

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.No.193/93

Dated this the 31st of January, 1996.

Hon'ble Shri S.R. Adige, Member(A)
Hon'ble Dr. A.Vedavalli, Member(J)

Shri Amin Beg,
Ex-Postal Assistant,
Bareilly Postal Division,
Presently r/o Azmat Bareilly,
Motor Workshop, Near Mother Dairy,
Hazarat Nizamuddin West Market,
New Delhi 110 013.

...Applicant

Shri S.M. Garg and
By Advocates: Shri R. Venkatramani.

versus

1. The Chief Postal Master General,
U.P. Circle, Lucknow.

2. The Senior Superintendent
of Post Offices,
Bareilly Division,
Bareilly (U.P)

...Respondents

By Advocate: Shri M.L. Verma.

O R D E R (Oral)
(By Hon'ble Shri S.R. Adige)

In this application, Shri Amin Beg has impugned the order dated 22.12.89 (Annexure-II colly) removing him from service and the appellate order dated 26.12.90 (Annexure-III) rejecting his appeal.

2. Shortly stated, the applicant while working as a Postal Assistant in the Air Force Station Post Office Bareilly during the period from 29.10.84 to 5.10.88 failed to account for the deposits made in 3 recurring deposit accounts standing at Air Force Station P.O. amounting to Rs.9500/-. Meanwhile, a FIR under Section 409 IPC was constituted against him for misappropriation on 14.11.88. The first date fixed in the departmental enquiry pursuant to the charge sheet was 2.1.88, on which date, the applicant appeared. Thereafter, it appears that on certain dates, the applicant did not appear in the enquiry, as

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a result of which, it had to be conducted ex-parte. The enquiry officer submitted his enquiry report on 6.10.90 in which he held charges against the applicant to be proved. Accepting the Enquiry Officer's findings, the disciplinary authority issued an impugned order dated 22.12.89 removing the applicant from service. The applicant filed an appeal against the said order which was rejected on 26.12.90.

3. Meanwhile, a charge sheet in the criminal case was filed on 22.8.89 and it appears that on 22.10.91, the applicant was acquitted of the charges. Thereupon, he appeared to have filed a representation dated 25.11.91 (Annexure-VI) addressed to the disciplinary authority for reconsideration of his case in the light of the acquittal that he had secured but the disciplinary authority is stated to have turned down his request on the ground that he has been found to have doubtful integrity under Rule 3(i)(8) of CCS (Conduct) Rules, 1964 and had thereby, been removed from service and his appeal had also been rejected. The department was not in a position to reinstate him in service. Thereupon, it appears that the applicant filed a review application dated 6.2.92 addressed to the Chief Post Master General, U.P. Circle, Lucknow which, we are informed by the applicants counsel Shri Venkatramani, that it still remains to be disposed of.

4. We have heard the learned counsel for both parties and perused the documents on record.

5. During the course of hearing, the learned counsel for the applicant has stated that the applicant would be satisfied if a direction is issued to the respondents to dispose of the said review application dated 6.2.92 filed by the applicant, treating the same to be a revision petition, in the light of the provisions of Rule 29(1)(iv) of the CCS (CCA) Rules. The above rule reads as follows:-

"the Head of a department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Post and Telegraphs Board), under the control of such Head of a Department may at any time, either on his or its own motion or otherwise call for the records (emphasis supplied) of any inquiry and revise any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary...."

There is a proviso to that rule which lays down that:

...."no power of revision shall be exercised by the Comptroller and Auditor-General, Member (Personnel), Postal Services Board, Adviser (Human Resources Department), Department of Telecommunications or the Head of Department, as the case may be, unless-

- (i) the authority which made the order in appeal, or
- (ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him...."

2. No proceeding for revision shall be commenced until after-

- (i) the expiry of the period of limitation for an appeal, or
- (ii) the disposal of the appeal, where any such appeal has been preferred.

Sub rule (3) of rule 29 states that an application for revision shall be dealt with in the same manner as if it were an appeal under these rules.

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6. From para 4.11 of the respondents reply, they have stated that the review petition should have been addressed to the Member(P) office order D.G. Posts New Delhi, ^{one of the} CPMG is not the proper authority to dispose of the same. That has been reiterated in para 5.11 of the reply wherein, it has been stated that the applicant has not adopted the proper procedure for the review and the competent authority to consider the review application was the Member(P) for the Directorate General of Postal Services.

7. Learned counsel for the respondents has contended that the disciplinary authority's order as well as the appellate authority's order are fully in accordance with law and procedure, and there is no scope at this stage for interference with the same. In this connection, he has invited our attention to the Hon'ble Supreme Court rulings in Government of Tamilnadu versus A. Rajapandian & Ors. (AIR 1995 SC 561), wherein, it has been held that the Administrative Tribunal has no jurisdiction to sit as the appellate authority over the findings reached by the enquiry authority in a disciplinary proceedings.

8. We make it absolutely clear that we have no intention to sit as an appellate authority over the findings of the disciplinary authority in the disciplinary proceedings in question.

9. We, however, note that the applicant's review petition dated 6.2.92 admittedly has not been disposed of till the date, and the reason why it has not

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been disposed of is found in para 4.11 and para 5.11 of the respondents own reply, wherein, it has been stated that it was not addressed to the proper authority who is in this case was Member (Posts) in the Directorate General of Postal Services.

10. In the circumstances, we dispose of this OA with a direction to the respondents to forward the applicants review application dated 6.2.92 to the competent authority (Member(Posts), Directorate General Postal Services) for disposal in accordance with law in the background of the provisions of Rule 29 of the CCS (CCA) Rules by a detailed, reasoned and self contained order under intimation to the applicant within 4 months from the date of receipt of the representation. Before a final order is passed by the competent authority, an opportunity should be given to the applicant for being personally heard.

11. This OA is disposed of accordingly. No costs.

A. Veda Valli
(DR. A. VEDAVALLI)
MEMBER(J)

/kam/

S. R. Adige
(S.R. ADIGE)
MEMBER(A)