

13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
J A I P U R.

OA NO.64/1992

Date of order: 15.5.1996

P.D.Jef

: Applicant

Versus

Union of India and others: Respondents.

None for the applicant

Mr.Zakir Hussain, brief-holder for

Mr.M.Rafiq, counsel for the respondents

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)

HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE))

In this application under Section 19 of the Administrative Tribunals Act, 1985 Shri P.D.Jef has prayed that order dated 31.1.1991 (Annx.A-1) by which minor penalty of with-holding of the next increment for a period of three months without cumulative effect was imposed may be quashed.

2. The counsel appearing for the applicant earlier was Mr.J.K.Kaushik. He however pleaded no instructions on 10.7.1995. Thereafter fresh notice was sent to the applicant on 12.7.1995 informing him that the OA has been listed for hearing on 25.8.1995 and that if he did not appear on the date fixed the OA would be heard exparte. Thereafter yet another notice was sent to the applicant on 29.8.1995 fixing the next date of hearing on 18.9.1995. Both the notices were served before the dates fixed. None however appeared for the applicant on these dates. Thereafter the hearing was adjourned to 10.11.1995. On that date the case

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was listed for hearing as per turn and it has come up before us for hearing today. None has appeared on behalf of the applicant. Accordingly we proceed to dispose of the OA on merits.

3. The case as set up by the applicant in the OA is that while working as a Postal Assistant at Khandela S.O. he was served with a charge-sheet dated 23.11.1990 (Annx.A-2) initiating minor penalty proceedings against him on the ground that while he had been granted LTC Advance of Rs.1550/- in February and March, 1990, he had neither submitted the LTC T.A. Bill within the prescribed period, nor had he performed the journey for which advance had been taken. The applicant made a representation dated 15.1.1991 against the proposal to initiate penalty proceedings against him. However, respondent No.3 i.e. the Superintendent of Post Offices, Sikar Division, Sikar passed order Annexure A-1 dated 31.1.1991 imposing minor penalty of with-holding of the applicant's next increment for a period of three months without cumulative effect. The applicant preferred an appeal against the aforesaid penalty order on 26.2.1991 to respondent No.2 i.e. Director, Postal Services, Rajasthan, Western Region, Jodhpur (Annx.A-4). No decision has been taken on the appeal preferred by the applicant though a period of six months has been passed. The applicant's reminder dated 4.9.1991 has also evoked no response. The grievance of the applicant is that the disciplinary authority has recorded no reasons in the order imposing penalty and the representation already made by him against the proposal to initiate penalty proceedings against him has not been taken

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into consideration while imposing penalty. He has cited a judgment of the Punjab and Haryana High Court in support of the view that order of this nature should be a speaking order. According to him, the order passed by the disciplinary authority is not a speaking order. He has, therefore, prayed that the order of penalty may be quashed.

4. The respondents in the reply had taken an objection regarding the application having been filed beyond the period of limitation. According to them, the impugned order was passed on 23.11.1990 whereas the OA has been filed on 28.11.1990. The factual position however is that while the impugned order i.e. Annexure A-1 was passed on 31.1.1991, the OA has been preferred on 13.10.1991. Therefore, the objection regarding limitation is not tenable.

5. In their reply, the respondents have further stated that the representation stated to have been sent by the applicant on 16.1.1991 against the proposal to initiate penalty proceedings was never received by them. They have added that after receipt of the L.T.C. Advance, it was incumbent upon the applicant to refund the amount in full in case the outward journey is not commenced within 30 days of grant of advance and he had been informed that in case he failed to refund the advance, he would be liable for disciplinary action. The applicant neither performed the journey nor refunded the amount of advance inspite of reminders sent to him. Since the journey was not performed by the applicant,

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no TA bill was submitted by him either. It was in view of these facts that charge-sheet was issued to him to which in fact he did not submit any reply. The amount of advance was recovered from the pay of the applicant. Penalty was imposed on him for violation of rules regarding undertaking journey, refunding the amount of advance etc. The appeal preferred by the applicant could also not been traced out in the office of the respondents but the memo of appeal has now been traced out on 3.4.1992 and it is pending consideration of the Appellate Authority. The present application according to them is therefore not maintainable when his appeal is pending. The disposal of the appeal has been delayed due to the filing of the present OA by the applicant.

6. As already stated above, none is present on behalf of the applicant. We have heard Mr. Zakir Hussain brief-holder for Mr. M. Rafiq, counsel for the respondents.

7. We have perused the charge-sheet Annexure A-2 and the final order passed Annexure A-1 dated 31.1.91 imposing penalty of with-holding of the applicant's next increment for a period of three months without cumulative effect as and when it becomes due. Annx.A-3 dated 15.1.1991 is supposed to be the representation submitted by the applicant against the proposal to impose minor penalty on him which according to the respondents was never received by them. Even assuming that the applicant did submit this representation against the proposal to impose penalty on him, in it he has not controverted the factual position set out in

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Annx.A-2 which is the charge-sheet. The order passed by the disciplinary authority is fairly detailed, it sets out the factual position regarding the applicant having drawn advance, the date on which the advance was drawn and the requirements regarding utilization of the advance and submission of L.T.C. T.A.bill. It cannot be said that the order Annx.A-1 imposing penalty on the applicant is not a speaking order. From the perusal of this order, it cannot be said that there was no misconduct on part of the applicant. We are further of the view that the penalty imposed on the applicant is quite mild having regard to the misconduct as set out in the charge-sheet and the order imposing penalty.

8. No doubt the appeal of the applicant is pending. However, ^{since} the respondents have not decided the appeal of the applicant in time, applicant was entitled to file the present OA. We have examined the case on merits and we find that the order of penalty does not call for any interference.

9. Accordingly the OA is dismissed. There shall be no order as to costs.


(RATAN PRAKASH)
MEMBER (H)


(O.P. SHARMA)
MEMBER (A)