

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 03rd DAY OF February, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Original Application No. 474 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

Ved Ram Saxena son of Ram Sanehi Saxena, aged about 43, Resident of New Indira Colony, Bholepur Fatehgarh.

..... Applicant

By Advocate: Shri M.K. Upadhyay

Versus

1. Union of India, through its Secretary Ministry of Communication Department of Post Dak Bhawan, New Delhi.
2. Director Postal Services Agra in the office of Post Master General Kanpur.
3. Chief Post Master, Kanpur.
4. Superintendent of Post Offices Fatehgarh, Division Farrukhabad.

..... Respondents

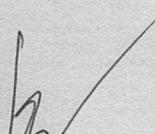
By Advocate: Shri Firoz Ahmad

O R D E R

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

Heard Shri M.K. Upadhyay, counsel for the applicant and Shri

Firoz Ahmad, counsel for the respondents.

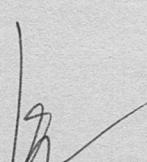


2. The following are the legal issues involved in this case:-

- (a) Whether the applicant, who chooses not to prefer an appeal against the order of Disciplinary authority's order, could come before this Tribunal without exhausting the available Administrative remedy.
- (b) Whether the Appellate Authority can treat the mere intimation to the applicant on his proposal to enhance the penalty awarded by the Disciplinary Authority as a show cause notice.

3. Brief facts of the case are as under:-

- (a) The applicant was proceeded against in respect of an alleged misconduct vide Annexure A-4 Charge Sheet dated 22.01.2004. The Enquiry Authority had held that the charges remain 'not proved' vide Annexure A-9. The applicant received a communication from the respondents stating that Disciplinary Authority was not agreeing with the findings of the Enquiry Authority vide Annexure A-10 dated 10.01.2005. It was signed by Superintendent of Post Offices, Fatehgarh.

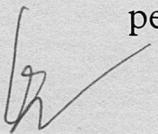


(b) As late as 21.06.2005, the Ministry of Communication (Department of Post) had appointed an ad hoc Disciplinary Authority in respect to the proceedings in question. The said authority without issuing any show cause notice as to the disagreement from the findings of the Enquiry Authority passed impugned Annexure A-1 order dated 10.09.2005 imposing a penalty of withholding of one increment of pay for six months with cumulative effect. The applicant has not chosen to file any appeal against the same. However, vide Annexure A-2 order dated 14.02.2006, the Director Postal Services (The Appellate Authority) sue moto, in exercise of powers conferred by Rule 29(1)(5) of CCS (CCA) Rules, 1965 proposed to revise the aforesaid order of penalty and directed the Disciplinary Authority to send the relevant records. A copy of this communication was addressed to the applicant also. It is at this stage that the applicant approached the Tribunal through this O.A. and vide order dated 02.05.2006 further proceedings in pursuance to Annexure A-2 communication were stalled.



4. After exchange of pleadings, the case was listed for hearing when the counsel for the applicant argued that the Disciplinary Authority has not followed the provision of Rule 15(2) of CCS (CCA) Rules, 1965. The counsel has stated that the orders suffer from serious legal lacuna and as such Annexure A-1 is liable to be set aside. As regards Annexure A-2, the counsel argued that by no stretch of imagination can the said Annexure A-2 order be treated as show cause notice as the said communication does not contain any reasons for the decision of the Appellate Authority to enhance the punishment imposed by the Disciplinary Authority. The counsel has relied upon the decision of the Apex Court in the case of **Ram Chander v. Union of India**, (1986) 3 SCC 103 , wherein, the Apex court has held, "The duty to give reasons is an incident of the judicial process".

5. Counsel for the Respondents, on the other hand, submitted that there being a clear admission of the applicant in the case of the proceedings to the effect that a verbal order had been passed by the Respondents to work on MPCM Counter and the same was not complied, the same is sufficient to prove the charges leveled against the Applicant and accordingly, the Disciplinary Authority has imposed the penalty.

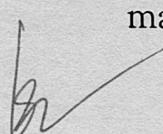


6. The Applicant has chosen not to file any Appeal and as such perhaps he was satisfied with the punishment awarded by the Disciplinary Authority. It is under the provisions of Rule 29(1)(5) CCS (CCA) Rules, 1965 that the Appellate Authority reviewed the punishment and before the same could culminate into a final decision interim order was passed by Tribunal staying the further proceedings.

7. According to the counsel for the Respondents, the Appellate Authority has the power under the Rules to enhance the penalty.

8. Arguments were heard documents perused.

9. Vide the Constitution Bench Judgment in the case of **S.S. Rathore vs. State of M.P. (1989) 4 SCC 582** the applicant can approach this Tribunal only when he exhausted statutory remedies and when the appellate order is passed, the initial Disciplinary Authority's order merges with the Appellate Authority's order which could be challenged before this Tribunal. Non filing of Appeal before the Authority and non approaching this Tribunal at the appropriate time may perhaps mean that the Applicant was satisfied with the penalty

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order imposed. However, when the Appellate Authority invokes the provisions of Rule 29(1)(5) of CCS (CCA) Rules, 1965 to impose a higher penalty than that awarded by the disciplinary authority, the rules require due notice to the delinquent, with requisite reason for the decision by the Appellate Authority for imposing higher penalty. The Appellate Authority enjoys the power to enhance the penalty even at the time when the appeal is preferred on time. In the instant case, may be, due to wrong advice the Applicant would not have preferred the appeal and since the Appellate Authority has chosen to proceed further, it would be only appropriate that applicant is also granted permission to file an appeal against the order of the Disciplinary Authority.

10. In view of the above, Annexure No.2 can be processed further subject to the condition that the Appellate Authority issue a proper show cause notice as to why it is proposed to enhance the penalty.

11. In view of the above observation, this O.A. is disposed of with the following directions:-

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(a) The applicant shall file an appeal to the appellate authority, within three weeks from the date of receipt of this order.

(b) If such an appeal is filed, the same maybe considered by the Appellate Authority and in case the Appellate Authority intends invoking the provisions of Rule 29(1)(5), a proper show cause notice as per Rules shall be issued to the applicants.

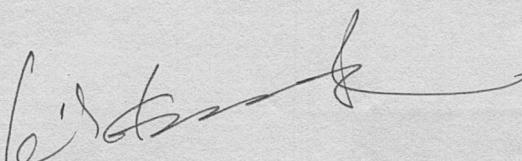
(c) The appeal filed by the applicant may be disposed with within four months from the date of preferring the appeal.

12. We make it clear that no opinion is expressed by us on the merit of the alleged misconduct.

No costs.



(D.C. Lakha)
Member-A



(Dr. K.B.S. Rajan)
Member-J

Sushil