

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.2219/2014

**Reserved On:03.05.2017
Pronounced On:04.05.2017**

Hon'ble Mr. P.K. Basu, Member (A)

Shri Amba Prakash
Aged about 51 years
S/o Late Shri Daryav Singh
Presently working as BCR (PA),
GPO Baraut Distt. Baghpat in
Gp 'C' post under Senior Supdt. Post Offices
Divisional Office Meerut,
Director Postal Services,
Bareilly Region, and Dte. General
Postal Department,
New Delhi
R/o House No.591/2, Shiv Shakti Nagar,
Meerut City (UP).

...Applicant

(By Advocate: Shri V.P. S. Tyagi)

Versus

1. The Union of India
(Through Secretary)
Ministry of Communication,
New Delhi.
2. The Director General of Post Offices,
Ministry of Communication,
New Delhi.
3. The Director of Post Office,
Office of PMG,
Bareilly Region,
Bareilly-243001.
4. The Senior Superintendent of Post Offices,
Meerut Division,
Meerut.

..Respondents

(By Advocate:Shri T.A. Ansari)

ORDER**By Hon'ble Mr. P.K. Basu, Member (A)**

The applicant while working as Sub Post Master (SPM), Balaini, SO, Meerut Division, had claimed Rs.800/- as cash conveyance on 20.06.2011 showing the particulars of Shani Travels, receipt No.212 dated 20.06.2011 for hiring of a taxi for remittance of cash amounting to Rs.2,50,000/- from Balaini So to Meerut City HO. The matter was got enquired into and the said receipt No.212 was found to be bogus. Therefore, the applicant was charge-sheeted under Rule 16 of CCS (CCA) Rules, 1965. The applicant deposited the sum of Rs.800/- in Government account on his own accord. He was awarded punishment of "Censure" by the Disciplinary Authority (DA) vide order dated 22.11.2011 (Annexure A-2). While going through the records of the aforementioned disciplinary proceedings, Director Postal Services, Bareilly Region, Bareilly was, prima facie, of the opinion that the punishment awarded to the applicant by the DA was not commensurate with the charges framed against him. He felt that the penalty should be enhanced to "withholding of next increment of pay of the applicant for three years without cumulative effect". The applicant was given an opportunity to submit his representation. After considering the applicant's representation, orders were passed to enhance the punishment of "Censure" to "withholding of next increment of pay of the applicant for three years without cumulative effect" vide order dated 31.07.2012. This order dated 31.07.2012 was

communicated to the Post Master, Baraut, HO vide Department of Posts letter dated 06.08.2012 (Annexure A-1).

2. The applicant is aggrieved by the order dated 06.08.2012 and has filed this OA challenging this order and prayed for the following relief:-

“(a) Quash and set aside the impugned orders (A-1) & (A-2) with direction to the respondents to restore the applicant’s held increments to original position by also directing to delete any adverse entry made in the applicant’s service record.

(b) Workout and compute the arrears so accumulated on restoring the applicant’s increments and make payment with 12% interest from the date it fell due till date the same paid.

(c) Pass any order or direction as deemed just and proper in the facts and circumstances of the case with award of the cost of this OA in favour of applicant against respondents”.

3. The grounds for seeking the relief are as follows:-

- (i) The impugned order passed by the DA is ab initio illegal as the applicant was not offered proper opportunity of cross-examining the vital witnesses relied upon by the disciplinary authority; and
- (ii) The impugned order, as passed by the Revisional Authority invoking Rule 29 of CCS (CCA) Rules, 1965, which is in modification of the order passed by the DA is unsustainable

in the eyes of law. Rule 29 provides that “the competent authority, may at any time, either on his or its own motion or otherwise call for the records of any enquiry and (revise) any orderfrom which no appeal has been preferred or from which no appeal is allowed”.

However, in this case it is contended that the applicant had filed an appeal dated 27.04.2012 against the penalty order of “Censure” dated 22.12.2011. Moreover, Rule 29(3) provides as follows:-

“(3) An application for (revision) shall be dealt with in the same manner as if it were an appeal under these rules”.

4. The learned counsel for the applicant has relied upon the judgment of Hon’ble Supreme Court in ***O.K. Bhardwaj VS. U.O.I. & Others 2002 SCC(L&S) 188***. In the said case it was held as follows:-

“3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that “withholding increments of pay with or without cumulative effect” is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.

4. Learned counsel for the respondent, however, says that though the second proposition of the High Court may not be correct, yet so far as this case is concerned it does not make any difference for the reason that in this case, as a fact an opportunity was given to the appellant and that there has been adequate compliance with the principles of natural justice. But since the High Court has not considered the matter from the above angle that is on merits the proper course in our opinion is to remit the matter to the High Court to consider whether an opportunity was given to the appellant to put forward his case and whether in the light of the facts and circumstances of the case, an enquiry was called for and if called for, was it held according to law and the principles of natural justice, and to dispose of the matter according to law. The appeal is allowed with the above directions. No costs”.

5. Learned counsel for the respondents first of all submitted that this OA is hopelessly time barred as per Section 21 of the Administrative Tribunals Act, 1985. The order under challenge was passed on 31.07.2012 and the OA has been filed on 21.04.2014. It is also contended that the applicant has not exhausted departmental channel of preferring appeal to the competent authority, i.e., the Post Master General, Bareilly against the revisional order of Director Postal Service, Bareilly dated 31.07.2012, on which ground also the OA is liable to be dismissed.

6. On the merits of the case, it is argued that the competent appellate authority who is the revisional authority, exercised power under the rules and procedure as provided under Rule 29 of CCS (CCA) Rules, 1965 and enhanced the penalty. It is stated that the applicant is relying on the provisions of Rule 29(3) which rule is not relevant in the applicant's case.

7. Heard the learned counsels and perused the pleadings and judgment cited by the applicant.

8. The DA had permitted the applicant to file his defence statement which he filed on 03.09.2011. This was considered by the DA and keeping in view the fact that the applicant had deposited Rs.800/- and also gave an undertaking not to repeat such mistakes in future,

decided to impose the penalty of “Censure” for his misconduct. He filed an appeal against this order dated 27.04.2012. However, the Revisional Authority under the provisions of Rule 29 re-examined the whole issue and decided to enhance the punishment of “Censure” to “withholding of next increment of pay of the applicant for three years without cumulative effect” and gave an opportunity to the applicant to make a representation. His representation was considered and only thereafter, the orders to enhance the punishment of “Censure” had been taken. What is relevant here is that the applicant deposited paying Rs.800/- and also gave an undertaking that he will not make such mistakes in future. In the light of this, the DA awarded a mild punishment of “Censure”. At this stage, he was also given an opportunity to defend himself. At the stage of revisional authority also, he was given an opportunity to defend himself but he failed. Therefore, the applicant cannot seek refuge of the judgment of Hon’ble Supreme Court in **O.K. Bhardwaj** (supra) which only states that in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. In my opinion, the respondents have not violated any rule or principle of natural justice or the ratio decided in **O.K. Bhardwaj** (supra). Therefore, there is no case made out by the applicant on merits.

9. In addition, as pointed out by the learned counsel for the respondents, the OA is also time barred as per Section 21 of the

Administrative Tribunals Act, 1985, and hence not maintainable. The OA is, therefore, dismissed. No costs.

(P.K. BASU)
MEMBER (A)

Rakesh