

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1249 OF 2000
ALLAHABAD THIS THE 13th DAY OF DECEMBER 2006

HON'BLE DR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. A. K. SINGH, MEMBER-A

Ghanshayma Yadav,
Son of Sri Murlidhar Yadav,
Resident of village Kador, Post Office,
Barnch Post Office Kador,
under post office Suriyavan,
District-Sant Ravi Das Nagar, Bhadohi.

..... Applicant

By Advocate : Shri S. K. Pandey

Versus

1. Union of India,
through the Secretary,
Ministry of Telecom,
New Delhi.
2. Post Master General,
Allahabad Region, Allahabad.
3. The Director, Postal Services,
Allahabad.
4. Superintendent of Post Office,
West Region, Varanasi.

..... Respondents

By Advocate : Shri S. Singh.

O R D E R

HON'BLE DR. K.B.S. RAJAN, MEMBER-J

By its judgment dated 4.5.2006 in CWP No. 40091/05, the following observation and directions have been made by the Hon'ble High Court:

" Learned counsel for the petitioner submitted that before the Tribunal specific plea was raised on behalf of the applicant that the enquiry officer has exonerated or found some of the charges having not been proved. If the disciplinary authority disagreed with the said proposition, he

ought to have given reason while calling upon explanation/reply from the petitioner. This plea was specifically raised and referred to by the Tribunal in paragraph 4 of its order but **we find that the said plea has not been dealt with by the Tribunal.**

In view of aforesaid discussions, we are of the opinion that the order passed by the Tribunal is not tenable and deserves to be set aside. The orders dated 28.5.2004 and 12.10.2004 are set aside. The writ petition is allowed. However, it is provided that the Tribunal will decide the matter expeditiously afresh in accordance with law in the light of the observations made above. In case the Tribunal comes to the conclusion that the application under section 5 Limitation Act is barred by limitation and delay is not liable to be condoned, it goes without saying that the Tribunal will not enter into the merits of the case."

2. The case thus, having been remanded, the same has been re-heard.

3. It is appropriate to extract the facts of the case as already reflected in para 2 of the earlier order dated 28.5.2004 and the same is as under: -

The facts, in short, are that the applicant was working as Extra Departmental Branch Post Master (for short EDBPM), Kador. He was put off duty vide order dated 28.05.93. He was served with charge sheet dated 18.08.93. Subsequently, he was reinstated by order of appellate authority, who awarded the punishment that applicant is debarred to appear in the departmental test for promotion. Same was subsequently modified to the extent that applicant was debarred from appearing in departmental examination for promotion for 3 years. The applicant was again put off from duty by order dated 29/31.01.1996 (annexure A-1). The applicant was served with charge sheet dated 15.05.1996. He submitted his explanation and as per applicant when the respondents took no action, he filed OA No.292 of 1996 in this Tribunal challenging the order-dated 29/31/01/1996. The OA was dismissed by order-dated 27.08.1997

(annexure A-3). However, direction was issued to the respondents to complete the inquiry against the applicant within six months. The inquiry was completed. Enquiry Officer submitted his report on 29.12.1997, holding the charges leveled against the applicant as not proved and recommended that he may be exonerated (Annexure A-4). The disciplinary authority did not agree with the inquiry report and passed the impugned punishment order dated 19.03.1998, awarding punishment of removal from service. The applicant filed appeal before respondent no.3, who rejected the same by impugned order dated 23.10.1998. Thereafter revision petition of the applicant filed before respondent no.2 i.e. Post Master General was also rejected by impugned order dated 18.06.1999. Aggrieved with the same, applicant has filed the present O.A., which has been contested by the respondents by filing counter-affidavit".

4. Arguments were heard and documents perused.
5. First, as to limitation: The Tribunal had earlier considered these aspects vide para 13 of the order dated 28.5.2004 and held that the O.A. is barred by limitation (delay of 04 months). However, it is observed that the reasons for not filing the O.A. on time vide para 3 and 4(25) of the O.A. had not been considered by the Tribunal. As, according to this Tribunal, the OA lacked on merits as well, as an additional factor for dismissal of O.A., limitation aspect had, it appears, also been taken, whereas in accordance with the decision of the Apex Court as per the following cases, there must be liberal approach in considering the limitation aspect and as such taking into account the reasons given in para 3 and 4.25 of the O.A., the marginal delay is considered.

(a) *State of Bihar v. Kameshwar Prasad Singh* ,
(2000) 9 SCC 94,:

(b) *Collector, Land Acquisition v. Katiji* (1987) 2
SCC 107

6. Now, on the legal issue: The Hon'ble High court has observed that the applicant had contended that the point of disagreement of the disciplinary authority had not been communicated to the applicant. It is on this ground that the matter has been remitted. It is seen from para 4 of the earlier order dated 28.05.2004 of this Tribunal also specifically reflected this contention as under:-

"Relying on the Judgment of Hon'ble Supreme Court in the case of Punjab National Bank and others Vs. Kunj Behari Misra 1998 S.C.C. (L&S) 1783 and Yoginath D. Bagde Vs. State Pf Maharashtra and another 1999 S.C.C. (L&S) 1385, learned counsel submitted that for the findings of disciplinary authority which are against the Enquiry Officer's report, applicant was not afforded any reasonable opportunity to defend himself rendering the entire proceedings against the principle of natural justice."

7. The above contention has not, however, as pointed out by the Hon'ble High Court, been considered in the earlier decision.

8. In para 4(ix) of the OA the applicant made the following assessment:-

"(ix) Because in the instant case as will be evident from the findings of the Enquiry Officer, he exonerated the applicant of the charges. However, the Disciplinary Authority without giving adequate opportunity of show cause with disagreement note to the applicant and giving him an opportunity of hearing passed the final order dated 19.3.1998 of the punishment rendering the same illegal."

9. In reply to the above, vide para 25 of the counter affidavit the respondents have stated as under:-

"25. That the contents of paragraph 4.8. to the 4.10 of the petition are matter of record hence admitted."

10. Once the legal requirement that point of disagreement by DA has to be communicated to the delinquent official has not been complied with, then the logical consequence is that the proceedings beyond the stage of inquiry report become vitiated.

11. Counsel for the applicant, during argument contended that apart from the above legal lacuna, yet another infirmity is that the two proceedings i.e. Criminal and Departmental had been conducted which would be against the law laid down by the Hon'ble Apex Court in Paul Anthony's Case (**1999 SCC (L&S) 810**). In addition he has relied upon the following judgments of the Tribunal and Apex Court: -

"(a) Order dated 2.2.2006 in O.A. No.209/00.

(b) Order dated 3.11.2006 in OA No.1198/03.

(c) G.M. Tank Vs. State of Gurajat 2006(5) SCC 446."

12. From the comparison of the charge sheet (Annexure A-2) the judgment dated 10.3.2004 of the Trial Court vide Annexure A-3 to written argument, it is apparent that the Departmental Proceedings and the Criminal Cases are based on identical and similar set of facts and the charges are the same. In other words, the charges, evidence witnesses and circumstances are one and the same. It has been held by the Apex Court in the case of G.M. **Tank v. State of Gujarat, (2006) 5 SCC 446**, at page 460 as under:-

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In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellants residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

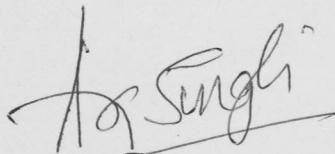
13. The decision in the case of G. M. Tank squarely applies to the case of the applicant. As such, the entire proceedings get vitiated.

14. The OA, therefore, succeeds. Orders dated 19.3.1998, 23,10,1998 and 18.6.1999 (Annexed as A-5, A-7 & A-8 respectively) are quashed and set aside. The applicant is entitled to consequential benefits viz. reinstatement, Back Wages from the date of put off till the date of reinstatement and conformity of service, and in addition, for the purposes of eligibility to appear for any departmental examination, the period from the date of dismissal till reinstatement shall also be treated as period of duty.

15. The respondents are directed to reinstate the applicant within one month from the date of communication of this order and payment of back wages shall be made within three months from the date of reinstatement.

16. It is made clear that if the reinstatement of the applicant, any other person has to be disengaged, the person to be disengaged would be entitled to alternate appointment.

No costs.



Member-A



Member-J

/ns/