

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

Original Application No. 322 of 1999

this the 4th day of March '2004.

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER (A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Surendra Pratap Singh, Faujdar, s/o Darab Singh Faujdar,
Ex-Postal Assistant Jugsana, Mathura, at present Village
Dhanauty, P.O. Sarai Dand, District Hathras.

Applicant.

By Advocate : Sri R.K. Verma.

Versus.

1. Union of India through Chief Postmaster General,
Lucknow.
2. Sr. supdt. of Post offices, Mathura.
3. Postmaster General, Head Office, Mathura.

Respondents.

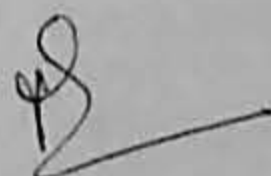
By Advocate : Km. S. Srivastava.

O R D E R

PER MRS. MEERA CHHIBBER, MEMBER (J)

By this O.A., applicant has challenged the order dated 29.7.98 by seeking a direction to the respondents to reinstate the applicant with all consequential benefits.

2. By the impugned order, applicant was informed that the punishment of removal from service was awarded to the applicant on the basis of negligence and breach of departmental rules, whereas the issue before the Trial Court were related to the criminal case, hence the decision of removal of service were in order. As far as the demand for giving copy of punishment order dated 27.1.89/6.2.89 was concerned, he was informed that



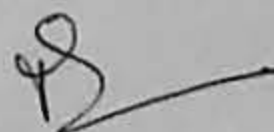
the same had already been delivered to him on 27.8.90 under his clear signature/receipt (page 14). The facts as disclosed in the O.A. are that the applicant was given a chargesheet under Rule 14 of CCS (CCA) Rules for negligence in performing the duties and breach of departmental rules which ultimately culminated in the order dated 29.7.98, whereby applicant was removed from service. Simultaneously, an F.I.R. was also lodged against the applicant by SSPO, Mathura Head Office under section 409 of IPC in police station sadar ~~Mathura~~, Mathura, as it was found that the value payable articles worth Rs. 13505.35/- had already been delivered to the addressees of the articles, but the money pertaining to them had not been credited in the Govt. account and was mis-appropriated by him. The said removal order was never challenged after by the applicant, but it was only acquitted from the Court of Judicial Magistrate, Mathura vide order dated 25.4.96, ~~which~~ was challenged by the state in the Hon'ble High Court of Allahabad, which appeal was ultimately dismissed on 24.4.98. ~~It~~ that the applicant gave a representation to the authorities in the year 1998 requesting therein to reinstate him in service with all consequential benefits as he has been acquitted by the Court of law.

3. The short point raised by the applicant's counsel in this case was that he was never served with the order of removal. However, it is seen that the respondents have annexed Annexure CA-4 with their Counter to show that the applicant had received the order dated 27.1.89/6.2.89 on 27.8.90 itself. This fact has not been denied by the applicant in his Rejoinder. Even otherwise, respondents have taken pains to explain the position in para 5 of the Counter by explaining that copy of removal order was sent to the petitioner through letter dated

8

6.2.1989, but the same was received back undelivered with the remarks 'left without address'. It was again sent vide letter dated 16.5.89, once again it was received back with the same remark 'left without address'. Therefore, the removal order was notified in the local News Paper 'Amar Ujala' on 5.7.1989 and subsequently when the petitioner attended the office on 27.8.90, copy of the removal order was delivered to him on 27.8.90 under clear receipt. This averment has not been denied by the applicant in his Rejoinder affidavit. Therefore, it is clear that the removal order was indeed served on the applicant as ~~xxx~~ back ^{al} in the year 1990 itself, which was never challenged by the applicant as he neither preferred any appeal against it, nor ~~xxx~~ challenged it in court of law. Even in the present O.A., removal order has not been challenged by the applicant and all that he has challenged is memorandum by which he was informed that simply because he was acquitted in the criminal case, he cannot be reinstated as his removal order was ~~xxx~~ passed due to break of rules and negligence. Even if the first part of the ~~prayer~~ ^{would} is allowed, applicant ~~is~~ not get any positive relief so long the removal order ~~is~~ exists, which has not been challenged by the applicant in the present case, therefore, the O.A., according to us, is absolutely mis-conceived.

4. Even otherwise the law on the subject is very clear as Hon'ble Supreme Court has held in the case of Union of India & others Vs. Behari Lal Sharma that mere acquittal in a criminal case does not entitle automatic ~~re~~ reinstatement as DE can be initiated even after acquittal. It was further held that the termination during the pendency of the criminal case is permissible. In the present case, applicant was given a chargesheet simultaneously and he was given full opportunity to defend himself



but in the enquiry, applicant had ^{initially} admitted the charge, but vide his subsequent letter, he gave in writing that he wishes to deny the charge levelled against him, on which application the Enquiry Officer had passed the orders stating therein that the applicant may give ^{he wants} a statement in his argument brief with regard to what was to say in his defence. On a specific query put to the applicant's counsel as to what defence was taken by the applicant, counsel for the applicant was not in a position to show us anything. It goes without saying that when the opportunity is given to the applicant/delinquent and he does not avail the same, he, later on, cannot be allowed to complain of denial of opportunity, nor order can be quashed on this ground. Since this is a case where the applicant had not even bothered to contest the charge levelled against him, nor he took any steps to defend himself, we are satisfied that the order passed by the authorities cannot be interfered with. Since the removal order was already passed way back in the year 1989 on the basis of enquiry wherein full opportunity was given to the applicant, it would not give him any right to seek reinstatement simply because he has been acquitted in the criminal case. After all, scope of criminal case and the departmental enquiry are absolutely different. The applicant has not even annexed the copy of the chargesheet or removal order, as stated above already, therefore, we cannot even know on what ground he was removed from service. Since applicant has not challenged his removal at any point of time and even now he has not challenged the same before us, no positive direction can be given to the respondents to reinstate the applicant in service in the given circumstances.



5. In view of the above discussions, O.A. is devoid of merit. The same is accordingly dismissed. No costs.



MEMBER (J)



MEMBER (A)

GIRISH/-