

**CENTRAL ADMINISTRATIVE TRICENTRAL
LUCKNOW BENCH**

**Original Application No.522/2005
This the 04 day of December 2008**

HON'BLE MR. M. KANTHAIAH, MEMBER (J).

HON'BLE DR. A.K. MISHRA, MEMBER (A).

Sri Shabbir Ahmad aged about 61 years S/o Late Sri Bashir Ahmad R/o 638 A Shekh Sarai Patel Old Sitapur (Retired SPM Old Town Sitapur).

...Applicant.

By Advocate: Shri R.S. Gupta.

Versus,

1. Union of India through the Secretary Department of Post Dak Bhawan, New Delhi.
2. Director of Postal Services Head Quarter Office of Chief Postmaster General U.P. Lucknow.
3. Superintendent of Post Offices, Sitapur.

... Respondents.

By Advocate: Mohd. A.P. Usmani.

ORDER

BY HON'BLE MR. M. KANTHAIAH, MEMBER JUDICIAL.

The applicant has filed the OA with a prayer to quash the impugned order Dt. 30.7.2003 (Ann-A-1) and Dt. 15.09.2005 (Ann.-A-2) issued by the Respondent No.3 and 2 respectively and direct them to pay correct and full pension to the applicant alongwith consequential benefits with interest @ 18 % from 01.07.2004 till the date of payment on the ground of withholding of increment by



impugned order passed by Respondent No. 3 is against the provisions of Rule 16 (1A) of CCS (CCA) Rules, 1965 and dismissal of appeal by the Respondent No.2 is only on technical ground but not on merits.

2. The respondents have filed Counter Affidavit, denying the claim of the applicant stating that the authorities have passed impugned order as per the rules and provision of CCS(CCA) Rules and thus, no justified reasons are there for interference of this Tribunal.

3. The applicant has filed Rejoinder Affidavit, denying the stand taken by the respondents and reiterated the pleas taken in OA.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that the applicant, who joined in the respondents department as PA on 16.09.2965 retired on 30.6.2004 after attaining the age of superannuation. During the year 2003 a charge sheet Dt. 25.6.2003 (Ann.A-3) was served on the applicant under Rule 16 of CCS (CCA) Rules, 1965 alleging that there was delay in sending intimation for clearance of cheque on the part of the applicant for which, he submitted explanation on 08.07.2002 (Ann.-4) denying his responsibility. But the Respondent No.3, who is Disciplinary authority, was not satisfied with the explanation of the applicant and found him guilty of such charges and imposed penalty by withholding his next increment for three months without cumulative effect vide order Dt. 30.07.2003 (Ann.1). Admittedly, the Respondent No.3 did not conduct any enquiry. It is also not in dispute that annual increment of the applicant was due in November of every year and his

last increment was due on 01.11.2003, but he was due for his retirement on 30.6.2004.

7. Aggrieved with such penalty imposed by Respondent No.3 on the ground that it adversely affected the pension payable to him as he is going to retire on 30.06.2004, the applicant preferred an appeal alongwith with an application for condonation of delay in filing appeal before the Respondent No.2 vide (Ann-A-5) Dt. 13.4.2004 with delay on the ground of his illness and illness of his wife. But Respondent No.2 dismissed the same on the ground of delay in filing appeal vide (Ann.-A-2) Dt.05.09.2005. Thereafter, the applicant has filed the present OA challenging the impugned orders passed by Respondent No.3 and 2 respectively.

7. It is the case of the applicant that the impugned order passed by the Respondent No.3 Dt. 30.07.2003 (Ann-A-1) is contrary to Rule 16 (1A) of the CCS (CCA) Rules, 1965 and against the principle of natural justice and as such, the same is liable to be quashed. In respect of impugned order passed by the Respondent No.2 Appellate authority dismissed his appeal only on technical ground of delay in filing the appeal, without touching his merits and the same is liable to set aside.

8. The short and limited question involved in this case is whether any enquiry is required or not, before imposing impugned punishment on the applicant under Rule 16 of CCS (CCA) Rules, 1965.

9. Admittedly, the annual increment of the applicant was due in November of every year and his last increment was due on 01.11.2003 due to his retirement on 30.6.2004 after attaining the age of superannuation. The Respondent No.3, who is disciplinary authority,

who issued Memorandum of charges against the applicant under Rule 16 of CCS (CCA) Rules, 1965 was not satisfied with the explanation submitted by the applicant and imposed penalty of withholding of his next increment for three months without cumulative effect vide order Dt. 30.7.2003 (Ann-A-1) and no doubt he is justified to question, if such penalty adversely affected the pension payable to the applicant, who is going to retire within one year of such penalty i.e. on 30.6.2004.

10. Rule 16 (1A) of CCS (CCA) Rules while imposing minor penalties, reads as under:-

- (1) -----
- (a). -----
- (b). holding an inquiry in the manner laid down in sub-rule (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;-----
- (c) -----
- (d). -----
- (1A). Notwithstanding anything contained in Clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under Clause (a) of that sub-rule, to withholding increments of pay and such withholding of increment is likely to affect adversely the amount of pension payable to the Government servant or withholding of increment period exceeding three years or to withhold increments of pay for a cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty."

11. From the provision of Rule 16 (1A) of CCS (CCA) Rules, 1965, it is clear that an enquiry shall be held in the manner laid down at 3 to 23 of Rules 14 before making any order imposing penalty on the employee, which is likely to affect adversely on the amount of pension payable to him. But, in the instant case Respondent No.3 did not conduct any such enquiry and imposed penalty of withholding of his next increment of pay only for 3 months and if it adversely affected the amount of pension payable to him the applicant is justified in

challenging the impugned penalty passed by the Respondent No.3 vide order Dt. 30.07.2003 (Ann-A-1) and affirmed it by dismissal of the appeal by the Respondent No.2 vide its order Dt. 05.09.2005 (Ann-A-2).

In view of the above circumstances, OA is allowed quashing the impugned orders Dt. 30.07.2003 (Ann.A-1) and order Dt. 05.09.2005 (Ann.-A-2) passed by Respondent No.3 and 2 respectively and with a direction to the Respondent No.3 to pay all the consequential benefits to the applicant, if there was any loss caused to the applicant in his next increment which fell due on 01.11.2003. No costs.



(DR. A.K. MISHRA)

MEMBER (A)

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(M. KANTHAIAH)

MEMBER (J)

04-12-08