

(2002) 12 AHC CK 0001
In the Allahabad High Court
Case No : C.M.W.P. No. 21507 of 2001

Union of India (UOI) and Others

APPELLANT

Vs

Central Administrative Tribunal and Another

RESPONDENT

Date of Decision : 18-12-2002

Acts Referred:

Citation : (2003) 1 AWC 448

Hon'ble Judges : Yatindra Singh, J; M. Katju, J

Bench : Division Bench

Advocate : S.N. Srivastava, S.C, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju, J. 1. Heard learned counsel for the parties.

2. This writ petition has been filed against the impugned order of the Central Administrative Tribunal, dated 11.9.2000 (Annexure-1 to the writ petition).

3. The facts of the case are that the respondent No. 2 was in postal department and he was charge-sheeted on various charges of financial irregularities and other misconducts. The charges are stated in paragraph 4 of the writ petition.

4. An enquiry was held and the respondent No. 2 was found guilty and was dismissed on 3.5.1989. Against that order, he filed an appeal in which the punishment was reduced by reduction of eleven stages in the time scale of pay for a period of five years and respondent No. 2 was deprived of increments during this period. The respondent No. 2 filed an O.A. against the appellate order before the Tribunal and that application has been allowed. Hence this writ petition.

5. The ground taken by the Tribunal for allowing the respondent No. 2's, O.A. is that on 27.5.1988, one Jagdish Narain Singh was examined by the Enquiry Officer in the disciplinary proceedings in the petitioner's absence. It is alleged that petitioner could not attend the enquiry and cross-examine Jagdish Narain

Singh as he was not given advance payment of T.A. and D.A.

6. In our opinion, the Tribunal should have further examined whether the respondent No. 2's financial condition was such that in the absence of grant of advance payment of T.A. and D.A., he could not attend the enquiry. In other words, the Tribunal should have considered whether as a result of non-advance payment of T.A. and D.A. the respondent No. 2 suffered any prejudice".

7. In our opinion, merely because T.A. and D.A. was not paid in advance, the respondent No. 2 could not validly have refused to attend the enquiry unless his financial condition was so bad that he could not attend the enquiry without advance payment.

8. It may be noted that respondent No. 2 was posted at Allahabad and the venue of the enquiry was fixed at Sub-Post Office, Nahwai, which is only about 75 km. from Allahabad. Hence, it seems to us that the distance was not so great that the petitioner could not attend the enquiry merely because the T.A. and D.A. was not paid.

9. There were serious charges of financial irregularities against the petitioner and in our opinion, the Tribunal should not have allowed the O.A. in such a cursory manner.

10. Learned counsel for the petitioner has submitted that it has been held in several decisions, e.g., Capt. M. Paul Anthony v. Bharat Cold Mines Ltd. and Anr. 1999 (2) AWC 1579 (SC) : 1999 (2) ESC 1009 (SC), that non-payment of subsistence allowance may vitiate the departmental proceedings. This Court in several decisions, e.g., Shiv Dularey Gupta Vs. Director of Local Bodies and Others, has distinguished these decisions, and has held that even if subsistence allowance has not been paid, it will not vitiate the enquiry unless some prejudice has been pleaded.

11. In the present case, there is nothing to show that the respondent No. 2 pleaded prejudice due to nonpayment of advance T.A. and D.A.

12. It seems to us from the facts of the case that petitioner was himself delaying the enquiry by various means, e.g., asking for documents, asking for change of venue of the enquiry, etc.

13. In view of the above, we are of the opinion that the impugned order dated 11.9.2000 of the Tribunal is illegal and is hereby quashed. The petition is allowed.