

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO.118 OF 1999

ALLAHABAD THIS THE 29th DAY OF NOVEMBER 2006

**HON'BLE MR. JUSTICE KHEM KARAN, VICE CHAIRMAN
HON'BLE MR. P.K. CHATTERJI, MEMBER-A**

Jagdamba Prasad, S/o Sri Nirpat, R/o Village Akhri Sahpur, Post Lotadh, District Allahabad.

.....Applicant

(By Advocate Shri S. Dwivedi.)

V E R S U S

1. Union of India, through the General Manager, N.R. Baroda House, New Delhi.
2. The Asstt. Engineer, N.R., Mirzapur.
3. The Section Engineer (P.Way), N.R., Meja Road, Allahabad.

.....Respondents

(By Advocate: Sri G.P. Agrawal.)

O R D E R

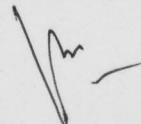
BY JUSTICE KHEM KARAN, V.C.

The applicant is challenging two orders, one dated 22.9.1998 (Annexure -I) by which the disciplinary authority imposed the penalty of withholding of three increments for a period of three years temporarily, and order dated 27.11.1998 (Annexure-II) by which the appellate authority rejected his appeal against the said punishment order.

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2. While being posted as Chowkidar on 13/14.8.1998, the Junior Engineer concerned made a surprise round at about 11.30 P.M. and found the applicant as-sleep and it was further found that the applicant was ^{not} having torch as well. A memo for minor penalty was served upon him and the applicant submitted his reply, a copy of which has been filed as Annexure A-5. He tried to say that he was not sleeping at the time of said inspection, but after taking some medicines, he was taking rest and so the charge that he was sleeping at the time of duty was not correct. He also tried to explain the previous incident of 23.7.98 referred to in the memo of chargesheet. The authority concerned was not satisfied with this explanation, so imposed the said penalty of withholding of increments. The appeal preferred to Assistant Engineer N.R., remained unsuccessful.

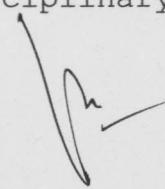
3. Sri Dwivedi has contended that in the circumstances, the authority concerned ought to have held oral enquiry as to whether the applicant was found sleeping or not and not holding of enquiry vitiates punishment order. He says had the applicant been given memo of major penalty, he would have been in advantageous position as in that case he would have been able to defend himself by leading the evidence etc. According to him, no good reasons have been disclosed in the order of punishment as to



why the explanation of the applicant was not found to be satisfactory. Sri Dwivedi has also pleaded that the order of punishment appears to have been passed in a mechanical way as it is a cyclostyled proforma and only certain figures and words have been supplied.

4. Sri G.P. Agrawal, learned counsel for the respondents has tried to defend it by saying that under the relevant Rules of 1968 in a case of minor penalty, it is not legally necessary to hold an enquiry or to receive the evidence etc. According to him, calling for explanation in reply to the memo of chargesheet and its consideration was sufficient. He says that it cannot be said that the authority imposing the punishment of withholding of increments did not apply its mind to the matter before him and so no flaw can be found in the order, simply for want of detailed reasons. Sri Agrawal says that the authority was not expected to record the detailed reasons as to why he was not impressed by the explanation given by the applicant.

5. We have considered the respective submissions on the above points. In the relevant Rules contained in the Rules of 1968, the procedure prescribed for imposition of minor penalty does not contemplate holding of full-fledged enquiry as is being done in the case of major penalty. No-doubt, the rule does provide that the disciplinary authority has



discretion to hold full-fledged enquiry, if the circumstances so demand. In the case, in hand, the simple charge against the applicant was that he was found sleeping at the time of duty when the Junior Engineer made a surprise visit/inspection. It is true that the applicant had denied that charge, but he indirectly conceded in his written reply by saying that he was resting after taking medicines. It was the inspection made by the superior officer and in our view no further enquiry was needed except calling for explanation of the applicant. The order of punishment makes a reference to the charge and to the explanation of the employee. It cannot be said that it does not reflect the application of mind. We, therefore, find no flaw in the order of punishment on that score.

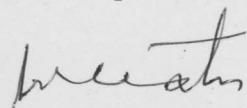
6. The next argument that the order is on certain proforma and only blanks have been filled in, by itself is not indicative of the fact that there was no application of mind. Filling the blanks are giving reference to the facts of the case, and penalty so imposed, themselves reflected application of mind.

7. Sri Dwivedi has also argued that the appellate order is far from satisfactory as it contains no reasons for rejecting the appeal. According to him, the appellate authority ought to have shown that he was satisfied about the requirements of Rule 22(2)

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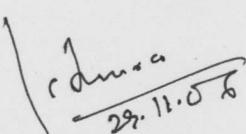
of the Rules of 1968. We find from the perusal of the appellate order that it does not reflect due application of mind to the points raised in appeal. Mere averment that the appellate authority has considered the matter, without advert to the points raised, is not sufficient. We do agree that the law does not expect from the appellate authority to pass a detailed order like the Judicial Officers, but it does not mean that he will pass a non-speaking order or will not show in its order that it has considered the points raised in the appeal. So the appellate order does not satisfy the requirement of law and deserves to be quashed.

8. In the result, the O.A. is allowed in part. The appellate order dated 27.11.1998 (Annexure-II) is quashed with the direction to the appellate authority to decide the appeal afresh, in the light of the observations made above within a period of three months from the date a certified copy of this order is produced before him. No costs.



MEMBER-A
GIRISH/-

VICE CHAIRMAN



29.11.06