

22.08.2022
KC(6)

F.M.A. 871 of 2017
Achintya Kumar Mondal
-versus-
The Union of India and Ors.

Mr. Swagata Datta,
Ms. Sneha Chatterjee.....For the appellant.

Mr. Pulakesh Bajpayee.....For the respondents.

This appeal concerns disciplinary proceedings against a CISF constable resulting in imposition of a minor penalty on him by the disciplinary authority which was affirmed by the appellate authority by inter alia, reduction of his pay by two stages from Rs. 3,575/- to Rs. 3,425/- in the time scale of pay for a period of two years effective from the date of issue of the order without increments during this period.

The facts are not complicated at all. On 30th June, 2005, the appellant was posted on duty at gate no. 4 of Netaji Subhas Dock in the Kolkata Port area between 13.00 and 21.00 hours. Rs. 315/- was found in the toilet hidden by bricks. The appellant was charged with having received that money illegally and hiding it in the toilet. The money was not found in his possession. There was no direct evidence to point towards his act of receiving the money or transferring any money to the toilet.

The appellant was held guilty on the probability that one R.K. Gosain, who was also on duty in the same shift, had handed over the money to him with the understanding between them that it would be hidden in the toilet in the event a check was carried out.

In our opinion, on the face of the records disclosed before us the conviction is based on very weak evidence. Nevertheless, it is not at the level which can be termed as perverse.

Rule 34 of the Central Industrial Security Force Rules, 2001 prescribes minor penalties as hereunder:

“Minor Penalties –

- (vi) censure;
- (vii) withholding of his promotion;
- (viii) reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension;
- (ix) withholding of increment of pay;
- (x) fine to any amount not exceeding of 7 days’ pay.”

Although we are not minded to interfere with the finding of the disciplinary authority and the appellate authority holding the appellant guilty of illegally receiving Rs. 315/-, we are of the opinion that the punishment imposed is not only against the said rules but is dis-proportionate.

Rule 34(viii) provides as a minor penalty “reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years”.

If the authority had decided to impose minor penalty of reduction of pay it ought to have been done reasonably and strictly in accordance with the rules. While deciding in favour of imposing minor penalty, the disciplinary and the appellate authority were clearly not right in imposing punishment which was in excess of what is conceptualised by the rules by reducing the pay of the appellant by two stages instead of one stage.

Therefore, we direct that the punishment imposed on the appellant should be read down so that it amounts to reduction of his pay to a lower stage in the time scale of pay by one stage. Consequential benefits are to be given to the appellant by the respondents within two months of communication of this order.

The impugned judgment and order dated 20th May, 2016 is partly set aside and modified by our judgment and order.

The appeal (F.M.A. 871 of 2017) is disposed of.

No order as to costs.

(I.P. MUKERJI, J.)

(SUBHENDU SAMANTA, J.)