

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 24 of 2000

Dated : This the 18th day of September, 2003

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, V.C.  
HON'BLE MR. D.R. TIWARI, MEMBER (A)

Manager Sharma,  
S/o Shri Thakur Sharma,  
R/o Palia Post Sidhuwa Baiga via  
Padrauna, Kushinagar

.....Applicant

Counsel for the Applicant : Shri K.C. Sinha

\* Versus \*

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

.....Respondents.

Counsel for the Respondents : EKm. Sadhna Srivastava

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O R D E R ( Oral )

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

We have heard Shri A.Srivastava, holding brief of Shri K.C.Sinha, learned counsel for the applicant & Km. Sadhna Srivastava, learned counsel for the respondents.

2. By this O.A. filed, under section 19 of Administrative Tribunal Act, 1985, applicant has challenged the order dated 06.5.1998/30.6.1998 <sup>directing</sup> ~~amount~~ recovery of Rs.17,961/- @ Rs.600/- per month in 30 instalments. The order was challenged in appeal which was dismissed on 30.6.1999 ( Annexure -II ), which has also been challenged in this O.A.

3. The facts of the case are that on the relevant date applicant was serving as Sub Post Master, Padrauna Cantt. In the night of 19/20.8.1997, theft took place and amount of Rs.30,353=05/- was stolen. For this, applicant was served a memo of charge under Rule 16 of CCS ( CC & A ), 1965. <sup>After Considering That</sup> Applicant ~~has~~ submitted his reply, ~~the~~ impugned order of punishment was passed, which has been confirmed in appeal.

4. Learned counsel for applicant has submitted that in this case applicant was demanding for open inquiry from the very beginning but the respondents failed to consider the request of the applicant and passed the order of punishment only on the basis of the explanation submitted by the applicant. Learned counsel for the applicant has placed before us the representation dated 23.1.1998 ( Annexure V ) wherein applicant prayed for open inquiry. After the punishment order was passed by Disciplinary Authority, applicant filed appeal, in memo of appeal also, the applicant claimed for open inquiry but

the Appellate Authority has failed to consider the request of the applicant. The claim for open inquiry is mentioned in para 6(4) and para 3(7) <sup>of the Memorandum of Appeal</sup>. Learned counsel for the applicant has placed reliance on the judgment in case of O.K.Bharadwaj Vs. U.O.I. & Others (2001 9 Supreme Court Cases 180.

5. Learned counsel for the respondents, on the other hand, submitted that the applicant has been given sufficient opportunity of hearing and he cannot claim for open inquiry as a matter of right.

6. We have ~~carefully~~ carefully considered the submissions made by the counsel for the parties. However, we find force in the submissions made on behalf of the applicant. 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."

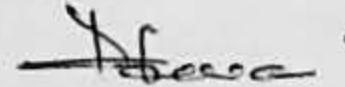
From the aforesaid observation of the Hon'ble Supreme Court it is clear that even in case of minor penalty opportunity has to be given to the delinquent employee to have his say and if the charges are factual and they are denied by the delinquent employee, an inquiry should also be called for, which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



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7. For the reasons stated above, this O.A. is allowed. The order dated 06.5,1998/30.6.1998 ( Annexure-I) and order dated 30.6.1999 ( Annexure II ) passed by the Appellate Authority, are quashed. The respondent no.3 is directed to hold an open inquiry and thereafter passed the order ~~of punishment~~ <sup>of inquiry</sup> in accordance with law. As the case is old, the disciplinary proceedings may be concluded <sup>or</sup> inquiry within six months from the date of receipt of a copy of this order.

8. There will be no order as to costs.

  
Member (A)

  
Vice-Chairman

Brijesh/-