

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.361 of 1999

Allahabad, this the 19th day of November, 2003

Hon'ble Mrs. Meera Chhibber, J.M.
Hon'ble Mr. D.R. Tiwari, J.M.

Manager Sharma,
aged about 49 years,
Son of Sri Thakur Sharma,
resident of Palie Post Sidhuwa Baign
Via Padrauna, Kushinagar.

.....Applicant.

Counsel for applicant : Shri K.C.Sinha.

Versus

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

Counsel for respondents : Km. S. Srivastava.

O R D E R

By Hon'ble Mr. D. R. Tiwari, A.M. :

By this O.A. filed under Section 19 of A.T. Act, 1985, the applicant has prayed to set aside the order dated 13.4.1998 by which his increment for one year was withheld without cumulative effect (Annexure-A-1). He has further prayed to set aside the order dated 31.1.1999 by which the appellate authority rejected his appeal (Annexure-A-2).

2. The facts of the case are that the applicant, at the relevant time, was employed as Postal Assistant at Fazil Nagar in Deoria Division. A charge sheet dated 1.12.1997 was served on the applicant under Rule 16 of CCS (CCA) Rules 1965 (Annexure-A-3). The main charge against him was that he left

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office on 15.1.1996 for Padrauna without permission. He attended office at 12 noon instead of 9 a.m. on 16.1.1996. It was also alleged that he made false statement that he had taken permission of the Sub-Postmaster, Fazil Nagar which was denied by the sub-master. Hence, he had failed to maintain devotion to duty and integrity.

3. On receipt of the charge sheet, the applicant made a request by an application dated 8.12.1997 (Annexure-A-4) for supply of certain documents to prove that the charges were baseless. The respondent did not oblige him. He submitted another application dated 2.4.1998 (Annexure-A-5) reiterating his demand for supply of certain documents. He also specifically sought an open enquiry in this case. The respondent No.3, on the other hand, served him with the order dated 13.4.1998 imposing punishment on the applicant of withholding one increment for one year. Against this punishment order dated 13.4.1998, the applicant filed appeal within the stipulated period on 6.6.1998 to the respondent No.2. However, the Appeal was rejected on 31.1.1999 (Annexure-A-2).

4. The respondent, on the other hand, has resisted the contention of the applicant. The respondent, in the pleadings has not accepted any of the contention of the applicant. Be that it may, the fact remains that the respondent has not agreed for open enquiry.

5. We have carefully considered the arguments of the counsel for both the parties and given anxious thought. We have perused the pleading.

6. The basic question which falls for consideration is whether the attitude of the respondent is justified

in refusing open enquiry. The learned counsel for the applicant has very forcefully pleaded that the request for open enquiry would meet the ends of justice. He submitted that Rule 16 (1 A) of CCS (CCA) Rules, 1965 has been totally ignored. He relied on the decision of this Tribunal in CA 21 of 2000 decided on 18.9.2003. The counsel for applicant has clearly stated that Annexure-A-5 would indicate that the applicant made specific demand for open enquiry. We find force in the submissions made by counsel for the applicant. The Hon'ble Supreme Court in the case of O.K. Bharadwaj Vs. Union of India & others held as under :-

"...While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. 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."

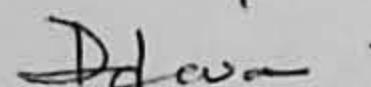
From the aforesaid observation of the Hon'ble Supreme Court it is clear that even in case of minor penalty opportunity has to be given to the delinquent employee to have his say and if the charges are factual and they are denied by the delinquent employee, an inquiry should also be called for, which is a minimum requirement of the principles of natural justice and this cannot be dispensed with. The judgement of Hon'ble Supreme Court is squarely applicable in the present case. The applicant is entitled for relief.



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7. Taking into consideration the facts and circumstances mentioned above, this O.A. is allowed. The order dated 13.4.1998 (Annexure-A-1) passed by the disciplinary authority and the order dated 31.1.1999 (Annexure A-2) passed by the Appellate Authority are quashed. The respondent No.3 is directed to hold an open enquiry and pass the order afresh in accordance with the law. The applicant is also directed to co-operate with the authorities. As the case is old, the disciplinary proceedings may be concluded within three months from the date of receipt of copy of this order.

8. There will be no order as to costs.


MEMBER (A)


MEMBER (J)

Asthna/-