

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 11th day of April, 2002.

Original Application No. 1468 of 1994.

CORAM :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mrs. Meera Chhibber, J.M.

R.K. Saxena

Son of Sri Munshi Kanhaiya Lal,

Resident of Mohallah Khakara,

Behind Post Office, Pilibhit,

District Pilibhit.

(Sri KC. Sinha, Advocate)

• • • • • Applicant

Versus

1. Union of India, through
Director General, Ministry of Posts,
New Delhi.

2. Chief Post Master General, U.P.
Circle, Lucknow.

3. Post Master General,
Bareilly.

4. Director Postal Services,
Bareilly.

5. Sr. Superintendent of Post Offices,
Nainital.

(Sri SC Tripathi, Advocate)

• • • • Respondents

O R D E R (O_r_a_l)

By Hon'ble Mrs. Meera Chhibber, J.M.

The applicant in the present OA has challenged the order dated 29-1-1993 by which the disciplinary authority, ^{after} passing a reasoned and detailed order has imposed the



penalty of Recovery of Rs.21,120/- from the official and it was further ordered that the sum of Rs.5274/- would be recovered from the pay of the official in remaining 9 months of his service in 9 monthly instalments of per month with immediate effect and it was further held that since the entire amount of loan proposed to be recovered from the official cannot be recovered due to his impending retirement w.e.f 31-10-1993, action as envisaged under the provisions of Rule 109 of Postal Manual Vol III read with Article 351-A of CSR for recovery of the residual amount proposed i.e. 15,846/- from the DCRG of the individual is advised. Against this the applicant had given a representation which was considered by the appellate authority and after calling the records and examining, the appellate authority by its detailed order dated 31-3-1995 held that the order dated 29-9-1993 is a self speaking and reasoned as far as this relates to the analysis of the facts and circumstances of the case in holding Sri Saxena guilty of misconduct. However, the operative part of the order of punishment suffers from the defect that the disciplinary authority contrary to the provisions of Rule 109 of Postal Manual Vol. VII, has ordered recovery of part of the loss from the pay of Shri Saxena and part thereof from gratuity after obtaining sanction of the competent authority. It was held that after the disciplinary authority had come to the conclusion that the recovery of loss should be imposed which was to be done from the DCRG also, it should have submitted the entire case for obtaining orders of the President after following the inquiry procedure prescribed in Rule 4 of CCS(CCA) Rules, 1965, through which only the grave misconduct, if any, can be established, warranting recovery or reduction from pension or gratuity. Therefore, in exercise of the power vested under Rule 29 of CCS(CCA) Rules, 1965, the appellate authority modified the original punishment

order of the disciplinary authority to the extent that the recovery of loss is restricted to the sum of Rs.5274/- recoverable from his pay during the remaining part of his service upto 31-10-1993.

2. The applicant's grievance is that even though he had been requesting the authorities to give him certain documents by making specific applications to defend his case, the same was not supplied to him and instead of his specific request to hold open enquiry as per Rule 16(1)(b) of the CCA(CCA) Rules, 1965, no such enquiry was held, thus, depriving him of his opportunity to defend himself effectively. Learned counsel for the applicant has also submitted that the applicant had fully justified remittance of amount by showing circumstances. The said remittances were sent by him. Therefore, he submits that in view of same it could not have been said to be a misconduct nor would any penalty be imposed on him. On the other hand the respondents have contested the claim of the applicant by stating that the fact that the remittances were in fact made was made on record and the same were made by the applicant was also not disputed that there was no need to hold an enquiry and since the applicant had violated the rules for making such remittances he was given a show cause notice under Rule 16 to show cause as to why action should not be initiated against him. The respondents' counsel had submitted that the disciplinary authority's order is a detailed and reasoned order. After discussing each and every thing he has come to the conclusion that the applicant was guilty of misconduct for having made remittances contrary to the rules and even the appellate authority had considered the entire matter in the Appeal and since he found that even though the charge of misconduct was rightly held to be proved. Since the penalty made in regard to the recovery was not held to be in accordance with law, he on his own,

had corrected the same by reducing recovery from Rs.21120/- to Rs.5274/- only to be deducted from his salary during the remaining part of his service upto 31-10-1993. Thus, it clearly shows that the authorities have acted with utmost caution and in a justified manner, which could not be found fault with. As far as holding of enquiry is concerned, Rule 16(1)(b) clearly shows that such enquiry is to be held in case the disciplinary authority is of the opinion that such enquiry is necessary. Therefore, what he has to see is whether the opinion formed by the disciplinary for not holding open enquiry was justified in the facts and circumstances of the case or not? As is seen from above, admittedly the applicant had made remittances in violation of the rules which could not be said that any enquiry was called for in the said case. Because of that the applicant is trying to suggest even now his stand to justify the circumstances ^{under which} He had made the **said** remittances. Therefore, it did not really matter whether an appropriate enquiry would have been held or the matter was decided on the basis of the explanation given by the applicant. It is seen from the orders passed by the authorities that the authorities have in fact taken great pains in passing the order as they have discussed each and every aspect of the matter and have given sound reasoning for coming to the conclusion that the misconduct against the applicant is proved. The Hon'ble Supreme Court has already held that once a misconduct is proved by the authorities on the basis of evidence, the Courts should not reappreciate the matter and so long as there is some evidence as to what punishment is to be granted should be left to the authorities as it is not for the Tribunal

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to decide the quantum of punishment in every case. Even otherwise it is seen that the appellate authority has already reduced the recovery from Rs.21120/- to Rs.5274/- which according to us is wholly justified. In the present circumstances of the case, no other ground has been made out by the counsel for the applicant requiring interference by this Tribunal. Therefore, the OA is dismissed being devoid of merits. There shall be no order as to costs.



Member (J)



Member (A)

Dube/