

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR
Original Application No. 520 of 1998

Jabalpur, this the 7th day of July, 2003.

Hon'ble Mr. D.C. Verma, Vice Chairman (Judicial)
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

Bha-rat Singh Thakur, aged 53 years,
S/o late Ram Sukh Singh
C/o Jankibai Pawar (Ward Member)
Marathipara, Dhamtari, Raipur (MP)

APPLICANT

(By Advocate - Shri S.K. Nagpal)

VERSUS

1. Union of India through Chief
General Manager, Telecommunication,
M.P. Circle, Bhopal.

2. General Manager
Telecommunication District
Raipur (M.P.)

3. Divisional Engineer
(Telegraphs) Rural,
Raipur.

4. Sub Divisional Officer
(Phones)
Dhamtari, Raipur (MP)

RESPONDENTS

(By Advocate - Shri S.C. Sharma for Shri B.da.Silva)

O R D E R (ORAL)

By D.C. Verma, Vice Chairman (Judicial) -

By this Original Application the applicant has challenged the charge memo issued under Rule 16 of CCS (CCA) Rules, dated 23/07/1997 (Annexure A/1), the order of penalty dated September 1997 (Annexure A/2), memo dated 01/12/1997 (Annexure A/4) passed by the disciplinary authority modifying the punishment and the order dated 07/01/1998 (Annexure A/3) the order of the appellate authority. A prayer has also been made that the dies-non ~~order~~ ~~memorandum~~ be quashed and the applicant be given the consequential benefits.



2. The facts of the case is that the applicant was working as a Telephone Supervisor in D.T.O. Dhamtari, was on leave. When applicant reported for duty he was assigned the duty of Cashier Cash counter on rotational transfer basis. The applicant represented against that on the ground that he was not fully qualified and has not any experience in handling of cash/maintenance of cash accounts register etc. The applicant did not join the post and kept on making representations. Finally the applicant was served with a charge memo Annexure A/1 dated 23/07/1997 under Rule 16 of CCS (CCA) Rules. The applicant replied to that on 31/07/1997 (Annexure A/8). The same was considered and thereafter the impugned order of penalty (Annexure A/2) was passed.

3. A perusal of the article of charge annexed with the memorandum dated 23/07/1997 shows that there were two charges against the applicant. The first was that the applicant refused to obey the order of the Incharge DTO and the second was that the applicant in writing refused to work. However the disciplinary authority vide Annexure A/2 passed two orders. First for the period 16/07/1997 to 26/07/1997 (the official refused to work) was treated as dies-non and the second was stoppage of one increment with future effect. The order passed by the disciplinary authority was not with regard to the article of charges mentioned in the memo. There was no reference in the article of charge for absence period of 16/07/1997 to 26/07/1997 and for treating the same as dies-non. The memo of charge was under Rule 16 but the second punishment was stoppage of one increment "with future effect"



i.e. a major penalty and not a minor penalty. It appears that after the applicant appealed vide Annexure A/9, dated 06/11/1997 the disciplinary authority has passed its order dated 01/12/1997 (Annexure A/4), whereby the period between 01/07/1997 to 15/07/1997 and 27/07/1997 to 29/08/1997 was to be treated as dies-non. The appellate authority however vide its order dated 07/01/1998 (Annexure A/3) ^{directed} ~~indent~~ that dies-non period of 16/07/1997 to 26/07/1997 (as in Annexure A/2), stands as it is and with regard to the second punishment the same is liberalised to one increment for 2 years without affecting the future.

4. The counsel for the parties have been heard at length. The learned counsel for the applicant has placed reliance on the decision of the Apex Court in the case of Kulwant Singh Gill Versus State of Punjab reported in 1991 Supp (1) SCC Page 504 and submitted that the initial order passed by the disciplinary authority vide Annexure A/2 with regard to stoppage of one increment with future effect could be only after proceeding under Rule 14 of CCS (CCA) Rules and as no such proceeding was drawn the order could not have been passed by the disciplinary authority after issue of charge memo under Rule 16 of CCS (CCA) Rules. Consequently the whole order should be quashed. We however after hearing the learned counsel for the applicant and going through the cited decision, find that the submission of the learned counsel for the applicant cannot be accepted. No doubt the disciplinary authority initially passed the order of stoppage of increment with future effect though no charge sheet was

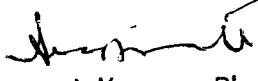
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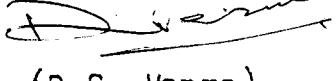
issued under Rule 14 of the CCS (CCA) Rules, but the appellate authority modified the order. The mistake committed by the disciplinary authority was rectified. In the case cited by the learned counsel for the applicant the final order was amounting to major punishment. The submission of the learned counsel that if the disciplinary authority has made some mistake in its order with regard to quantum of punishment the appellate authority has no power to rectify the said mistake, has no merit.

5. As has been observed in the preceding paragraph the order of the Disciplinary Authority is totally invalid because it is not with reference to the article of charge and also because the same was with regard to major penalty for which the applicant was not served with charge memo. We also find that even the appellate authority has passed the order of dies-non for the period between 16/07/1997 to 26/07/1997 though it was not in the article of charge. Thus the order of the appellate authority also cannot be sustained. As has been so mentioned in the earlier paragraph the disciplinary authority vide its another order dated 01/12/1997 directed two period, one between 01/07/1997 to 15/07/1997 and the other between 27/07/1997 to 29/08/1997 to be treated as dies-non but the appellate authority in its order dated 07/01/1998 has only directed the period between 15/07/1997 to 26/07/1997 to be treated as dies-non. Thus the whole order either of the disciplinary authority or of the appellate authority are not in conformity with the provisions and are in-valid.

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6. In view of the discussion made above the Original Application is allowed. The impugned orders are quashed. Costs easy.


(Anand Kumar Bhatt)
Administrative Member


(D.C. Verma)
Vice Chairman (J)

"SA"

पृष्ठांकन सं ओ/व्या.....जवलपुर, दि.....

प्रतिलिपि अच्चे छित:-

- (1) संगिय. उच्च न्यायालय दार एसोसिएशन, जवलपुर
- (2) अधेन्द्रन. श्री/श्रीमती/पतु.....के राजउस्ल
- (3) प्रद्युम्नी श्री/श्रीमती/पतु.....के काउंसल
- (4) वंदा भार, देशभार, जवलपुर न्यायपीठ

राज्यका दुन आधरयक कार्यवाही हेतु


S.K. Nagpal

S.C. Sharma Adc


अध राजस्वम्
15-7-03

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on 15.7.03
By B