

A 24 (10)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 463 of 1986

Allahabad this the 31st day of May 1996

Hon'ble Dr. R.K. Saxena, Member (Jud.)
Hon'ble Mr. S. Dayal, Member (Admn.)

Mahboob Ullah, S/o Sri Noor Mohammad, R/o Village-
Mahewan Kalan, Post Nahwai, Distt. Allahabad.

APPLICANT

By Advocate Sri Rakesh Verma

Versus

1. Union of India through the Director General,
Department of Post, New Delhi.
2. The Director Postal Services, Allahabad.
3. The Senior Superintendent of Post Offices,
Allahabad.
4. The Post Master General, U.P. Circle, Lucknow.

RESPONDENTS.

By Advocate Sri N.B. Singh.

ORDER

By Hon'ble Dr. R.K. Saxena, Member (J)

The applicant has filed this O.A. under
Section 19 of the Administrative Tribunals Act, 1985
to challenge the orders dated 08/9/82 (annexure-VII)
dated 09/7/86 (annexure-XI) and dated 14/6/83
(annexure-VIII).

2. The facts of the case as are set out

(11)

:: 2 ::

in the O.A. are that the applicant was working as a Postman at Allahabad Kutchery Post Office. Because of two criminal cases of embezzlement and cheating, ^{being &} ~~were~~ registered against him and he ^{being &} ~~was~~ convicted in the case no!337/73 State Vs. Mahboob Ullah' under Section 409, 468 and 471 I.P.C., he was placed under suspension w.e.f. 10/4/69. He had preferred an appeal before the High Court against the conviction. In another ' case no.775/1974 State Vs. Mahboob Ullah' under Section 409 and 468 I.P.C., he was acquitted. It appears that the record of the criminal case no [&] ~~337~~ in which the applicant was convicted, was extinguished by fire while being kept in the Record Room, the same record could not be produced before the High Court during the hearing of the criminal appeal. In the absence of the record, appeal was heard and it was observed that because the record was not available, the evidence could ^{if sent for retrial &} not be properly recorded. It was further observed that the case was not fit for retrial. Secondly, the conviction and sentence recorded by Additional Sessions Judge on 14/6/75 under Section 409 and 471 I.P.C. were set aside. The directions were given by the High Court that the department could proceed

:: 3 ::

departmentally against the applicant if the department had not taken such an action against him by that time. It appears that the applicant was, therefore, served with a charge-sheet and the Inquiry Officer was appointed. Since the record was not available because the same was produced in evidence before the Trial Court in the case under Section 409 and 471 I.P.C. and the said record having been lost in fire, the Inquiry Officer submitted the report that charges were not proved. The disciplinary authority, therefore, recorded order dated 31.3.86 (annexure-IX) that since the charges having not been proved, the proceedings initiated against the applicant, were dropped.

3. Before the charge-sheet could be served and the proceedings started against the applicant could be dropped, the action about the period of suspension was taken against the applicant. It may be mentioned that after he was acquitted by the High Court in appeal, the applicant was reinstated. Anyway, he remained under suspension from 10/4/69 to 11.6.81. The disciplinary authority issued notice to the applicant to explain as to whether this period should be treated as duty period or not

:: 4 ::

and on receipt of the explanation, the order dated 08.9.82 (annexure-VII) was passed. According to this order, the period of suspension from 10.4.69 to 11.6.81 ^{was} ~~would be~~ treated as ^{on} ~~duty~~ only for the purpose of leave and pension but, pay and allowances would be limited to the amount which the official had already drawn as subsistence allowance. It was further mentioned in the said order that the said order should be treated as final so far as the period from 10.4.69 to 04.5.1977 was concerned. The order so far as it related to the period from 05.5.77 to 11.6.81, would be reviewed after finalisation of the departmental proceedings initiated against him. The applicant had preferred an appeal against the said order which was disposed of vide order dated 14-6-83 (annexure-VIII) The appellate authority justified the order under F.R.54-A. It was further observed that the competent authority would pass an order on the completion of the departmental inquiry as regards the salary and allowances.

4. After the departmental inquiry was dropped against the applicant, he moved an application dated 02.6.86 (annexure-X) praying for orders about the full salary and allowances of the period of suspension. The Senior Superintendent, Post Offices passed the order on 09/7/86 (annexure-XI) that the

:: 5 ::

suspension period from 10/4/69 to 12/6/81 was already treated as ^{on} duty only for the purposes of leave and pension. So far as the pay and allowances were concerned, only that amount which was paid ~~to~~ him as subsistence allowance, should be deemed admissible ~~to~~ him. Feeling aggrieved by these orders, the O.A. has been preferred.

5. The respondents contested the case on the ground, that the orders which were passed by the concerned authorities were legal and valid and no interference was needed. It was further averred that the applicant would have been found guilty during departmental proceeding, had the record was not lost in fire. The O.A. is said to have [&] ~~been~~ no merits.

6. The applicant submitted the rejoinder, reiterating the facts as were mentioned in the O.A.

7. We have heard the learned counsel for the applicant-Sri Rakesh Verma and Sri A. Sthalekar, for the respondents. We have also perused the record.

8. In this case, the main question for determination is whether the applicant was entitled for the salary and allowances of the period of

:: 6 ::

suspension starting from 10.4.69 to 11.6.81. There appears some confusion in the mind of the disciplinary authority about the last date of suspension period because it has been mentioned as 12.6.81. The learned counsel for the applicant contends that the applicant had joined on 12.6.81. Thus, the period of suspension is from 10-4-69 to 11-6-81. It is also pointed out that the applicant had retired after reaching the age of superannuation on 31.1.1986. There is no dispute that the applicant remained under suspension during this period. It is also not disputed that two criminal cases under Section 409, 471 and 468 I.P.C. were constituted against the applicant. Of them, he was convicted in one of the cases by the Additional Sessions Judge, while in the other case, he was acquitted. It is not clear from the facts as to for how much period, during this suspension period, he remained confined in Jail or ⁱⁿ Police or judicial custody. The appeal which was pending in the High Court, was disposed of in the absence of the record which was extinguished in the fire of the Court. It is, therefore, quite clear that benefit of the record being not available, was given to the applicant and he was acquitted. The Trial Court found the applicant guilty. It is not the case of any of the parties here that the record

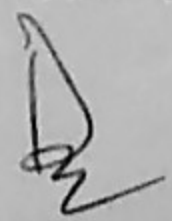
:: 7 ::

was not available to the Trial Court itself. Thus, it can be said that the Trial Court had convicted the applicant on consideration of the evidence on record. The sentence given to the applicant was of two years and six months under Section 409 and 471 I.P.C.. It is, therefore, clear that there was evidence against the applicant and for that reason, he was convicted. He was acquitted in the appeal by the High Court on the technical ground that the record was not available and re-trial was necessary. We have already mentioned this fact and we may quote the relevant paras of the judgment. They are;

"The record of the Court below is not available as it was burnt in the fire in the judgeship of Allahabad in May, 1978.

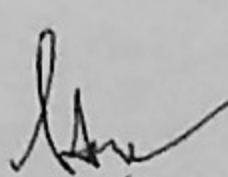
The occurrence took place 14 years ago. The department can proceed departmentally against the applicant if the department has not taken such an action against him so far and if the department is so advised. In this case there was evidence of a handwriting expert. Now that the record is not available, his evidence cannot properly be ^{recorded} ~~appreciated~~. In these circumstances it is not a fit case for retrial."

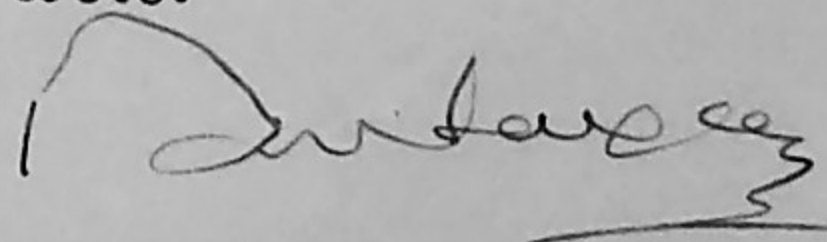
9. It is clear from these extracts of the Judgment that the record was extinguished in fire and it was not available at the time of hearing of



appeal. The High Court was definite in saying that there was evidence of Handwriting expert. There is no reason given in the Judgment as to why the point of retrial was thought of. Anyway, for our purposes this much is sufficient that there was evidence against the applicant and on that basis, he was convicted by the Trial Court but, was acquitted by the High Court on technical ground. The High Court had suggested the department to initiate the inquiries departmentally. It is quite clear that during this period from 10.4.69 to 11.6.81, the applicant was not in service. He did not discharge any duties. When he was convicted and sentenced to undergo 2 years 6 months R.I., he must have been sent behind the bars. In such a situation, the applicant does not appear entitled to full salary of this period.

10. On the discussion of the facts and circumstances, we find no illegality in the orders under challenge. The O.A. is, therefore, dismissed. No order as to costs.


Member (A)


Member (J)