

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 233 of 2009

Reserved on 18.12.2013
Pronounced on 11.02. 2014

Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A

Parvej, aged about 41 years, S/o late Lallan Khan, Shorting Assistant, RMS 'O' Division, Faizabad.

.....Applicant

By Advocate : Sri P.R. Gupta

Versus.

1. Union of India through the Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. DPS (HQ), O/O the CPMG, U.P. Circle, Lucknow (Director Postal Services.)
3. Senior Superintendent RMS 'O' Division, Lucknow.

.....Respondents.

By Advocate : Sri Vishal Choudhary.

O R D E R

Per Ms. Jayati Chandra, Member (A)

The applicant has filed the present O.A. seeking following relief(s):-

- "(i) to quash the orders dated 8.8.2007 and 15.1.2009 as contained in Annexure 1-C and 1-A.
- (ii) Any other relief deemed just and proper in the circumstances of the case.
- (iii) Allow cost of O.A."

2. In this case, the applicant was initially charge-sheeted by Opposite party no.3 on 22.1.2007. The Chargesheet was issued to the applicant under Rule 16 of CCS (CCA) Rules, 1965 requiring the applicant to submit his reply within 10 days from the date of receipt of chargesheet. The applicant gave his representation on 3.2.2007 demanding relevant documents, but the said documents were neither given nor shown to the applicant and ultimately his application was rejected vide order dated 19.6.2007. The applicant again wrote a letter requesting for an opportunity to cross examine the witnesses by letter dated 25.6.2007, but the respondents

J. Chandra

denied the same taking the plea under Rule 16 of CCS (CCA) Rules, 1965 that there is no provisions for allowing the charged employee to cross examine the witnesses. Finally, the disciplinary authority passed an order dated 8.8.2007 imposing the punishment of withholding of one annual increment for a period of six months without any cumulative effect. The applicant was given second show cause notice by Opposite party no.2 to enhance the penalty for withholding of next increment for three years under powers vested in him vide rule 29 (1)(v) of CCS (CCA) Rules, 1965. The applicant preferred an appeal against the disciplinary order on 6.2.2008, but the appellate authority turned down his appeal vide order dated 22.10.2008 on the ground that the appeal was received after 186 days. Further he gave representation against memo received by him by which it was proposed to enhance the earlier penalty order, but the revisionary authority without fully appreciating the case of the applicant passed the third impugned order dated 15.1.2009 by which his earlier penalty order was enhanced to stoppage of increment for one year without cumulative effect. The applicant has challenged all the impugned orders on the ground that he was not given the copies of the relevant documents, nor they were shown to him. He was also not allowed to cross examine and ex-parte order was passed by the Opposite party no.3 in the capacity of reviewing authority and his appeal was summarily rejected by the Opposite party no.2 in the capacity of appellate authority.

3. The respondents have filed Counter Reply stating therein that their decision to disallow the applicant from cross examine any witness is correct and in accordance with Rule 16 of CCS (CCA) Rules. This was informed to the applicant vide letter contained at Annexure CA-2. Further, the appeal submitted before the appellate authority against the original penalty order dated 8.8.2007 was submitted after delay of 186 days. The cause of delay was stated to be illness of his wife, which was not supported by any medical certificate.

4. Rejoinder Reply has also been filed by the applicant refuting the averments made by the respondents in their Counter Reply and reiterating the averments made in the Original Application.

J. Chandrasekhar

5. Further, the order of the Revisional authority passed under the category of minor punishment under Rule 16 of CCS (CCA) Rules, 1965 as the penalty imposed by the disciplinary authority has been enhanced to stoppage of one increment for one year without cumulative effect.

6. We have heard the learned counsel for the parties and have perused the pleadings on record.

7. In this case, it is noticed that the chargesheet was given to the applicant in accordance with rule 16 of CCS (CCA) Rules. Rule 16 thereof does not have a provision for inspecting the records. However, in case a charged official seeks to inspect the documents on which the charge is based and it is determined by the disciplinary authority that such inspection is necessary in the interest of justice and fair play, he may allow the charged official to inspect the same. In this case, the applicant has not sought permission to inspect any documents, but had rather called for copies of documents without specifically stating that what documents are required by him. It is also seen that there is no provision for cross examination of the witnesses. However, nothing prevents the disciplinary authority from allowing the cross examination in case so desired by the charged official. It is seen that the disciplinary authority had entertained various letters written by the applicant and had applied his mind on them. His order dated 8.8.2007 has been passed after due application of mind. It appears from the relevant dates that the applicant gave his appeal only after receipt of proposal of enhancement of punishment after a delay of 186 days. Therefore, the appellate authority dismissed it as per relevant provision.

8. The Revisional authority vide impugned order dated 15.1.2009 imposed a penalty of stoppage of one increment for one year without cumulative effect. This is a minor penalty under Rule 11 of CCS (CCA) Rules, 1965, therefore, to be imposed after following the procedure as laid down under Rule 16 of CCS (CCA) Rules, 1965. As already discussed, there is no express provision for holding an inquiry etc. as in the case of major penalties. The Revisional authority in his order dated 15.1.2009 has discussed

J. Chander

at length all the grounds for holding the charges proved against the applicant. The Hon'ble Supreme Court in the case of **Union of India & Others Vs. P. Chandramouli (2003) 10 SCC 196** has held that the power of punishment is within the employer's discretion and should not be ordinarily interfered with unless there is infirmity in the procedure.

9. In view of the above, the O.A. has no merit and is accordingly dismissed. No costs.

J Chandra

(Ms. Jayati Chandra)
Member-A
Girish/-

VR. Agarwal

(Navneet Kumar)
Member-J