



CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No.409/2015

New Delhi, this the 5th Day of December, 2019

**Hon'ble Mrs. Justice Vijay Lakshmi Member(J)
Hon'ble Mr. Pradeep Kumar, Member (A)**

Shri Anil Khosla, Age 58½ Years
S/o Late Shri Vaishan Dass Khosla
Postal Assistant, Kalkaji Head Post Office
New Delhi-110019.
Under New Delhi South Postal Division
New Delhi-110019.
R/o H. No. 1729/5, IIIrd Floor
Govind Puri Extn., New Delhi-110019
Address for service of notices
C/o Sh. Pradeep Kumar, Advocate
Ch.No.665, Western Wing
Tis Hazari Courts, Delhi-110054.Applicant

(By Advocate: Shri Pradeep Kumar)

Versus

1. Union of India through the Secretary
Ministry of Communications & I.T.
Department of Posts, Dak Bhawan
New Delhi-110001.
2. The Chief Post Master General
Delhi Circle, Meghdoot Bhawan
New Delhi-110001.
3. The Sr. Superintendent of Post Offices
New Delhi South Postal Division
New Delhi-110019.
4. The Post Master, Kalkaji Head Post Office
New Delhi-110019. ...Respondents

(By Advocate: Shri Acharya Santosh Prasad Chaurasiya)



ORDER (Oral)

Hon'ble Mr. Pradeep Kumar, M(A)

The applicant herein was appointed as Postman on 09.08.1975. In due course he appeared in a departmental examination and was appointed as Postal Assistant sometimes in September, 1980. The department of Posts had a scheme known as Time Bound One Promotion (TBOP) wherein the employees who were not promoted for 16 years were granted one time financial upgradation. Subsequently, since the stagnation cases were still continuing, the Department of Posts brought in another scheme known as Biennial Cadre Review (BCR) wherein those who were not promoted for 26 years were granted one more financial upgradation.

2. As per TBOP Scheme, the applicant was granted first financial upgradation w.e.f. 16.11.1996 on completion of 16 years of service as Postal Assistant. The benefit under BCR was to be considered sometimes in 2006 on completion of 26 years of service. The applicant, however, was issued a minor



penalty charge sheet on 28.04.2005 which culminated into a major punishment vide orders dated 29.07.2005 which was upheld by the Appellate Authority also with little modification. The punishment still remained major.

3. The applicant felt aggrieved at this punishment and approached the Tribunal by filing OA No.1978/2007 which was decided vide orders dated 05.05.2008. The operative para of this Order reads as follows:-

"11. In our considered view as the impugned penalty order specifically provides that the applicant will not earn the increment during the period of reduction and such a direction constitutes major penalty under clause (v) of Rule 11, the impugned Order is rendered unsustainable in law, particularly when the proceedings were initiated against him for minor penalty. It is well settled that major penalty cannot be imposed when the departmental proceedings were initiated for imposing minor penalty. Consequently OA is allowed. Order of the disciplinary authority dated 29.07.2005 as upheld by the appellate authority on 09.03.2007 is quashed & set aside. However, liberty is granted to the respondents to conduct the disciplinary proceedings strictly in accordance with rules, if so advised. If the respondents chose to conduct said proceedings under Rule-16, they shall do so and complete the entire proceedings within a period of six months from the date of receipt of a copy of this order. We may also observe that we have



not examined other contentions raised by the parties. No costs."

4. Accordingly, the punishment orders by the Disciplinary Authority as well as the Appellate Authority both were quashed and the department was granted liberty to proceed with the disciplinary proceedings in accordance with rules.
5. Subsequently, the department decided to issue a fresh minor penalty charge sheet on 18.08.2008 which culminated into the punishment of 'Censure' vide order dated 30.10.2008.
6. The applicant is aggrieved that the BCR benefit, which was due to him in the year 2006, was not granted. Thereafter the Departmental Screening Committee, which was to consider grant of this benefit had met in the year 2007 as well as 2008. However, the BCR benefit was not granted. Subsequently, the Central Government promulgated a scheme known as Modified Assured Career Progression which took effect from 01.09.2008 and the applicant was granted third MACP benefit under the said MACP Scheme.



7. The applicant had been making representations to the respondents for grant of BCR benefit from the due date. However, the same has not been agreed to and accordingly, he filed the instant OA.
8. Respondent pleaded that the chargesheet issued in 2005 was pending against the applicant at relevant point of time. This chargesheet was not quashed and accordingly, BCR benefit is not due.
9. The matter has been heard. In the instant case a minor penalty charge sheet was issued in the year 2005 wherein a major punishment was imposed but the punishment was quashed by the Tribunal. It is noted that Tribunal did not quash the chargesheet.
10. Thereafter, the department chose to issue a new minor penalty charge sheet on 18.08.2008. However, this new chargesheet is in respect of same charge and for the same incident for which the minor penalty charge sheet was earlier issued in the year 2005. There is hardly any difference. A punishment of censure was imposed vide order dated 30.10.2008.



11. From this sequence of event, it is clear that the earlier charge sheet was treated by Respondents as *non est*. Reason is punishment was imposed on the new chargesheet. Even otherwise the old chargesheet issued in 2005 did not culminate into any punishment. Hence, it has to be treated as *non-est*. Accordingly, it follows that on the date when BCR was due in the year 2006 there was no charge sheet pending against the applicant. Accordingly, BCR benefit could not be denied on the ground of a pending chargesheet.

12. With this in view, the respondents are directed to consider the case of the applicant for grant of BCR benefit as per the prevailing instructions at that point of time when it was due to the applicant and evaluate the case and issue necessary orders. Once this is done and if the applicant is found fit for BCR benefit, he will be granted the consequential benefits also, as applicable to him.

13. This exercise shall be completed within a period of three months from today and the applicant shall



be advised by passing a reasoned and speaking order. There shall be no order as to costs.

(Pradeep Kumar)
Member(A)

(Justice Vijay Lakshmi)
Member(J)

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