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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

(SAI)
5/11

Original Application No. 766 of 1988

Allahabad this the 29/1/ day of Feb. 1996

Hon'ble Dr. R.K. Saxena, Member (Judicial)
Hon'ble Mr. S. Dayal, Member (Administrative)

Hari Krishna Upadhyaya, S/o Sri Jwala Prasad Upadhyaya,
Postal Assistant, Post & Telegraph Department, Head Office,
Basti, R/o Village Bhainsaya, Post Dudhaura, Pargana,
Tehsil and Distt. Basti.

APPLICANT

By Advocate Sri B.K. Srivastava

Versus

1. Union of India through Secretary, Ministry of Posts and Telegraphs, New Delhi.
2. The Director, Postal Services, Lucknow Region, Lucknow.
3. Superintendent of Post Officers, Basti Division, Basti.

RESPONDENTS.

By Advocate Sri N.B. Singh.

ORDER

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

To challenge mainly the order dated 25.11.82
annexure-3 whereby recovery of one year's ^{salary} from the
applicant was ordered, and the suspension order
dated 19.12.1977(annexure-1) and another order
dated 09.2.1983 regarding the denial of pay ^{after revocation of suspension} and as well as for the period of suspension from 19.12.77
to 29.11.82, is filed this O.A.

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2. The facts of the case are that the applicant was appointed as a Postal-Clerk at Basti Head Post Office on 07.3.1977. He was allotted the job of Money-Order Issue-Clerk during the year 1977. An information was received about non-receipt of I.P.O.'s and B.P.O.'s paid returns to audit and, therefore, the inquiry was made in which it was revealed that the applicant had misconducted himself; and, therefore, he was placed under suspension vide order dated 19.12.77. The case of mis-appropriation was reported to the Police where a case under Section 409 I.P.C. was registered. The investigation was ~~done~~ ^{done} by the Police and ultimately a final report dated 09.3.79 was submitted. Thereafter, the applicant was served with the charge-sheet on 28.2.1980 with the allegation that the applicant on various dates starting from 12.9.77 to 12.12.77 had discharged the duties of the counter where Indian Postal Orders and British Postal Orders were presented. The applicant was required to put up those postal-orders of both kinds before Assistant-Post-Master for examination and authorising their payments by impressing the round M.O. Stamp and to cross the face of the Postal Orders in red ink and putting the signatures thereon. It is alleged that the applicant paid the value of the said orders to their holders straight way on his own accord without obtaining the authority for their payment from Assistant Post Master as was required. He denied the charges levelled against him and, therefore, the inquiry was started. The

Inquiry-Officer was appointed. On completion of the inquiry, the Inquiry-Officer submitted report on 19.6.1982 to the disciplinary authority holding that charges no.5 and 6 were proved and other charges were not proved. The disciplinary authority disagreed with the report as regards charges no.1, 2, 4, 7 and 8 and held that all the charges were proved. Therefore, the order of punishment was passed on 25.11.1982 whereby the recovery of one year's salary in 36 instalments, was ordered. As regards suspension period the order was passed on 09.2.83 with the direction that the said period of suspension should be treated on duty for pension only.

3. The applicant preferred ~~and~~ appeal against the order which was passed as regards the suspension period but the same was rejected on 04.7.1984. He also filed appeal against the order of penalty on 28.6.84 and made representations on 18.7.1987 and 23.10.1987. It is claimed by the applicant that the result of disposal of appeal has not been communicated to him.

4. This O.A. has been preferred on the ground that the suspension order which was initially passed on 19.12.1977, was passed by an authority which was not competent. The said suspension order was, however, revoked and the applicant was reinstated on 25.11.82 . The order of suspension dated 19.12.77 was appealed against on 23.11.81 and the final order of suspension

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period being treated on duty for pension only, was also appealed against the order dated 09.2.83, ^{which} was rejected by an unreasoned order on 04.7.84.

5. As regards the disciplinary proceedings, the applicant comes with the plea that the order of punishment was not sustainable because the inquiry-officer did not find the charges established; and the disciplinary authority did not record the reasons of dis-agreement. The order of punishment was passed mechanically and no show-cause notice against the proposed punishment was given. Feeling aggrieved, this O.A. was filed with the reliefs which have already ^{been} mentioned.

6. The respondents contested the case by filing counter-reply through Sri V.H. Shanbhag, Superintendent Post Office, Basti. It is averred that the applicant had misconducted himself by not following the prescribed procedure for the payment of Indian Postal Orders and British Postal Orders and, therefore, he was placed under suspension and subsequently charge-sheeted. It is also pleaded that the suspension-order was passed by the competent authority and the order dated 09.2.83 about the suspension period being treated on duty for pension only, was also passed by the competent authority ^{and} legally. As regards the charge-sheet served on the applicant, it is pointed out that inquiry was started after giving opportunity to defend and after the charges were denied by the

applicant. The respondents came with the assertion that the Inquiry-Officer had held charges no.5 and 6 established while others were not found established but the disciplinary authority was not bound by the findings of the Inquiry Officer and the view of the other charges having not been found established, was claimed to have been rightly discarded. It is also contended that the order of punishment was rightly and legally awarded and that order cannot be challenged because of being barred by limitation.

7. We have heard the learned counsel for the parties and have perused the record.

8. In this case, the applicant has challenged the order of punishment in the departmental proceedings and has also challenged the order of suspension passed on 19.12.1977, and of suspension period being held on duty for pension only, vide order dated 09.2.83. Besides these two main reliefs, the applicant has also sought directions to pay full pay and allowances for the period of suspension, confirmation, disposal of representation and such other reliefs as may be deemed fit. From the facts, as are set out earlier, it is revealed that the order of punishment whereby one year's salary was required to be recovered in 36 instalments, was passed on 25.11.1982. The order of suspension was passed on 19.12.1977 and the suspension period to be treated on duty for pension only was ordered on 09.2.1983. The appeal against this order of 09.2.83 was rejected on 04.7.84. We, thus, find that several remedies for the orders which were passed on different dates and giving

the separate cause of action, have been combined in the O.A. Rule 10 of Central Administrative Tribunal (Procedure) Rules, 1987 prohibits such plural remedies through one application. In our opinion, all these remedies which are specified in para 7 of the O.A., cannot be sought in the manner in which they have been.

9. First of all, we take up the question of limitation, it appears that the applicant is mainly contesting the order of suspension period being treated on duty for pension only. This order was passed on 09.2.83 and it was appealed against but the said appeal was rejected on 04.7.84. This O.A. has been filed on 03.6.88. Thus, the O.A. was filed after about 4 years. The period of limitation is only 1 year. Thus, it is barred by limitation.

10. If we take up the order which was passed on 25.11.82 about the mis-conduct and penalty of recovery of one year's salary having been ordered to be made in 36 instalments, the period of limitation again operates. It has been pointed out that appeal against the order of penalty was filed on 28.6.84. According to the applicant, the result was not communicated. The respondents did not make a mention if any appeal was filed; and if so, it was decided on what date. Anyway, if the appeal was preferred on 28.6.84 and the result was not communicated, there was no point for having waited for about 4 years.

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11. Now we take up the case on merits. The penalty order has been challenged on two grounds namely that the reasons of disagreement with the report of Inquiry Officer, have not been recorded. The contention of learned counsel for the respondents is that disciplinary authority is not bound by the report which is submitted by the Inquiry Officer; and it can hold altogether a different view. In the present case, the position is some what different. It is not that Inquiry Officer had recorded its findings of all the charges having not been established. What he did is that charges 5 and 6 were found established by him while other charges were not proved. Even if it is assumed that the reasons have not ^{been} recorded about disagreement, there was agreement with respect to the findings on charges 5 and 6. Thus, the punishment can validly be awarded by the disciplinary authority on the charges which were found established. Looking to the fact that the stipulated procedure ^{of his post} was not adopted by the applicant, the punishment which was awarded could not be said to be severe one. Thus even on merits, we do not find any ground to interfere with the order of punishment.

12. The emphasis of the applicant had been to challenge the different orders of suspension and the period of suspension being treated on duty for pension only. So far as the initial order of suspension dated 19.12.1977 is concerned, it was recalled and the applicant was re-instated vide order dated 25.11.1982 and he had actually resumed duty on 29.11.1982. Thus, ^{there} remains no point of

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challenging the said order. In other words, the challenge of the order dated 19.12.77 becomes infructuous.

13. The question raised is if the order dated 09.2.1983 whereby the period of suspension was treated on duty for pension only, was legal. The argument advanced on behalf of the applicant is that no show-cause notice before passing the order was given. No authority on this point could be shown to us. The disciplinary authority is the best judge for passing an order about the period of suspension. The scope of judicial review is very limited. Unless any illegality or perversity is shown, it would not be possible for us to interfere therein. Judging from this angle, we find that the learned counsel for the applicant could not show anything of the nature. Thus, we do not find any substance about the challenge of the order dated 09.2.83. The result is that O.A. is dismissed. No order as to costs.

Member (A)

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