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Reserved

Central Administrative Tribunal, Allahabad.

Registration No. O.A. 1 of 1988

Brij Mohan Pandey Applicant

Vs.

Senior Superintendent of
Post Offices, East Division
Varanasi and another Respondents.

Hon. G.S.Sharma, JM
Hon. K.J.Raman, AM

(By Hon. G.S.Sharma, JM)

In this petition u/s.19 of the Administrative Tribunals Act XIII of 1985, the applicant has prayed that the disciplinary proceedings started against him after a period of 15 years be dropped and the period of his suspension be regularised with all consequential benefits.

2. The facts of this case are a bit peculiar. The applicant was posted as Postal Assistant at Sub-Post Office Singra in Varanasi town from 1969 to 1972 and was thereafter transferred to Varanasi Head Office from 8.7.1972. On account of embezzlement of certain money, he was placed under suspension on 10.8.1972 and 3 FIRs dated 7.8.72, 25.8.72 and 1.9.72 were lodged against him by the respondent no.1. The Police submitted a charge sheet only in respect of one report on 12.8.1975. For want of the case diary, the said charge sheet was consigned to records on 20.6.1983. Final reports were submitted by the Police in respect of other two FIRs which were accepted by the Magistrate concerned on 5.1.1985. The suspension of the applicant was revoked after a great delay on 30.7.1987 by the respondent no.1 but after a period of 14 $\frac{1}{2}$ years, he was served with a charge sheet dated 19.2.1987 under

rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules by the respondent no.1 in respect of the subject matter of the FIRs aforesaid. It is alleged that under the provisions of rule 10 sub-rule 8(3) (4) of the CCS (CCA) Rules and the instructions issued from the Govt from time to time the charge sheet could not be issued to him for disciplinary action after such an undue delay and as the evidence likely to be produced against the applicant may also not be available now after such delay, the applicant is being unnecessarily harassed by the respondents and despite his representations, the disciplinary proceedings initiated against him have not been dropped. The applicant alleges that he cannot be proceeded against departmentally under the law and has accordingly prayed for dropping the proceedings.

3. In the reply filed on behalf of the respondents by the respondent no.1, it has been stated that during the year 1972-73, the applicant is shown to have misappropriated the amount of Savings Bank Deposits and withdrawals to the tune of Rs.24,978 permanently and Rs.4835 temporarily and he was accordingly placed under suspension on 10.8.1972. The cases were reported to the Police and the Police submitted charge sheet against the applicant in one case u/s.409 IPC and the said case is still pending against the applicant. As Police did not take action against the applicant on 2 other reports and the case against the applicant did not proceed in the Court despite the submission of the charge sheet, the suspension of the applicant was revoked on 30.9.1987 and he was served with a charge sheet under rule 14 for taking the disciplinary proceedings against him which are permissible under the law and the contention of the applicant to the contrary is not correct and the applicant is not entitled to any relief.

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4. The applicant filed a long rejoinder with a number of annexures. The last two annexures, A-22 and A-23, go to show that on 23.5.1988 the inquiry officer in his summary of inquiry report exonerated the applicant by ~~giving~~ coming to the conclusion that the charges levelled against the applicant are not proved. The disciplinary authority, however, did not accept this report and holding the applicant guilty passed an order on 30.6.1988 reducing the applicant in grade for a period of 5 years without any cumulative effect. In view of these two orders, we are of the view that the petition has become infructuous and as the disciplinary proceedings pending against the applicant have already been concluded, the question of their dropping does not arise.

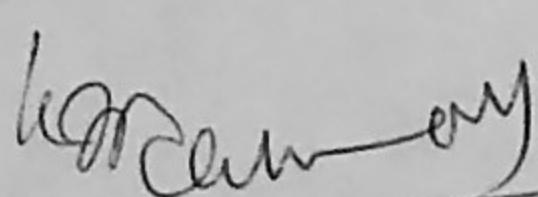
5. We have also examined the case of the applicant on merits. We are of the opinion, that the delay in taking the action against the applicant by the respondents was solely due to the inaction of the Police and to some extent by the Magistrate concerned. Three specific reports were made by the respondent no.1 against the applicant to the Police and on investigation, the allegations made atleast in one report were found, *prima-facie*, correct and a charge sheet was submitted against him ⁱⁿ ~~to~~ the Court on 12.8.75. The Police, however, did not produce the case diary and other relevant papers before the Magistrate and as such, the case was consigned to the record room. There is no order of acquittal against the applicant so far and in the eye of law criminal case should be deemed to be still pending against him though it is actually ^{not} ~~progressing~~ in Court. In the other cases, the Police is shown to have submitted final reports which were accepted by the Magistrate. The copy of one such order dated 30.5.85 (?) is available on the record as annexure 2 to the petition. It is not shown as to when the respondents knew about this order of Magistrate. It is also not on record to show that the Magistrate

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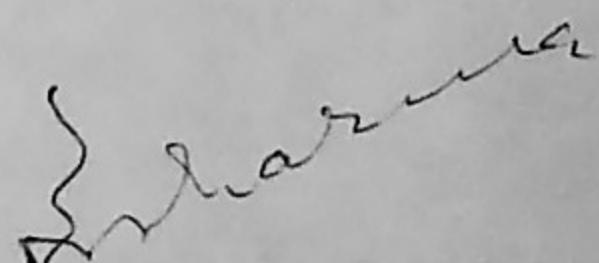
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had accepted the final report of the Police after due notice to the applicant. Thus, some time was likely to be taken by the respondents after knowing the acceptance of the final report by the Magistrate in making up their mind to take action against the applicant departmentally and the delay thus having been caused ^{due to} to Court and Police proceedings against the applicant stands well explained and the proceedings cannot be dropped or quashed merely on this ground. In case the evidence likely to be produced against the applicant has been lost or is not available, it will be to his own benefit and it is better that after the exercise of the disciplinary action, he is exonerated on merits in the disciplinary proceedings so that the clouds cast on him are cleared. We, therefore, do not find it to be a fit case for any interference even if the disciplinary proceedings against the applicant are still pending and have not been concluded ^{though & otherwise} as shown by annexures A-22 and A-23 mentioned above.

6. The petition is accordingly dismissed without any order as to costs.



MEMBER (A)



MEMBER (J)

Dated: 30.1.1989
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