

3

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 485 OF 1992.

Cuttack, this the 30th day of June, 1999.

Hrushikesh Nanda.

....

Applicant.

-versus-

Union of India & Others.

....

Respondents.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? X
2. Whether it be referred to all the Benches of the Central Administrative Tribunal or not? NO

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
30.6.99

30.6.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

4. 4

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 485 OF 1992.
Cuttack this the 30th day of June, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
&
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

...

Hrushikesh Nanda, Sub Post Master,
Rajendra Nagar, Cuttack-13. ... Applicant.

By legal Practitioner :- Mr. D. P. Dhalsamant, Advocate.

-Vrs.-

1. Union of India represented through the
Director General of Posts, New Delhi-1.
2. Chief Postmaster General, Orissa Circle,
Bhubaneswar, Dist. Khurda, Pin-751 001.
3. Director of Postal Services,
Office of Chief Postmaster General,
Orissa Circle, Bhubaneswar,
Dist. Khurda.
4. Senior Superintendent of Post Offices,
Cuttack City Division, Cuttack-1. ... Respondents.

By legal practitioner Mr. Ashok Mishra, Senior panel counsel
(Central).

....

O R D E R

Mr. G. Narasimham, Member (Judicial):

Applicant, a sub Postmaster was imposed a minor punishment of stoppage of increment for six months without cumulative effect by the Disciplinary Authority, Respondent No. 4 in his Memo dated 25-3-1991 (Annexure-3). His appeal dated 14-4-1995 to Respondent No. 3 resulted enhancement of punishment of withholding of increment from six months to eighteen months by order dated 16-1-1992 (Annexure-5). Applicant, then preferred an appeal against the enhancement of punishment to Respondent No. 2 on 10-2-1992 and this application has been filed on

11/2//

16-9-1992 and was admitted on 23-9-1992. These facts are not in controversy.

2. According to applicant, without giving him reasonable opportunity to show cause, against the enhancement of sentence the appellate authority could not have enhanced the sentence. His further version is that on 1.10.91 his second promotion became due to be effective on Biennial Cadre Review because of his completion of 26 years of service yet he was not given promotion although the currency of the punishment imposed by the Disciplinary Authority under Annexure-3 had already expired by 1.10.91 and the order enhancing the punishment under Annexure-5 was not in existence on the crucial date i.e. on 1.10.91;

Hence, in this application, he prays for quashing the orders of punishment passed by the Disciplinary Authority and the Appellate Authority as well and for direction to Respondents to give him promotion under Biennial Cadre Review from the date when it became due.

3. Respondents in the counter do not dispute that by 1.10.91, applicant had completed 26 years of service. However, they had not approved his promotion under BCR by the D.P.C. His prayer for second promotion under BCR is not maintainable because he had not followed the Departmental procedure before filing this Original Application in this regard.

4. We have heard Mr. D.P. Dhalsamant, learned counsel for Applicant and Mr. Ashok Mishra, learned Senior Panel counsel appearing for Respondents. Also perused the records.

6
//3//

5. Since this Original Application was admitted on 23-9-1992, by which date Respondent No.2 had not passed any order in the appeal preferred by Applicant, against the enhanced punishment passed by Respondent No.3, the application pending before Respondent No.2 stood abated. Hence, even if any order has been passed by Respondent No.2 in the meanwhile the same has no legal sanctity.

6. In the Original Application, nothing has been pleaded as to how the order of punishment passed by the Respondent No.3 & 4 the Disciplinary Authority and the Appellate Authority is legally defective leading interference. This is a minor punishment and applicant has been given reasonable opportunity to represent ^{and} ~~1. AS~~ after considering his representation Disciplinary Authority, through a reasoned order dated 25-3-1991 imposed the punishment vide Annexure- 3. ^{therefore} We do not see any legal infirmity affecting the principles of natural justice in the procedure adopted by Respondent No.4, the Disciplinary Authority. As such, we do not see any reason to quash this order of punishment passed by the Disciplinary Authority in Annexure-3.

Admittedly, appellate Authority had not issued any notice to applicant to show cause before enhancing the penalty. Rule 27(2) (4) of Central Civil Services (Classification Control & Appeal) Rules, 1965 is crystal clear to the effect that no order imposing enhanced punishment shall be made unless the appellant has been given a reasonable opportunity as far as may be in accordance with the provisions of Rule 16 of making a representation against such enhanced penalty.

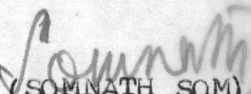
7
11/4//

(9)
This Rule, based on well known principle of natural justice is mandatory in nature. Since the Appellate Authority ignored this Rule, his order dated 16.1.1992 in Annexure-5 can not be sustained and needs to be quashed.

However, we are not inclined to pass any order whether the applicant is entitled to the benefit of BCR from 1.10.1991 onwards except by giving appropriate direction to the Department.

7. In the result, while disallowing the prayer for quashing the order of punishment, passed by the Disciplinary Authority, under Annexure-3, we quash the order of the Appellate Authority passed under Annexure-5 and further direct the Respondents to consider as to the entitlement of applicant of the benefit of BCR w.e.f. 1.10.1991 within a period of thirty days from the date of receipt of a copy of this order through a speaking order under intimation to applicant.

8. In the result, with the directions given in para 7 above, the Original Application is disposed of.
No costs.


(SOMNATH SOM)
VICE-CHAIRMAN

20.6.55
(G. NAKASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.