applicant, respondent no.3 had no power to issue such directions and only the Post Master General can issue the same. He has also attempted to justify his failure by saying that his place of residence and office (Maliyana) was a central place and his office should not be removed from there. The respondents have clearly asserted that <sup>an</sup>

respondent no.3 had power and authority to order the shifting. The rules cited in this connection by the applicant do not at all bar such directions by respondent no.3. On the other hand, we find cogent reasons given by respondent no.3 for ordering the shifting. Respondent no.3 has also testified that Maliyana is not a central place and it would not be in the public interest to keep the office in that place; on the contrary, it would only serve the private interest of the applicant, who had his own residence in that village. In the circumstances, there is no escape from the conclusion that the applicant had failed to obey the orders of his superior officer and the punishment therefor cannot be considered to be arbitrary or uncalled for. We are also not impressed by the applicant's allegation of prejudice or bias against respondent no.3, in the absence of specific basis or grounds. The appellate order in this respect cannot also be faulted as it is clear that the appeal was received outside the time limit prescribed under the rules.

7. Considering all these circumstances, we do not find sufficient justification for interfering with the impugned orders in question. The applicaton, therefore, fails and is dismissed, with no order as to costs.



MEMBER (A).



MEMBER (J).

Dated: May 5, 1989.

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