

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

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ORIGINAL APPLICATION NO. 374 of 1999

this the 29th day of September, 2004.

HON'BLE MR. JUSTICE S.R. SINGH, V.C.  
HON'BLE MRS. ROLI SRIVASTAVA, MEMBER (A)

Manager Sharma, aged about 49 years, S/o Sri Thakur Sharma,  
R/o Palia Post Sidhuwa Banga via Padrauna, Kushinagar.

Applicant.

By Advocate : Sri A. Srivastava.

Versus.

Union of India through Director, Postmaster General,  
Gorakhpur.

2. Director postal Services, Gorakhpur.
3. Sr. Supdt. post offices, Deoria.
4. Postmaster General, Gorakhpur.

Respondents.

By Advocate : Km. S. Srivastava.

O R D E R

BY JUSTICE S.R. SINGH, V.C.

while the applicant was working as Postal Assistant, Raja Bazar, Khagda, Padrauna, District Deoria, he was served with charge memo dated 5.10.1998 under rule 16 of CCS (CCA) Rules, 1965. The charge was that while issuing six years National Saving Certificate in the name of Manager, Shri <sup>Gandhi</sup> Intermediate College, Khagda, the applicant did not observe the instructions laid down in the circular no. 61-11/95 S.B. dated 9.10.1995 and thus, he violated the provisions of rule 3 (i)(ii) of CCS (Conduct) Rules, 1964. The applicant submitted his representation denying the charges and demanding an open enquiry in the matter. The disciplinary authority

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vide its order dated 23.10.1998 held the applicant guilty for the charge framed against him and imposed the penalty of withholding of increment for six months, which would not have the effect of postponing future increments.

2. The learned counsel for the applicant submits that though the charge memo was one under rule 16 of CCS (CCA) Rules, 1965, the disciplinary authority was bound to consider the applicant's request for conducting a regular enquiry in sub-rule(iv) of the Rule 16 of the Rules after taking into consideration the grounds on which the applicant demanded an open enquiry under the rules.

3. For the respondents, it has been contended that in disciplinary proceedings for imposition of minor penalty, the disciplinary authority is not bound to hold an enquiry in the manner laid down in the rules.

4. We have given our anxious considerations to the submissions made across the Bar.

5. In O.A. no. 1432 of 1999 in re. Amar Pal Pal vs. Union of India & ors. decided on 17.9.2004, this Bench has taken the view while interpreting the similar provision contained in Railway Servants (Discipline & Appeal) Rules, 1968, that the disciplinary authority must address itself to the ground on which the enquiry is demanded by the delinquent and then from its opinion as to whether the enquiry is necessary or not. In O.K. Bharadwaj vs. U.O.I. & ors. (2002 SCC (L&S) 188) it has been held that opportunity of being heard cannot be dispensed with even in the case of minor penalty. Clause (b) of sub rule (1) of Rule 16 of the Rules no-doubt gives discretion to the disciplinary authority to hold an enquiry in the manner laid down in sub-rules(3) to (23) of Rule 14, but the discretion is not infettered and is rather subject to the qualification that the disciplinary authority would act reasonably in the manner and from its opinion as to

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whether "such enquiry is necessary". Since this procedure has not been followed, the order imposing the penalty is vitiated due to procedural impropriety.

6. Accordingly, O.A. succeeds and is allowed. The impugned order is set-aside. The matter is remitted to disciplinary authority to take an appropriate decision in the matter in accordance with law and also in the light of the observations made above. parties are directed to bear their own costs.

*Member*

MEMBER (A)

*Paranjpy*

VICE CHAIRMAN

GIRISH/-