

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 19TH DAY OF JULY 2000

Original Application No.176 of 1992

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.S.DAYAL, MEMBER(A)

Surya Kumar Verma, Son of Sri Harihar Prasad  
R/o 133/138, M.Block, Kidwai Nagar,  
Kanpur.

....Applicant

Versus

1. The Union of India, through the Secretary  
Govt. of India, Ministry of  
Post & Telegraphs, Communication  
New Delhi.
2. Senior Supdt. of Post Office,  
Kanpur City Division, Kanpur. .... Respondents

Along With

Original Application No.1326 of 1992

Surya Kumar Verma, Son of Sri Harihar Prasad  
R/o 133/138, M.Block, Kidwai Nagar,  
Kanpur.

.... Applicant

Versus

1. The Union of India through the  
Secretary, Ministry of Post & Telegraphs  
Communication, Govt. of India,  
New Delhi.
2. The Senior Supdt. of Post Offices,  
Kanpur City Division, Kanpur.
3. The District Magistrate,  
Kanpur Nagar, Kanpur.
4. The Tehsildar, Kanpur  
Nagar, Kanpur.

.... Respondents

Along With

Original Application No.681 of 1992

Surya Kumar Verma, son of Sri Harihar Prasad  
R/o 133/138, M.Block, Kidwai Nagar,  
Kanpur.

.... Applicant



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Versus

1. The Union of India through the Secretary Ministry of Posts & Telegraphs, Communication, Govt. of India, New Delhi.
2. The Senior Supdt. of Post Offices, Kanpur City Division, Kanpur.
3. District Magistrate, Kanpur Nagar, Kanpur.
4. Tehsildar Kanpur Nagar, Kanpur.
5. The Registrar, Tehsil Kanpur
6. Sub-Divisional Officer, Kanpur City (East Division) Kanpur.
7. The Post Master(L.S.G.), Transport Nagar, Kanpur.
8. Post Master Kanpur Cantt. Head Post Office Kanpur Nagar.

.... Respondents

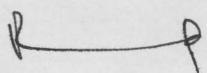
Counsel for the applicant.: S/Shri R.G.Padia & Z.K.Hasan.

Counsel for the Respondents Shri C.S.Singh, Advocate.

O R D E R(Oral)

(By Hon.Mr.Justice R.R.K.Trivedi, V.C.)

The facts in short stated in the aforesaid applications are that the applicant Shri S.K.Verma was serving as Sub Post Master, New P.A.C.Lines, T.P.Nagar Post Office, Kanpur. It was alleged that while applicant was functioning as Sub Post Master, New P.A.C.Lines Post office, T.P.Nagar, Kanpur during the period from September 1971 to May 1972, some withdrawals were made in Saving Bank account on the basis of forged signature and without making payment to the depositors, the amount was taken under the head Saving Bank withdrawals. Total amount involved was Rs.18,550/-. For this First Information Report was lodged. Applicant was tried by Addl.Chief Metropolitan Magistrate, Kanpur in criminal case nos.1268/81,1270/81 and 1269/81 for the offences u/s 409/420/468/471 I.P.C. By separate orders in each case, passed on 23.11.1982 applicant was acquitted for criminal charges. Applicant was put under suspension

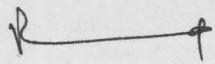


w.e.f. 19.6.1972. However, on his acquittal in criminal cases he was reinstated on 8.2.1983 and thereafter promoted to the next higher post w.e.f 23.11.1983. By order dated 8.5.1984 applicant was treated in service during suspension period also. On 19.9.1991 a memo of charge was served on the applicant for the alleged lapses during the period September 1971 to May 1972 and disciplinary proceedings were initiated. Disciplinary authority by order dated 31.12.1991 passed the following order against the applicant.

"In face of what has been discussed of the whole affair I conclude that charges against the accused are proved beyond doubt. Therefore, I Anju Nigam, Senior Superintendent of Post Offices, Kanpur City Division hereby order for recovery of Rs.17,555/- which is a part of government loss in 36 instalments @ Rs.500/- per month commencing from January 1992 from Shri S.K.Verma Sub Post Master, T.P. Nagar Post Office, Kanpur and further order of withholding of his one next increment for a period of three years without cumulative effect."

This order of punishment has been challenged in OA No. 176/92. In pursuance of the aforesaid order recovery was sent to District Magistrate, Kanpur for recovery of Rs.17,555/- as loss of money sustained by the government revenue. This order of recovery communicated to the District Magistrate, Kanpur has been challenged in OA No.681/92.

By order dated 18.8.1992(Annexure 1) passed by Asstt.Suptd. of Post office, Cantt. Depot, Kanpur, applicant has been required to make good the loss suffered by government and deposit of Rs.18,550/- at the Kanpur Head Post Office in A.C.G 67 within 15 days after receipt of



~~the~~ letter, failing which action may be taken and recovery shall be made. Challenging this order OA No.1326/92 has been filed.

We have heard Shri Z.K.Hasan learned counsel for the applicant and Shri C.S.Singh learned counsel for the respondents.

Shri Hasan has submitted that disciplinary proceedings were not legally maintainable in view of the judgment of the criminal court by which the applicant was acquitted. It is submitted that the allegations against the applicant in both criminal case and disciplinary proceedings were identical and evidence was also same, in the circumstances judgment of the criminal court was binding on the <sup>not</sup> Disciplinary authority and he could/ initiate disciplinary proceedings against the applicant after 19 years of the occurrence. It is also submitted that proceedings and the impugned order of the punishment are also liable to be quashed, on the ground of inordinate delay of 19 years. learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in case of Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd. and others, 1992(2 PAC1009)(SC).

Shri C.S.Singh on the other hand submitted that in disciplinary proceedings initiated against the applicant allegations against him were different, that he could not control his office as Sub Post Master and allowed unauthorised withdrawals from the Saving Bank account, which caused monetary loss to the Government. It is also submitted that considering the facts and circumstances of the case proceedings cannot be termed to be bad on the ground of delay only. Learned counsel has also submitted that OA No. 681/91 and 1326/92 are misconceived and not maintainable as recovery of the amount under PD Act cannot be termed a dispute regarding service matter. Reliance has been placed in the judgment of Lucknow Bench of this Tribunal in case of 'Madan Lal Mishra Vs.Superintendent of Post Office and others' P

Post office and Others, reported in 1988 Vol(II) CAT pg302.

We have carefully considered the submissions of the learned counsel for the parties. We have also perused the judgments of the criminal court and order of the disciplinary authority in which applicant has been punished.

6. In our opinion the allegations against applicant in both the proceedings were identical and evidence relied on was also same. In such facts and circumstances the judgment of the Hon'ble Supreme court in case of 'Capt.M.Paul Athony (Supra)... is squarely applicable. In para 33 of the judgment ~~in which~~ Hon'ble Supreme Court held as Under:-

"There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom. The findings recorded by the Inquiry Officer a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that

no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the findings that the "raids and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings, to stand."

In the present case the criminal court clearly recorded a finding that there is no evidence to establish the charge against the applicant that he was in any way responsible for withdrawing the money from the saving bank accounts of the depositors. Subject matter of inquiry in disciplinary proceedings initiated against the applicant was also same that he allowed forged withdrawal of money from the saving bank accounts which was not paid to the depositors.

In our opinion the case is squarely covered by legal position <sup>stated</sup> by Hon'ble Supreme court in above case and disciplinary proceedings could not be initiated against the applicant. It is also <sup>note</sup>worthy that after acquittal in criminal cases on 23.11.1982 applicant was reinstated on the post with continuity in service during period of suspension. He was promoted to the next higher post. Disciplinary proceedings were initiated against him after lapse of a long period of 19 years. No satisfactory explanation has been given by the respondents in the counter affidavit for this long delay. Hon'ble Supreme Court in case of State of Madhya Pradesh Vs. Bani Singh and another(A.I.R 1990 S.C.1308) disapproved the initiation of disciplinary proceedings after 12 years. Hon'ble Supreme court in para 4 of the judgment gave reasons which are



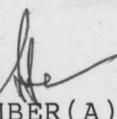
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relevant and squarely applicable in the present case.

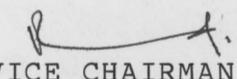
For the reasons stated above in our opinion the impugned order of punishment cannot be sustained and is liable to be quashed. Original Application No.176/1992 is allowed. Impugned order of punishment dated 31.12.1991 (Annexure A-14) is quashed.

With regard to the OA No.681/92 and OA 1326/92 objection has been raised by learned counsel for the respondents that they are not maintainable being cases of recovery from the employee under P.D.Act. It is not disputed that recovery from the applicant in both aforesaid OAs is as a matter of consequential action under the order of punishment. Since impugned order of punishment dated 31.12.1991 has been quashed in OA No.176/92, there is no question of recovery of any amount from the applicant. In the circumstances both these OAs are also disposed of finally by this orders.

There will be no order as to costs.



MEMBER(A)



VICE CHAIRMAN

U.Verma