

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 9th day of April 2002

Original Application no. 314 of 1993.

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Maj Gen K.K. Srivastava, A.M.

Triloki Nath, S/o Sri Badri Prasad,
R/o Vill and Post Office Dhani Bazar,
Distt. Maharajganj.

... Applicant

By Adv : Sri M.K. Updhayaya
Sri R.C. Maurya

V E R S U S

1. S.D.I. (Posts) Anand Nagar, Maharajganj.
2. The Supdt. of Post Offices, Gorakhpur Division, Gorakhpur.
3. Union of India through the Chief Post Master General, U.P. Circle, Lucknow.

... Respondents

By Adv : Miss. Sadhana Srivastava

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA filed under section 19 of the A.T. Act, 1985, the applicant has challenged the order of ^{Inspector} Sub Divisional (Posts) (in short SDI (P)), Anand Nagar, Maharajganj (respondent no. 1) dated 14.8.1992 putting off the applicant. The applicant has also challenged the order of respondent no. 1 dated 22/31-05-1993 dismissing the applicant and has prayed that the impugned order dated 14.08.1992 and 22/23-5-1993 be quashed and the respondent no. 1 be directed to allow the applicant to perform his duty with all consequential benefits.

...2/-

2. The facts, in short, giving rise to this OA are that the applicant was employed as Extra Departmental Mail Peon (in short EDMP) Baisar Dhani Distt. Maharajganj. He was dismissed from service by Sub Divisional Inspector Anand Nagar (respdt no. 1) vide order dated 17.1.1987. The appellate Authority confirmed the punishment vide appellate order dated 21.5.1987. The applicant filed OA no. 813 of 1988 in this Tribunal challenging the order of Disciplinary Authority dated 17.1.1987 and also the appellate order dated 21.5.1987. This Tribunal vide order dated 18.2.1992 remanded the case to the appellate authority with its observations and direction that the matter be decided afresh within a period of three months by giving full opportunity of hearing to the applicant. The appellate authority after considering the documents set aside the order of dismissal dated 17.1.1987 by order dated 16/27-7-1992. The appellate authority also directed respondent no. 1 to take back the applicant on duty as EDMP Baisar Dhani with immediate effect and the period may not be treated as break in service. S.D.I., Anand Nagar (respdt no. 1) did not reinstate the applicant and instead passed order dated 14.8.1992 putting off the applicant. Charge sheet was issued on 26.11.1992 for temporary misappropriation during 1984 and unauthorisedly doing Savings Banks functions of Baisar Dhani, E.D. Branch Post Office from 1.3.1983 to 29.9.1984. Enquiry Officer was appointed by order dated 18.12.1992. The enquiry officer submitted report on 26.4.1993 and punishment order dated 22/31-5-1993 was issued by respondent no. 1 imposing the penalty of dismissal from service. Hence this OA, which has been contested by the respondents.

3. Heard Sri M.K. Updhayaya, learned counsel for the applicant and Miss. Sadhana Srivastava, learned counsel

for the respondents and perused records.

4. Sri M.K. Updhayaya, learned counsel for the applicant ^{has submitted} that the order dated 14.8.1992 of respondent no. 1 putting off the applicant is illegal and arbitrary as it is against the order dated 16/27-7-1992 of appellate authority i.e. Sr. Supdt. of Post Offices (in short SSPOs) Gorakhpur respondent no. 2 by which respondent no. 1 was directed to reinstate the applicant. Second time the charges have been framed pertaining to year 1984 only after the earlier charges pertaining to the same year were set aside by appellate authority vide order dated 16/27-7-1992.

5. Sri M.K. Updhayaya, learned counsel for the applicant submitted that the applicant was not given any opportunity to defend himself, an enquiry was conducted ex parte and the punishment order dated 22/31-5-1993 was passed. Respondent no. 1 instead complying with the orders dated 16/27-7-1992 to reinstate the applicant took extreme step and out of sheer prejudice went out of the way to dismiss the applicant.

6. The learned counsel for the applicant finally submitted that the order dated 22/31-5-1993 issued by respondent no. 1 is liable to be quashed as the applicant has been chargesheeted at such a belated stage after lapse of 8 years ⁱⁿ for Charges pertaining to the year 1984, in view of Hon'ble Supreme Court decision in State of Punjab & Ors Vs. Chaman Lal Goyal (1995) Vol 29 ATC 546.

7. Miss Sadhana Srivastava, learned counsel for the respondents, contesting the case submitted that the applicant was reinstated as ordered by appellate authority setting aside

^{the} order of dismissal dated 17.1.1987 and he took over charge on 14.8.1992. ^{he} Since he was involved in another case ^{he} and he was put off duty again. Detailed enquiry was held and charges were found proved. Therefore, he was dismissed again vide order dated 22/31-5-1993.

8. Miss Sadhana Srivastava, finally submitted that the applicant was involved in fraud cases and he does not deserve any sympathy. The enquiry report and punishment order were sent to the applicant by Registered post but the applicant refused taking the delivery of both the registered letters. He was given full opportunity to defend himself.

9. We have given due consideration to the submissions of the counsel for the parties. We do not find any substance in the submission of the learned counsel for the respondents that the applicant was reinstated on 19.8.1992. The impugned order dated 14.8.1992 (Ann 3) is an order putting off the applicant from duty with immediate effect and therefore once the applicant was put off duty on 14.8.1992 ^{he} we fail to ^{on reinstatement} understand as to how could the applicant join on 19.8.1992.

10. The applicant was dismissed for the first time vide order dated 17.1.1987 and this order of dismissal was set aside by the appellate authority vide order dated 16/27-7-1992. Respondent no. 1 instead of reinstating the applicant again issued the order dated 14.8.1992 putting off the applicant. The entire action of respondent no. 1 smacks of high handedness and unfortunately ^{he} the applicant has been ^{he} victim of prejudice.

11. We have perused the charge sheet dated 26.11.1992.
.....5/-

The charges pertain to the year 1984. These charges should have been levelled against the applicant in charge sheet dated 20.11.1985 itself. It appears that respondent no. 1 was bent to oust the applicant from service and that is why he kept certain issues in his kitty so that he could take action in future in case he did not succeed in his designs to oust the applicant from the department. That is why when the order of respondent no. 1 dated 17.1.1987 was set aside by the appellate order dated 16/27-7-1992, respondent no. 1 ^{resorted to} ~~restored~~ to fresh action by first issuing order dated 14.08.1992 and subsequently dismissal order dated 22/31-5-1993. Besides charge no. 2 of the charge sheet dated 26.11.1992 is that the applicant unauthorisedly discharged the S.B. functions of Baisar Dhani Post Office from 1.3.1983 to 29.9.1984. In this connection we would like to observe that respondent no. 1 would have visited the Post Office during this period for annual inspection etc and in case respondent no. 1 found that the applicant was discharging S.B. functions of the Post Office unauthorisedly he should have put a stop to it which he did not for reasons best known to him. We have no doubt in our mind that the action of respondent no. 1 is arbitrary and illegal.

12. In view of our aforesaid discussion we are convinced that the order dated 14.8.1992 and 22/31-5-1993 are liable to be quashed and the interest of the applicant merits protection.

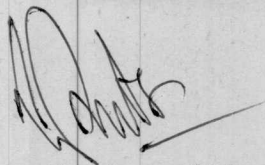
13. In the facts and circumstances, the OA is allowed. Orders dated 14.8.1992 (Ann A-3) and 22/31-5-1993 (Ann A-6)


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are quashed. We direct respondent no. 1 to reinstate the applicant immediately. Respondent no. 2 is directed to ensure the compliance of this order. The applicant will also be entitled to 50% of back wages from the date of his dismissal to the date of reinstatement. The payment of the back wages will be made within 3 months from the date of communication of this order to respondents.

14. We also ^{an award} cost of Rs. 1000/- because the entire action of respondent no. 1 has been arbitrary, prejudicial ⁱⁿ and illegal. The department may recover the loss to the government from respondent no. 1, because of whose ⁱⁿ ^{illegal} action the department had to indulge into avoidable litigation.

15. A copy of this order will be sent by name to Chief Post Master General, U.P. Circle for taking further necessary action against respondent no. 1.


Member (A)


Vice-Chairman

/pc/