

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ALLAHABAD this the 27th day of *November, 2006.*

ORIGINAL APPLICATION NO. 1245 OF 1999

**HON'BLE DR. K. B.S. RAJAN, MEMBER- J.
HON'BLE MR. M. JAYARAMAN, MEMBER- A.**

Ajay Kumar Singh, S/o Raj Pal Singh Chauhan,
R/o Vill. And Post- Rampura, Patiali, Distt. Etah.

.....Applicant.

VER S U S

1. Union of India through the Secretary,
D/o Posts, New Delhi- 110001,
2. Post Master General, Bareilly Region,
Bareilly.
3. Director, Postal Services, Bareilly Region,
Bareilly.
4. Superintendent of Post Offices,
Shahjahanpur, distt. Shahjahanpur.
5. Post Master, Head Post Office,
Shahjahanpur.

.....Respondents

Counsel for the Applicant:

Sri Satyendra

Counsel for the Respondents:

Sri S. Singh

ORDER

BY HON'BLE DR. K.B.S. RAJAN, JM.

The applicant, serving as Postal Assistant, was proceeded against vide Charge Memorandum dated 22.12.1995 and the applicant had participated in the inquiry up to a particular stage

he having fallen ill, could not

attend further enquiry. Inquiry Report was stated to have been sent to his last known residential address through registered post on 16.12.1996 but the same was returned back undelivered with postal remark that "where about is not known". The Disciplinary Authority vide Annexure A- 2 dated 24.1.97/04.02.1997 imposed the penalty of removal from service with immediate effect.

2. According to the respondents, the order of penalty was also sent to the applicant at his residential address vide registered letter dated 13.02.1997 and the same too was returned back undelivered on 19.02.1997 with postal remark that "where about not known". The applicant thereafter vide his letter dated NIL, received in the office of respondents on 29.10.1997, demanded a copy of the punishment order, which was dispatched on 31.10.1997 and received by him on 05.11.1997.

3. According to the applicant, he had filed an appeal on 05.12.1997 and sent the same by UPC. Having heard nothing from the department, the applicant is stated to have submitted a reminder dated 27.03.1998 and further on 26.06.1998.

4. According to the respondents, the latest communication dated 26.06.1998 is stated to have been received and the Appellate Authority, on the ground of delay in filing the appeal, dismissed the same.

5. That applicant has sought the following relief(s): -

(a). issue an order or direction quashing the entire disciplinary proceedings initiated against the applicant under Rule 14 of CCS(CCA) Rules 1965 as well as the order dated 24.01.1997/04.02.1997 and the order dated 19.03.1999 passed by the respondent No. 4 and 3 respectively (Annexure 2 and 1);

(b). issue an order or direction directing the respondents to release the suspension allowances for the period of July 1996 to November, 1997;

(c). issue an order or direction directing the respondents to pay the arrears of revised salary since January 1996 to June 1996 illegally withheld by the respondent authorities to the applicant;

(d). issue any other order or direction as this Tribunal may deem fit and proper in the circumstances of the case.

6. The contention of the respondents in the Counter Affidavit is that they have done their part in dispatching the copy of Inquiry Report as also the order of penalty by registered post, which were returned ~~back~~ undelivered as where abouts of the applicant are not known. In addition, it has also been stated in paragraph 15 of the Counter Affidavit that the Complaint Inspector, who was detailed to enquire about where about, met the father of the applicant and even ^{to him} ~~though~~ the ^{to} were abouts of the applicant were not known. It has been stated in the Counter Affidavit that ~~is~~ so far as the Appeal is concerned, it was received by the respondents only on 26.06.1998 and as such the appeal being time barred was rejected out rightly without going into the merit of the case.

7. Though the various relief (s) have been sought in the O.A, the counsel for the applicant submitted that ^{if} his appeal is decided on merits, the ends of justice would be met.

8. Arguments heard and the documents perused.

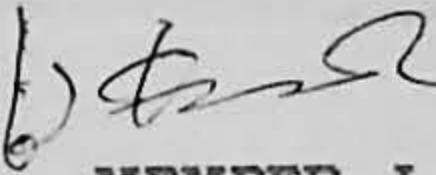
9. Admittedly, copy of the Inquiry Report has not been made available to the applicant; earnest attempt was made by the respondents. However, justice demands that when the enquiry report could not be made available before passing the penalty order at least alongwith penalty order, it should have been made available when the applicant had demanded for the penalty order. Admittedly this has also not been done. In the absence of the enquiry report, the applicant is certainly handicapped in preparing an appeal. Had the respondents not taken action in sending the copy of the enquiry report by the ^{post} Registered post, the case would have been clear violation of principles of nature justice for which even the enquiry proceedings from the stage of enquiry report would have been held to be vitiated. However, in this case since the attempt had been made by the respondents, such order cannot be passed and the counsel for the applicant fairly conceded that he may be given relief to the extent that direction to the Appellate Authority to consider and decide the appeal of the applicant on merits, be given.

10. The case justify that the Appellate Authority should consider the appeal preferred by the applicant on merits. Since there has been no admission to the effect that the appeal dated 05.12.1997 and

27.03.1998 have been received by the Appellate Authority, the applicant shall file ^{the} said documents with the Appellate Authority within 15 days from the date of communication of this order, on receipt of which, the Appellate Authority i.e. Director, Postal Services, Bareilly shall consider the same on merits and decide the issue within 2 months. The fact that the applicant has not been served with a copy of Inquiry Report at that time shall also be taken in to consideration while disposing of the Appeal.

11. With the above the O.A is disposed off. No costs.

MEMBER- A.


MEMBER- J.

/Anand/