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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD

REGISTRATION O.A.NO.25/1988

O.P.BhargavaPetitioner

Versus

Union of India & OthersRespondents

Hon'ble Mr. Justice U.C.Srivastava,V.C.

Hon'ble Mr. A. B. Gorthi, Member (A)

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

The applicant who has joined the Postal Department in the year 1948 as Sorter at Railway Mail Service, Varanasi and because of his good work he was given promotions after promotions and ultimately he was promoted to the post of Superintendent Post Offices Grade II and thereafter Grade I. At the irrelevant point of time, he was holding the charge of Sr. Superintendent Railways Mails Division Gorakhpur and thereafter he was transferred to the post of Sr. Superintendent Post Offices, Deoria. A day prior to his retirement a charge sheet was served upon him levelling ten charges. Some of these charges ^{were} ₁ regarding the occupation of particular Premises of [&] Guest Houses and the other charges were in respect of the examination of Sorter conducted while he was Sr. Superintendent of Post Offices in which it was stated the ^{of} gist ^{are} the charges ^{of} that he ignored the mistake of the English letters and numerals and

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awarded more marks to some of the candidates with the result that they could get appointment while in some cases it was found that mistakes were not ignored. The applicant submitted his detailed reply to the said charge sheet and ^{re}puted the charges against him and stated that as a matter of fact he was to assess the knowledge of the applicants so far as their capability or ability to write English letters and numerals is concerned and it was not a fact that he awarded ^{more} ~~one~~ marks ^u each in numerals or the English letters or made such deductions. Whenever it occurred to him that the candidates, even if there was some mistake was acknowledged of the language of the letters ^{or} of the English numerals, he awarded him marks on this ^u basis and there was no malafide on his part in awarding the marks and even if some mistakes had been committed it was only bonafide mistake. The ^u Enquiry Officer was appointed and an enquiry proceeded. One of the pleas was that the applicant had stated that regarding this examination he was going to take some action against Sri S.P.Pandey and Sri S.N.Sharma. Before he could take any action against them he was transferred to another place. Regarding enquiry the complaint of the applicant is that the statements of Sri V.D.Dwevedi, Sri S.N.Sharma and Sri S.P.Pandey who were directly responsible for the charges no. 8 and 9 were not supplied to him in time inspite of clear and categorical demands and directions of the enquiry officer to supply ^u of those documents. These documents were supplied where all the P.W.'s were examined.

2. The respondents who have filed a written statement

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disputing various allegations made by the applicant. In reply to this paragraphs it is stated that the petitioner has admitted that documents were asked for were supplied after all the prosecution witnesses were examined. He did not seek any adjournment in the proceedings nor did he request the Enquiry Officer to recall the prosecution witnesses and as such all these allegations are an after thought. According to the application this deprived him of reasonable opportunity to defend himself. The Enquiry Officer proved him [✓] guilty in respect of only 4 charges out of 10 charges and recommended that a 20% cut in his pension. Thereafter he ~~has~~ [✓] submitted his report to the Disciplinary Authority and it appears that while awarding the punishment the Disciplinary Authority gave him copy of the enquiry officer's report. The applicant was holding class ^{one} and post, the matter was referred to [✓] Union Public Service Commission which did not agree in respect of one of the findings but otherwise agreed with the findings recorded against the applicant and the proposed punishment was thereby maintained, thereafter the applicant was punished. Without entering into the merit of the enquiry report this application deserves to be allowed on the simple ground that although the punishment has been awarded to the applicant under Rule 9 of the CCS Pension Rule but its terms were not followed and as a matter of fact without going ^{through} the terms the punishment has been awarded. Rules 9 reads as follows:

"9. Right of President ^{to} of Withhold or Withdraw Pension;

- (1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof,

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whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement....."

3. The plain reading of the Rule indicates as a matter of fact so far as withholding of the pension is concerned generally it is ^{awarded to recover} ~~reliable to~~ pecuniary loss which is caused by an employee to the Govt. as the pecuniary loss can be compensative ^{-ed} to some extent by withholding the ^{pension} salary of an employee even otherwise the punishment could be awarded to an employee in case he is found guilty of grave misconduct or negligence. So far as the term 'grave mis-conduct' is concerned undoubtedly findings has been recorded against the applicant that he has committed misconduct giving of more marks to candidates and without correctly assessing their ability to write numerals or language, ^{it} may amount ^{to} the mis-conduct against which no mala fide intention has been proved. ^{it} The only amount ^{of} misconduct but it can never tantamount ^{to} the misconduct. In the absence of any findings as to grave misconduct power under Rule 9 extracted above could not have been exercised. Even while awarding the punishment neither the Disciplinary Authority nor any other authority took into consideration the instructions issued by the Govt. in this behalf contained in GIMS No. F-575(E) V/69 dt. 28 August, 1959 and 6 August 1960 and No. 5(4) E V E/78 dt. 28.6.1978.

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4. In view of the facts that neither pecuniary loss is caused by the applicant to the Govt. nor there is any findings with regard to that he has committed any "Grave Misconduct", and punishment of withholding 20% pension could not have been awarded. In this way as the application deserves to be allowed. In this way as the application deserves to be allowed on this ground, it is not necessary to go into the plea raised by the applicant questioning the enquiry proceedings or that the proceedings violative of Article 14 of the Constitution of India in as much as the applicant has been singled out and others who were also guilty has not been roped into, need not be gone into and accordingly the application is allowed, order dt. 19.2.1987 is quashed.

5. There will be no order as to the costs.


MEMBER (A)


VICE CHAIRMAN

DATED: 6.9.1991

Allahabad.

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