

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 21st day of August 1996.

Original Application no. 18 of 1988.

Hon'ble Mr. T.L. Verma, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member.

Yad Ram, S/o Late Shri Hukmi Ram, Postal Assistant, H.O.
Agra, C/o Puran Chand House no. 39/3, Nandanpura Road, Agra.

... Applicant.

C/A Shri Rakesh Verma.

Versus

1. Union of India through Senior Superintendent of Post
Offices, Agra Division, Agra.

... Respondents.

C/R Shri Ashok Mohiley.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the
Administrative Tribunal's Act, 1985, has been filed to seek
following reliefs:-

- i. quashing of the order of the compulsory retirement
dated 26.10.97.
- ii. quashing of order of suspension dated 30.10.87.
- iii. direction to give all consequential benefits and
quashing of above two orders.

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2. The facts as narrated in the application are that the applicant was posted as Postal Assistant, Pinhat, Agra. He was placed under suspension on 24.01.86 as disciplinary proceeding were contemplated under Sub Rule 1 of Rule 10 of CCS rules 1965. No charge sheet was issued. The proposed enquiry could not proceed upto 15.12.86. The order of suspension was revoked by the respondents by its order dated 15.10.86. Thereafter, the enquiry was initiated on 12.02.87. The Enquiry Officer found him guilty even though the depositors and the complainant did not turn up during enquiry. The applicant was retired compulsorily by order dated 20.10.87. The period after revocation of suspension from 24.01.86 to 30.10.87 was decided as period of suspension by order dated 30.10.87. The applicant represented against two orders dated 26.10.87 and 30.10.87 on 14.11.87.

3. Arguments of Sri Rakesh Verma learned counsel for the applicant and Sri Ashok Mohiley learned counsel for the respondents were heard.

4. The respondents in their CA have stated that Sri Ghanshyam Singh, Lekhpal, Bah, Agra submitted a complaint that he had not received pass books for three new accounts under National Small Saving Scheme in the name of Sri Ram Bharose Singh, Sri Nek Ram and Sri Ram Prakash Sharma although counterfoils of the pay in slip duly signed and stamped were given. At that time he was told that the pass books were not in the stock. The respondents claim that further enquiry revealed that the counter clerk did not account for the amount

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of Rs. 1250/- on 16.09.85. He issued pass book account no. 615524 on 30.12.85 in the name of Sri Ram Bharose Singh for Rs. 500/-, account no. 615523 in the name of Sri Ram Prakash Sharma for Rs. 250/- on 30.12.85 and account no. 615528 in the name of Sri Nek Ram for Rs. 500/- on 21.1.86. Thus there was misappropriation of amount from 16.09.85 to 30.12.85 in case of two accounts and 16.09.85 to 27.01.86 in case of one account. It is admitted that Sri Yad Ram was placed under suspension on 24.01.86 and the suspension order was revoked on 16.10.86. It is also admitted that the depositor and the Lekhpal who was the first complainant did not turn up during the enquiry. It is mentioned that since the applicant was awarded major penalty of compulsory retirement, the period of suspension was not treated as duty. It is admitted that the representation of the applicant was received but it is stated in the CA that the request of the applicant for setting aside of two orders was not accepted. It is stated that his past services in the department were not satisfactory that he is a man of fraudulent bent of mind and had been awarded penalties in the past also. The plea has been made that the application is time barred because the order of compulsory retirement was passed on 26.10.86 and the petition has been filed on 05.01.88.

5. Suppl. Affidavit has also been filed on behalf of the respondents. It has been mentioned in para 8 of the Suppl. Affidavit that the applicant received Rs. 1250/- for opening three new accounts and the accounts for the amount not opened on the same date which was 16.09.85. It is also stated that the amount was not handed over to S.P.M. ^{for} keeping it in account on the same date.

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6. The applicant has challenged the impugned orders on the ground that he was denied opportunity to cross examine the complain^{ant} on whose instance the enquiry was started. He has also raised issue of absence of witnesses against him during the enquiry to say that the allegations remained not proved. Lastly he has challenged the period of suspension on the ground that the respondents were responsible for holding up the enquiry during the suspension.

7. As far as the first two grounds are concerned and also issue which is to be examined by us is whether any evidence is existent to substantiate the charges made against the applicant. The charges against the applicant are that he had received Rs. 1250/- for opening two accounts on 16.09.85 but he did not open the account no. 615523 and 615524 for Rs. 750/- till 29.12.85 nor did he account for the above amount in the Post Office account. Similarly in case of account no. 615528 the period of misappropriation was from 16.09.85 to 20.01.86 because account was open only on 21.1.86. This amounted to misappropriation for the period mentioned in the case of three accounts. The applicant, in his statement before Enquiry Officer or in his brief submitted to the Enquiry Officer, has not denied that the amount was received by him, but the applicant has raised the plea that he had returned the amount to the Lekhpal under orders of the Sub Postmaster because there is no pass book available in the stock. Thereafter, the account were opened after the Lekhpal brought the index card alongwith the amount. He alleges that the entire case is concocted by Lekhpal against him. Any examination of this issue would amount to reappreciation of evidence of this case

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which is not within the jurisdiction of this court, because in view of the fact that the amount was received and that new account were opened after the few months of the receipt of the amount, it can not be said to be a case with no evidence. As a matter of fact in his statement annexed as annexure A 5 to the CA has stated that the Lekhpal had given Rs. 1250/- but no pass book was issued because blank pass books were not in stock and this amount was kept in the head of account till the pass book were made. Therefore, his plea that returned the amount to the Lekhpal alongwith index card and pay in slip is not worthy of any credence.

8. As far as the period of suspension is concerned, it is true that the applicant was suspended w.e.f. 24.01.86 and that the suspension was revoked on 15.10.86. After revocation of suspension the applicant was on duty for all purposes. The show cause notice dated 30.10.87, annexed as annexure 7 to the application, requires the applicant to show cause why "the period of suspension should not be treated as suspension for all purposes." The applicant submitted his representation against this notice on 14.11.87 in which he has stated that norms of natural justice have not followed in the inquiry against him nor he ^{was} given benefit of order of Director dated 28.03.84 and that 9 increments during his period of absence from 14.09.71 to 30.04.81 should be restored pursuant to the order of D.P.S. He has not stated as to why the period of suspension should be treated as period of duty. The applicant has also not made any complaint reference to the final order passed regarding his period of suspension by the respondents. The respondents have stated in their suppl. counter affidavit



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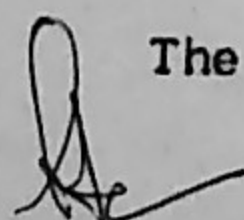
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that the Senior Supdt. of Post Office had to decide as to how the period of suspension of the applicant should be treated by memo no. F/SB-4/85-86 dated 27.11.86, in which it was mentioned that since the applicant had been awarded meior penalty of compulsory retirement, the period of suspension should not be treated as period of duty for any purpose. We find no informative in this case and hold that the applicant is not entitled to this relief.

9. The applicant has claimed that he had filed a representation against the orders dated ²⁶~~25~~.10.87 and 30.10.87. However, his representation dated 14.11.87 at annexure 8, the only representation filed has no reference to the order dated 26.10.87 annexed ^{as} ~~to~~ annexure 6 to the application. The applicant has mentioned as subject of his representation the treatment of suspension from 24.01.86 to 23.10.86. However, the applicant claims in this representation that the departmental proceedings were not conducted in accordance with principles of natural justice and he also makes plea for restoration of increment earned for the period of 14.09.71 to 30.04.81 and the respondent should only then pass orders regarding the period of suspension in this application. Therefore, it is clear that the applicant in his representation regarding treatment of suspension period has made oblique reference to the order compulsory retirement.

10. The first relief claimed by the applicant is of quashing of order of compulsory retirement dated 26.10.87. The applicant's claim to this relief is on the ground that



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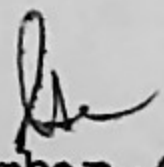
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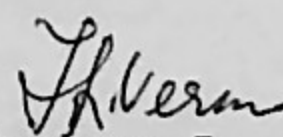
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the charge has not been proved against him beyond doubt. The charge against the applicant was temporary misappropriation from the date of opening of account ~~till~~ till the new S.B. accounts were opened and pass book were prepared. There is enough oral and documentary evidence to show that this ^{had} happened and the applicant himself gave ⁱⁿ consistent statement during preliminary enquiry and in the departmental enquiry. Therefore, the first relief asked for is inadmissible.

11. Since the applicant is not entitled to the main relief, he ^{is} not entitled to the third relief solicited by him as it is consequential to first relief.

12. The application, therefore, fails and is rejected. There shall be no order as to costs.


Member-A


Member-J

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