

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.480 of 1999

Allahabad, this the 28th day of Jan., 2004

Hon'ble Mr. Justice S.R. Singh, V.C.
Hon'ble Mr. D.R. Tiwari, A.M.

Raj Kumar Singh,
S/o Sri Ayodhya Singh,
P.A., Allahabad High Court
Post Office, Allahabad.

.....Applicant.

(By Advocate : Shri K.S. Kushwaha)

Versus

1. Union of India,
through Ministry of Post and
Telecom., New Delhi.
2. Director,
Postal Services,
Allahabad.
3. Senior Superintendent of Post Offices,
Allahabad Division, Allahabad.

.....Respondents.

(By Advocate : Shri S. Mandhyan)

ORDER

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 for quashing the punishment order dated 3.9.1998 (Annexure- II) imposing on him the penalty of withholding of next increment for three months without cumulative effect besides recovery of Rs.5000/- from his pay in 10 monthly instalment of Rs.500/- each. He has further challenged the appellate order dated 22.12.1998 (Annexure -I) rejecting his appeal dated 28.9.1998.

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D.R. Tiwari

2. The facts of the case, in brief, are that the applicant was posted as P.A. (Postal Assistant) in Head Post Office, Allahabad since September, 1992. He was deputed on N.S.C. Discharge Branch in the same post office between October'1996 and 24.5. 1997. He was asked to work on 2.2.1997 and 16.2.1997 on O.T.A. basis to prepare the N.S.C./K.V.P. Discharge Issue Return for the months of December, 1996 and January, 1997.

3. He was chargesheeted under Rule 16 of CCS (CCA) Rules, 1965 (Annexure -III). The main charge against the applicant was that he failed to prepare and submit on due date the N.S.C./K.V.P. Discharge Return to D.A.P., Lucknow (Director Postal Accounts). This delay resulted in commitment of fraud by the S.P.M. (Sub Post Master) Manauri A.F. to the tune of Rs.62,90,560/-. It was alleged that failure to submit discharge return violates Rule 51 (1) of P.O. SB Manual Vol.2 and the applicant failed to maintain devotion to duty and infringed the provisions of Rule 3(I) & (II) of CCS (Conduct) Rules 1964. He made representation denying all the charges. After receipt of representation, the Disciplinary Authority imposed upon him the penalty of withholding of increment for three months without cumulative effect alongwith recovery from his salary a sum of Rs.5000/- in ten instalments. His appeal to the Appellate Authority was rejected, Aggrieved by which he has instituted the instant O.A.

4. The applicant contends that he was the regular postal Asstt. at N.S.C./K.V.P. Discharge Branch which is separate from N.S.C./K.V.P. Discharge Return Branch. The work of Discharge return Branch was in arrears and the regular employee of other branches were deputed to clear the backlog of Discharge Return Branch. The applicant was put on O.T.A. duty for two days i.e. 2.2.97 and 16.2.97 (being

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holidays) to update the NSC/KVP discharge return for the months of December 1996 and January 1997 which were to be submitted to D.A.P., Lucknow by 10th of the following month. He has further submitted that updating and timely submission of Return was the responsibility of the regular employee of the Discharge Return Branch. It was the duty of those officials who were working in N.S.C. Return Branch permanently. It was stated that the liability for submission of return in accordance with Rule 51(1) of P.O. S.B. Man.Vol-2 was not of applicant but of the regular employees working in the said Branch. He has further pleaded that a detailed enquiry under Rule 14 of the CCS(CCA) Rules, 1965 should have been made so as to enable him to put up effective defence.

5. The respondents have, on the other hand, resisted the claim of the applicant. It has been submitted that Discharge-Issue Return Branch is not a separate branch but the Discharge Issue branch looks after the submission of the return also. They have alleged that delayed submission has resulted in commission of fraud in Manauri sub post office and the applicant's conduct is liable.

6. We have carefully considered the rival contentions of both the parties and perused the pleadings and other relevant documents.

7. During the course of hearing, the counsel for the applicant submitted that the applicant's case is fully covered with the facts of the case in O.A. No.922 of 1999 decided by Division Bench of this Tribunal on 2nd April, 2002. The counsel has further argued that he was denied opportunity of defence and his demand of proceedings under Rule 14 of CCS (CCA) Rules was rejected on the specious ground that the respondents wanted to take lenient view and did not think it necessary to hold enquiry under Rule 14.

8. From the above discussion, only two issues remain

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for consideration. The first issue relates to the responsibility of the applicant in fraud committed at Manauri Sub Post office. It may be mentioned that the facts of the present case are on all ~~force~~^{four} with the facts of the case in O.A. No.922 of 1999 (Shiv Raj Singh Kushwaha Vs. Union of India & others). In that case, after full discussion of the case laws of other benches, the Tribunal concluded as under :-

"In our opinion, the charges are based on surmise only. It is admitted fact that there was delay in submitting the return to DAP, Lucknow, but that does not mean that the applicant was in any way involved in the fraud committed at the end of Manauri Air Force Post Office. The fraudulent payment of KVPs was made by Post Master, Manauri Air Force Post Office during December 1996 and January 1997 and even if the return were sent timely to DAP in the following months, surely the fraud could not have been averted as it had already been committed....."

Nowhere the respondents have been able to prove that the applicant was negligent in his work except that he was given overtime duty to complete the return and submit it to DAP Lucknow. 1)

9. We are in respectful agreement with the submission of Kushwaha's case (Supra). The last question which falls for consideration is whether the respondents were justified in punishing the applicant without providing any opportunity of hearing. His demand of enquiry was summarily rejected which is contrary to Govt. of India's instruction below Rule 16 of CCS(CCA) Rules 1965. Rule 16(1A) provides for holding of an enquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, it is the discretion of the Disciplinary Authority. In the facts and circumstances of this case, we are of the considered view that the enquiry should have been conducted to give an opportunity for effective defence. We get support for our views from the decision of the Apex Court

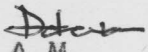
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
in the case of O.K. Bhardwaj Vs. UOI & others 2002 SCC (L&S) 188 which are extracted as under :-

"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."

10. In the facts and circumstances, the O.A. succeeds on merit and is accordingly allowed. The impugned punishment order dated 3.9.98 and the Appellate Order dated 22.12.98 are quashed. The applicant is entitled to all consequential benefits. Recovery made will be refunded within a period of three months from the date of receipt of a copy of this order.

No order as to costs.


A.M.


V.C.

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