

ORIGINAL APPLICATION NO. 1304 OF 1995

HON. MR. GOVINDAN.S.TAMPI, MEMBER-A

HON. MR. A.K. BHATNAGAR MEMBER-J

Bharat Singh,
a/a 48 years
s/o late Shri Kanahaiya Lal
r/o c/o Shri P.P.Tiwari, A.P.M.,
46/5, Ritha Mandi,
DehraDun.

..... Applicant.

(By Advocate:- Shri Rakesh Verma)

Versus

1. Union of India through Secretary,
Ministry of Communication,
New Delhi,
2. The Senior Superintendent of
Post Offices, Muzaffarnagar
Division, Muzaffarnagar.
3. The Director, Postal Services,
Office of the Post Master General,
Dehra Dun. Respondents.

(By Advocate:- K^{III}. Sadhna Srivastava)

O R D E R

HON. MR. GOVINDAN. S. TAMPI, MEMBER-A

The reliefs sought for in this O.A are as below:-

- (i) To issue a writ, order or direction in the nature of certiorari quashing order dated 7-10-1993, passed by the Respondent No. 2, removing the petitioner from service (Annexure- A-I).
- (ii) To issue a writ, order or direction in the nature of certiorari quashing appellate order dated 28-11-1994, received by the petitioner on 9-12-1994, rejecting the appeal of the petitioner (Annexure.A-II).
- (iii) To issue a writ, order or direction in the nature of

mandamus directing the respondent Nos. 2 & 3 to reinstate the petitioner in service with all consequential benefits, as if no such removal order would have ever been passed.

(iv) To issue any other

To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Tribunal may deem fit.

(v)

To award cost of the petition.

2.

Heard Shri Rakesh Verma, learned counsel for the applicant and Miss Sadhna Srivastava, learned counsel for the respondents.

3.

The applicant who was appointed as Extra Departmental Delivery Agent at Purkaji Post Office, Muzaffarnagar, 1968 became a Group 'D' Packer in 1983 and becoming a permanent Group 'D' staff w.e.f 1-7-1986. He has since then been working to the satisfaction of all concerned without any complaints still after implicating him in false complaints a chargesheet were issued to him on 27-11-1992. The inquiry which was conducted in a illegal manner went against him and accepting the report to the Enquiry Officer he was removed from service by the Disciplinary Authority on 7-10-1993. Appeal against this punishment was on 28-11-1994 all the charges against him were false and mala fide. It was alleged that he had stolen letters which was not correct. During the inquiry, though he specifically asked for the supply or permission to peruse certain documents the same was denied. None of the prosecution witnesses had made any allegation against him still the inquiry report went against him resulting in his removal from service hence the O.A.

4.

The grounds raised by the applicant are :-

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- (a) The applicant has been performing his duties satisfactorily.
- (b) Nothing adverse report against him.
- (c) He was never warned for coming late.
- (d) None of witnesses had deposed against him.
- (e) There is a case of no evidence.
- (f) During the inquiry the main documents relied upon by the respondents were not supplied to him or he was permitted to arise them.
- (g) The Appellate Authority had not gone into the points raised by him.

All the above points were very strongly reinforced by Shri Rakesh Verma during the oral submissions.

5. In her reply an oral submissions on behalf of the respondents Miss Sadhna Srivastava stated that the applicant was penalised on account of his having committed irregularities when he was working as Group-D Officer. The inquiry conducted proved the charges. The inquiry report was sent to the applicant alongwith show cause notice, and disciplinary authority have passed the order only with after perusing his representation. The petitioner's appeal against the order of removal was dated on 28-11-1994 and the review petition filed thereafter was pending decision. The respondents pointed out that they have acted strictly in accordance with law and therefore, the intervention by the Tribunal is not called for.

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6. We have carefully considered the matter while the applicant points out that procedural irregularities have been committed by the respondents the same is disputed by them by the letter. We find that, in para viii-a of the O.A it has been submitted that the applicant had specifically asked for the supply of our permission to peruse certain document which are relied upon by the respondents but they have been refused by the Enquiry Authority. There is no specific denial to this averment from the respondents side. It is obvious, therefore, that the inquiry proceedings against the applicant had been taken and completed on the basis of certain documents which have not been supplied or permitted to be perused by the applicant in spite of his specific request. The Hon'ble Apex Court has held time and again that proceedings are gone through without supply of the relied upon documents would vitiate the proceedings. During the course of the enquiry such a failure has taken place and therefore, the enquiry proceedings had become vitiated. The report emerging from such an enquiry and the decisions by the Disciplinary Authority and Appellate Authority basing the state enquiry report are also vitiate and cannot be endorsed. They would, therefore, have to fail. This would not, however, preclude the respondents from dealing with the applicant once again, as provided for under law.

7. In the above view^{of} the matter the O.A succeeds and is accordingly disposed of. The impugned order dated 7-10-1993 removing the applicant from service as well as the appellate authority dated 21-11-1994 confirmed in the same, are quash and set aside. The applicant is

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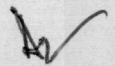
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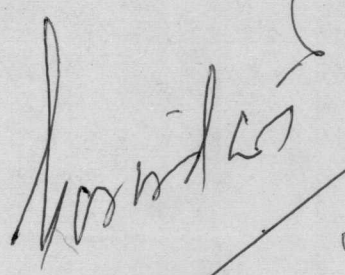
ordered to be reinstated in service within 2 months from the date of receipt of a copy of this order.

He would be treated as under deemed suspension.

The respondents are if so advised, continue the proceedings against the applicant from the stage of inquiry after supplying to the applicant copy of the documents requested for by him, complete inquiry proceedings and take a decision thereafter. The

regularisation of the period between the applicant's date of removal and is ultimately reinstatement in terms of his order shall be determined by the respondents at the culmination of the Disciplinary proceedings if any under taken, no costs.


Member-J


Member-A

Madhu/