

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No. 342 of 1999

Monday, this the 12th day of January, 2003

Hon'ble Maj. Gen. K.K. Srivastava, A.M.
Hon'ble Mr. A.K. Bhatnagar, J.M.

Manager Sharma,
aged about 49 years,
son of Sri Thakur Sharma,
Resident of Palia Post
Sidhuwa Baiga Via Padrauna,
Kushinagar.

....Applicant.

(By Advocate : Shri K.C. Sinha
Shri A. Srivastava

Versus

1. Union of India,
through Director/
Post Master General,
Gorakhpur.
2. Director,
Postal Services,
Gorakhpur.
3. Senior Superintendent,
Post Offices, Deoria.

.... Respondents.

(By Advocate : Km. S. Srivastava)

O R D E R

By Hon'ble Maj. Gen. K.K. Srivastava, A.M. :

In this O.A. filed under Section 19 of A.T. Act, 1985,
the applicant has prayed for quashing the order dated 13.7.1998
(Annexure-A-1) passed by Disciplinary Authority and order dated
16.2.1999 (Annexure-A-2) passed by the Appellate Authority.

....2.

The applicant has also prayed for direction to the respondents for payment of 18% interest on the arrears of pay which was reduced by the above orders.

2. The applicant joined the respondents' establishment on 8.11.1969. He was promoted to the post of Lower Selection Grade w.e.f. 8.11.1985 and to H.S. Grade II under B.C.R. Scheme w.e.f. 1.7.1995. While working as Sub Post Master (B.C.R.) Padrauna Cantt, the applicant was served with a charge sheet dated 11.03.1998 under Rule 16 of CCS (CCA) Rules, 1965. The applicant denied the charges vide his letter dated 22.3.1998. The Disciplinary Authority by order dated 13.7.1998 (Annexure-A-1) awarded the punishment of reduction of two stages in the pay scale of Rs.5000-8000 to the scale of Rs. 6200-5900 for one year. The applicant appealed before the Appellate Authority and the Appellate Authority vide impugned order dated 16.2.1999 (Annexure-A-2) modified the punishment to that of reduction of one stage i.e. from Rs.6200 - 6050/- for one year only without cumulative effect. Aggrieved by the same, the applicant filed this O.A., which has been contested by the respondents by filing the counter affidavit.

3. Shri A. Srivastava, learned counsel for the applicant submitted that the punishment awarded to him has been due to annoyance of the Disciplinary Authority as the applicant had earlier challenged the transfer order in O.A. No.1009/97. The applicant has committed no fraud nor any temporary misappropriation. His work and conduct has been all through satisfactory. It is unfortunately a case of clerical mistake.

4. Inviting our attention to Annexure-4, the learned counsel for the applicant submitted that the applicant in his

reply dated 22.3.1998 requested for an open enquiry but the request was not acceded to nor any reply given in this regard. Instead the Disciplinary Authority passed the impugned punishment order dated 13.7.1998. Such an action on the part of the Disciplinary Authority is illegal in view of the law laid down by the Hon'ble Supreme Court in the case of O.K. Bhardwaj Vs. Union of India & ors. 2002 SCC (L&S) 188.

5. Resisting the claim of the applicant Km. S.Srivastava, learned counsel for the respondents submitted that the respondents have committed no irregularity. It is established that the applicant did not account for the Government money properly and thus the punishment awarded to him, which is minor in nature, is justified. By depositing Rs.100/- later on when pointed out by Savings Bank Control Organisation, the applicant cannot be treated as having been absolved from the charges. Learned counsel further submitted that it is certainly not a case of clerical mistake. Had it been a clerical mistake, there would have been excess amount of Rs.100/- in Cash Chest which should have been taken into Govt. Cash under Head unclassified receipts.

6. We have heard the counsel for the parties, considered their submissions and perused the records.

7. The applicant is maintaining that there has been clerical mistake on his part whereas the respondents are denying this. Perusal of appellate order reveals that even the appellate authority has recorded his finding that this is not a case of misappropriation but of clerical omission. Besides, the very fact that the applicant sought for open enquiry in the

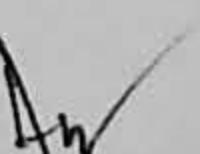
matter, we do not understand as to why the respondent No.3 could not accede to the request of the applicant by ordering for open enquiry in the matter, though the provisions do exist for enquiry under Rule 16 (1) (A) of the CCS(CCA) Rules, 1965. The Hon'ble Supreme Court in the case of O.K. Bhardwaj (supra) has observed as under :-

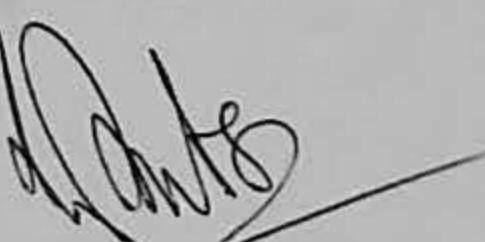
" even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."

8. Keeping in view the law laid down by Hon'ble Supreme Court, we have no hesitation to observe that by not holding the enquiry as sought for by the applicant, the action of respondent No.3 is violative of principles of natural justice and therefore the impugned orders can not sustain in the eyes of law.

9. In the facts and circumstances, the O.A. is allowed. The impugned orders dated 13.7.1998 and 16.2.1999 are quashed with all consequential benefits.

10. There shall be no order as to costs.


MEMBER (J)


MEMBER (A)

RKM/