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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH.

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Registration O.A. No. 1004 of 1987

Khalil Ahmad      ...      ...      Applicant.

Versus

Superintendent of Post Offices  
Budaun & others      ...      ...      Respondents.

...

Hon'ble Mr. K. Obayya, A.M.

Hon'ble Mr. S.N. Prasad, J.M.

( By Hon'ble Mr. K. Obayya, A.M. )

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed for quashing the charge memo dated 1.4.1987 contained in Annexure- A VIII and for treating the suspension period as on duty for all consequential benefits.

2.      The facts giving rise to this application are briefly as follows. The applicant while working as Postal Assistant in the Sub-post office at Bilsa, District Budaun was asked to look after the work of the Post Master, one, Sri Deo Pal Sharma when the latter proceeded on short <sup>leave</sup> during the year 1983. The applicant noticed shortage of Government money amounting to Rs.12,772.55/- on 24.6.1983 and reported the matter to the higher authorities. A criminal case was instituted against Sri Deo Pal Sharma for temporary embezzlement of Government money. The applicant was also made co-accused in the criminal case. The applicant was placed under suspension on 9.7.1983 and simultaneously departmental action was also initiated against him. The criminal case ended in the discharge of the applicant and shortly

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thereafter his suspension was revoked by an order dated 31.10.1985. The applicant was served with a charge memo on 18.2.1986 (Annexure- A V). This memo was cancelled and another charge memo was issued to him on 1.4.1987 containing the same charge mentioned in the first charge memo. According to the applicant, the embezzled amount was made good by Sri Deo Pal Sharma on 8.7.1983. It would also appear that both the criminal case and also departmental proceedings are still pending against the said Sri Deo Pal Sharma.

3. The applicant retired from service on 31.7.1989. Till the date of his retirement, he has not received any punishment in the departmental proceedings. In this application, the impugned charge memo is challenged on the ground that issue of second charge memo for the same allegation contained in the cancelled charge memo is against the principles of natural justice and also not in accordance with the instructions of the Director General, Post Offices given under rule- 15 of C.C.S. C.C.A. Rules, 1965. It is also his case that in as much as the departmental proceedings he is not led to imposition of any punishment, he is entitled for payment of full salary and allowances for the period covered under suspension.

4. The stand taken by the respondents in the counter is that the applicant as also Sri Deo Pal Sharma were joint custodians of the cash and other valuables in the post office and that mis-appropriation of the amount was the result of their joint efforts. Their further stand is that the applicant has delayed in reporting short fall in cash and delay indicated is connivance at the mis-deed. Regarding the cancellation

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of the first charge memo and re-issue of second charge memo, their contention is that there was a clerical mistake in the first charge memo dated 18.2.1986 consequently, it was cancelled on 25.3.1987 and a corrigendum was issued on 27.7.1987 and the second charge memo was served on 1.4.1987. The reasons for cancellation of the charge memo were given. According to them, issue of second charge memo by cancelling the first charge memo is not irregular or illegal as the charges contained in <sup>the earlier</sup> charge memo were not dropped. Their case is that the departmental proceeding against the applicant is still pending and after finalisation of the same, the suspension period will be regularised in accordance with the applicable rules.

5. We have heard Sri R.K. Tiwari, learned counsel for the applicant and Sri Shirish Chandra, brief holder of Sri N.B. Singh, learned counsel for the Respondents and we have also perused the record. The article of charge dated 1.4.1987 contained in Annexure- A VIII reads as under;

" Article No.1

While working as Postal Assistant Bilsi SD during June 83 and July 83 Shri Khalil Ahmad committed a grave misconduct in as much as he afforded opportunity to Shri Dev Pal Sharma for keeping cash short and he filled in SB account showing the cash in hand as Rs. 12772.55/- without endorsing suitable remark of shortage of Rs. 12772.55 paise w.e.f. 29.6.1983 to 7.7.1983. He also failed to put his initials in SB account as joint custodian of cash and valuables.

By acting in aforesaid manner the said Shri Khalil Ahmad is alleged to have contravened the provisions of Rule 658 of P&T Man Vol. VI part

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III and thereby failed to maintain absolute integrity and devotion to duty as required of him under rule 3 (i) (i) and 3 (i) (ii) of CCS (Conduct) Rules 1964."

The contention of the learned counsel for the respondents is that this charge memo is different from the first charge memo dated 18.2.1986. The second charge memo was issued after cancellation of the first charge memo. The reasons for cancellation of the charge memo have been given by the disciplinary authority and also it was indicated in the cancellation order that the cancellation of the first charge memo was without prejudice to further action against the applicant, therefore, the second charge memo is not violative of any rule or law, more so, when the first charge was not dropped on merits. The learned counsel for the applicant, on the other hand, stated that according to the instructions of the Director General, Post Offices, reasons should be furnished as to why the first charge memo is being cancelled and issuing a charge memo without complying with these instructions is violative of principles of natural justice. Therefore, he contended that the second charge memo is void.

6. We have carefully examined the order of cancellation of the first charge memo dated 25.3.1987 contained in Annexure- A VII. The order is as follows;

"The charge sheet under rule 14 of CCS(CCA) Rules 1965 issued under this office memo of even number dated 18.2.1986 against Shri Khalil Ahmad the them SPH Bilsa is hereby cancelled.

Supdt. of Post Offices  
Budaun Division Badaun."

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It can be seen from the above that the order does not contain any reasons for cancellation of the charge memo. Further it is noticed that corrigendum which according to the respondents became necessary because of certain errors in the first charge memo which is appended to the counter affidavit as Annexure-I was given on 27.7.1987. The respondents also admit in para-7 of the counter that this corrigendum was issued on 27.7.87 but the second charge memo is dated 1.4.1987. This clearly shows that the corrigendum is an after thought. The instructions under rule 15 of C.C.S. C.C.A. rules referred to by the learned counsel for the applicant are contained in para 9 page 73 of Swamy's Compilation 18th Edition. These instructions are to the effect that once the disciplinary proceedings are dropped, the disciplinary authorities are ~~debarred~~ from initiating fresh disciplinary proceedings unless the reasons for cancellation of the original charge-sheet or in dropping the proceedings are mentioned and it is also indicated in the order that the proceedings are dropped without prejudice to further action against the charged officer. These instructions evidently referred to disciplinary proceedings which are dropped. In this case, the proceedings were not dropped only the charge memo was cancelled. This cancellation was not on consideration of any representation of the applicant or on merits. In these circumstances, we <sup>are</sup> inclined to agree <sup>with</sup> the learned counsel for the respondents that in as much as cancellation of the first charge memo did not amount to dropping the charges either after consideration or on merits. There is no irregularity or illegality in issuing the second

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charge memo. What is required is that the charged officer should get opportunity to defend his case. The mis-appropriation of amount was made good by Sri Deo Pal Sharma against whom criminal charge as also departmental proceedings are pending. The applicant retired from service on 31.7.1989 on superannuation under normal terms. His pension and other retiral benefits have been settled. But the suspension period from 9.7.1983 to 31.10.1985 has not been regularised as yet. The applicant was evidently paid subsistence allowance. It is nearly 2 years after his retirement and <sup>the</sup> issue is still hanging.

7. Taking into consideration the facts and circumstances of the case, we are of the view that non-finalisation of the disciplinary proceedings initiated against the applicant even after 2 years of his retirement is not justified. We have not been informed as to why it is pending and where it is pending. The respondents have evidently not been able to complete the proceedings even though, the applicant continued in service after re-instatement from suspension from 31.10.1985 till the date of his retirement i.e. 31.7.1989.

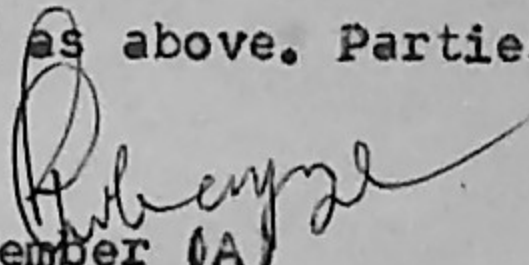
8. In these circumstances, we direct the respondents to finalise the disciplinary proceedings and pass orders within 3 months from the date of receipt of a copy of this order. They are further directed that in the event of their failure to pass final orders within 3 months, the applicant should be paid full salary and allowances by deducting the subsistence allowance as already paid

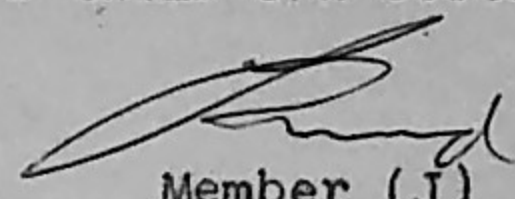
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to the applicant for the period 9.7.1983 to 31.10.1985 and also revise his pension and other retirement benefits, if any, arising out of full payment of salary for the suspension period treating it as on duty. The application is allowed as above. Parties to bear their own costs.

  
Member (A)

  
Member (J)

Allahabad

Dated : 17/5/1991

(n.u.)