

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD

(THIS THE 26 DAY OF 2, 2010)

Hon'ble Mr. A. K. Gaur, Member (J)  
Hon'ble Mrs. Manjulika Gautam, Member (A)

Original Application No. 877 of 2002  
(U/S 19, Administrative Tribunal Act, 1985)

Musfir Rai S/o Late Khandru Lal, R/o Jamunipur, District Chandauli

..... *Applicant*

*Versus*

1. Union of India, through Secretary Ministry of Communication Department of Post, New Delhi.
- 1(A). Post Master General, U. P. Circle Lucknow.
2. Pravar Adhikshak, Dakghar Purva Mandal Dakghar, Varanasi.
3. Post Master General, Allahabad, Region, Allahabad.
4. Director, Postal Services, Allahabad.

Present for Applicant : Shri B.N. Tiwari ..... *Respondents*

Present for Respondents : Shri R.D. Tiwari

ORDER

(DELIVERED BY HON'BLE MR. A.K. GAUR, J.M.)

In the instant Original Application applicant has prayed for following main relief(s) :-

- "i). The Hon'ble Tribunal be pleased to quash the impugner orders dated 29.1.92, 31.8.2000 and 23.1.2002.
- ii). Issue an order in the nature of mandamus to direct the respondent to reinstate the applicant in service and to pay arrears of his salary including

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*all benefits which have accrued to him during the service.*

*iii). To direct the respondent to issue direction to the respondent to fix the salary of the applicant after benefits of all the allowances which would have accrued to him, had he been in service since 1987..”*

**2.** The factual matrix of the case is that the applicant was initially appointed as Extra Department Branch Post Master (E.D.B.P.M.) at Jamunipur Branch Post Office under head Post Office, Chandauli. In the year 1987 respondents lodged two criminal cases against the petitioner under Section 409 and 420 I.P.C. for the fraud in distributing the Money Orders and misappropriation of the amount deposited against the insurance. He was further charged for withdrawal of amounts from other accounts by making forged receipts etc. The applicant was arrested by the local police and was released on bail after 18 days in case crime NO. 60/87. He was again arrested in case crime No. 64/89 in which he was also released on bail. He was put off from duty vide order dated 30.04.1987. According to the applicant, a charge sheet in both the criminal cases was submitted before Chief Judicial Magistrate. The applicant was however, acquitted in both the cases vide order dated 20.01.2000 and 17.07.2001 (Annexure- 1 and 2 of O.A respectively. It is alleged that the applicant, during pendency of criminal proceedings came to know that some inquiry had been set up against him and the inquiry officer had also been appointed by the respondents. In para 4.8 of O.A, it has been stated by the applicant that he represented the matter before the respondents for staying the departmental proceedings during pendency of the criminal proceedings on the ground that both are based on same charges and evidence.

3. Learned counsel for the applicant contended that despite the request being made by the applicant, during pendency of criminal cases before Chief Judicial Magistrate, Chandauli, a departmental proceeding was initiated against him and he was served with a charge sheet dated 07.06.1990 followed by letter dated 03.07.1990 asking the applicant to submit his reply within 10 days. Learned counsel further submitted that the Inquiry Officer without sending any proper intimation about ongoing inquiry proceeding, proceeded ex parte and submitted the inquiry report on 30.10.1991, based upon which the Disciplinary Authority dismissed the applicant from service vide order dated 29.01.1992 and that too without sending any show cause notice to him. As the criminal proceedings were pending for same charges, the applicant did not prefer an appeal either against the order dated 30.04.1987, by which he was put off duty or order dated 29.01.1992.

4. It has been contended by the learned counsel for the applicant that after obtaining the certified copy of the order dated 20.01.2002 in Criminal Case No. 60/1987, the applicant filed an appeal against the order dated 30.04.1987 and praying for his reinstatement in service, which was rejected by the Director, Postal Services, Allahabad vide order dated 31.08.2000 (Annexure-B/Compilation-I of O.A). Learned counsel for the applicant would further contend that after acquittal in Crime Case No. 64/1989 vide order dated 17.07.2001 (Annexure-2 of O.A), the applicant filed Revision Petition before the Post Master General, Allahabad Region, Allahabad against the order of dismissal from service dated 29.01.1992 and the order dated 31.08.2000 passed by the D.P.S on the appeal of applicant, which was also dismissed

vide order dated 23.01.2002 (Annexure-C/Compilation No. 1 of O.A). Aggrieved the applicant has filed the instant O.A on the grounds that the charges and the evidences in departmental inquiry and criminal proceedings were the same, but the department withheld most of the witnesses of the departmental inquiry for oblique reasons. The applicant was not given information about inquiry proceeding. Neither the witnesses were examined before the applicant nor the documents were proved before applicant. The application of the applicant dated 13.09.1990 by which he requested for the copy of the charge sheet and to postpone the proceedings on account of his illness was also not responded by the Inquiry Officer.

5. On notice Respondents have filed their Counter Affidavit stating therein that the impugned order of punishment was passed after due and proper departmental Enquiry, in which all the charges were proved. Learned counsel for the respondents submitted that the applicant while working as EDBPM Jamunipur, Chandauli misappropriated the amounts of 'Money Order', Insured letter, S.B. R.D. deposits and amount tendered for purchase of NSCs to the tune of Rs.11,522.98. Thereafter the applicant was placed under put off duty vide memo dated 30.04.1987 and proceeded under Rule 8 of EDA's (Conduct and Service) Rules, 1965, vide Sr. Supdt. of Post Offices Memo dated 30.03.1990 and 05.06.1990. The aforesaid memo dated 30.04.1987 was sent to the applicant vide Registered A.D. letter dated 07.06.1990. The petitioner vide letters dated 30.03.1990 and 05.06.1990 was also asked to submit his written defence within 10 days of the receipt of the aforesaid memo, but the applicant did not submit any representation within the prescribed time. Therefore, the

Enquiry Officer and the presenting officer were appointed to enquire into the mater on 18.07.1990. The Enquiry Officer fixed the date for enquiry on 28.07.1990 and 13.09.1990 and the information was sent to the applicant vide Registered A.D. letter dated 27.07.1990 and 31.08.1990. Both the aforesaid letters were delivered to the applicant on 28.07.1990 and 01.09.1990 respectively but he neither attended the enquiry nor submitted any application in this respect. Hence, there was no other option to the Enquiry Officer except to proceed with the enquiry expte in which all the charges leveled against the applicant were proved. Copy of the Enquiry report was sent to the applicant through Registered letter dated 30.10.1991 which was received back with the postal remark "Refused". Copy of Enquiry report was again sent to the applicant through the Inspector of Post Offices Chandauli on 13.11.1991 but the same was also returned back on 02.01.1992 with the remark "Refused". Thereafter, the Disciplinary Authority passed the dated 29.01.1992 dismissing the applicant from service , a copy of which was delivered to the applicant on 04.02.1992 but he did not prefer any appeal or representation against the said punishment order within the time as prescribed under the Rules.

**6.** The F.I.Rs were lodged against the applicant in the Police Station under Section 409/420 I.P.C. and other under Section 409/420 under Case Crime No. 60 of 1987, and 64 of 1989 respectively, learned counsel for the respondents submitted that Police submitted charge sheet in the Court of Chief Judicial Magistrate Chandauli, wherein the applicant was acquitted vide judgment and order dated 20.01.2000 in Criminal Case No. 210 of 1991 and vide judgment and order dated 17.07.2001 in Criminal Case No. 971 of

1999. After acquittal in Criminal Case No. 210 of 1991, the applicant submitted his representation dated 29.09.2000 to the Post Master General Allahabad for taking him back in service, but as the applicant had already been dismissed from service vide order dated 29.01.1992, against which he did not prefer any appeal and the said punishment order was still in existence, the representation of the applicant was rejected by the Director Postal Service Allahabad vide order dated 31.08.2000. Subsequently after acquittal in Criminal Case No. 971 of 1999 vide judgment and order dated 17.07.2001, the applicant filed Revision Petition against the order dated 31.08.2000, which was also dismissed by the competent authority. Learned counsel for the respondents would further contend that mere acquittal from the criminal charges by the competent Court, the applicant cannot be absolved from the departmental enquiry in which all the charges were fully proved.

7. Applicant did not file Rejoinder Affidavit. However, after the matter was heard finally, Sri B.N. Tiwari, learned counsel for the applicant was directed to file Written Submission. In para 2-A of Written Submission it has been stated that when the applicant was put off duty on 30.04.1987 as provided under Rule 9 of the Extra Departmental Agents (conducts and service) Rule, 1964 by the competent authority, no disciplinary proceedings was either in contemplation or pending against the applicant rather the department initiated the criminal prosecution against the applicant, and as such, in view of rule 57 of the Post Office Manual Vol. 2, the department could not proceed departmentally during pendency of Criminal Prosecution. In support of his contention, learned counsel placed

reliance on a decision rendered by Apex Court reported in **AIR 1988**

**S.C 2118 – Kusheshwar Dubey Vs. Bharat Cooking Coal Ltd** and submitted that the department ought not to have proceeded with the disciplinary proceedings particularly when rule 9 of E.D.As (Conduct and Service) Rules 1964 prohibits to do so.

8. It has further been stated by the learned counsel for the applicant in para 2. B of Written Submission that the charge sheet was issued by the department on 07.06.1990 i.e. after three years of put of duty vide order dated 30.04.1987, therefore, issuance of charge sheet and initiation of disciplinary proceedings after lapse of three years is totally arbitrary and against the law laid by Apex Court **State of Andhra Pradesh Vs. N. Radha Kishan – AIR 1998 SC page 1833.**

9. The further stand taken by the learned counsel for the applicant in para 2.C of Written Submission is that the punishment awarded by the respondents stands wiped out after the acquittal of the applicant in Criminal Cases. In support of his contention, learned counsel for the applicant placed reliance on a decision rendered by Hon'ble Supreme Court reported in **AIR 1999 SC page 1416 – Capt. M. Pal Anthony Vs. Bharat Gold Mines**, wherein it has been held that if an employee punished by the department, has been acquitted by the Criminal Court after examination of the same set of witnesses and same evidence, the punishment awarded by the disciplinary authority is liable to be set aside. In the instant case, **the witnesses Shiva Pujan Singh, Jagnath Prasad, Smt. Sangma Devi, Ghuran Singh, Gopal Srivastava and others were examined in the departmental proceeding and were also examined in the Criminal Trial against**

**the applicant in the Court of C.J.M.** Therefore, in view of dicta laid down in **Capt. M. Pal Anthony (Supra)**, the order of dismissal from service of the applicant dated 29.01.1992 deserves to be set aside.

10. It has also been contended by the learned counsel for the applicant that the entire disciplinary proceeding and inquiry conducted against the applicant is violative of principle of natural justice and the none of the authorities have applied their mind while deciding the appeal or Revision Petition of the applicant.

11. We have heard Sri B.N. Tiwari, learned counsel for the applicant and Sri R.D. Tiwari, learned counsel appearing for the respondents and perused the pleading as well as the Written Submissions filed by learned counsel for the applicant.

12. In the instant case, we find that the charge sheet was issued by the department on 07.06.1990 i.e. after three years of put of duty vide order dated 30.04.1987, therefore, issuance of charge sheet and initiation of disciplinary proceedings after lapse of three years cannot be said to be proper in view of the law laid by Apex Court in **State of Andhra Pradesh Vs. N. Radha Kishan – AIR 1998 SC page 1833.** In Para 19 of the said judgment Hon'ble Apex Court has held as under:-

“19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether, on that ground the Disciplinary Proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay

particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony ..... when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. ....”

13. We may further observe that the Disciplinary Proceedings were started during the pendency of criminal proceedings pending before the competent court of law. Having gone through the order dated 29.01.1992 (Annexure A-1 of O.A) and judgment in case crime NO. 60/87 delivered by the Chief Judicial Magistrate, Chandauli dated 20.01.2000 (Annexure-1 of O.A) we find that the witnesses, who were examined in the disciplinary proceedings were also examined in the criminal proceedings before competent court of law. For better appraisal of the controversy we would like to reproduce the relevant paras of the order dated 29.01.1992, which are as under:-

“अनुबन्ध – 1

अनुच्छेद 3

यह कि उक्त श्री मुसाफिर राय शाखा डाक पाल पुट आफ डियुटी जमुनीपर चन्दौली वाराणसी के पद पर कार्य करते हुए दिनांक 7.3.87 को जमुनी पुर शाखा डाकघर स्थित आरो डी० खाता संख्या 53396 से रु० 131.45 की अंतिम निकासी का भुगतान जमा कर्ता श्री शिव पूजन सिंह प्रधान व पो० जमुनीपुर चन्दौली वाराणसी को न करके शाखा डाक घर नियमावली के नियम 143 (8) और 144 का उल्लंघन किया।

अनुच्छेद 4

यह कि उक्त श्री मुसाफिर राय शाखा डाक पाल पुट आफ डियुटी जमुनीपर चन्दौली वाराणसी के पद पर कार्य करते हुए

दिनांक 31.3.86 को जमुनी पुर शाखा डाकघर स्थित बचत बैंक खाता संख्या 1095251 से रु0 1000/- की निकासी का भुगतान जमा कर्ता संगम देवी पत्नी श्री मारकन्डे सिंह ग्राम व पो0 जमुनी पुर चन्दौली वाराणसी को न करके शाखा डाकघर नियमावली के नियम 134 का उल्लंघन किया।

### अनुबन्ध - 2

#### अनुच्छेद 1

उप मण्डलीय निरीक्षक चन्दौली ने अपने पत्रांक ए/जमुनीपुर दिनांक 12.2.87 द्वारा यह सूचित किया कि श्री मुसाफिर राय शाखा डाकपाल जमुनीपुर के विरुद्ध आरोप लगाते हुए शाखा किया कि उक्त श्री मुसाफिर राय सरकारी धन का दुविनियोजन कर रहे हैं।.....

.....अतएव इन्होने अपनी जांच आख्या संख्या सी0आई0/जांच/85.86 दिनांक 25.4.87 प्रस्तुत किया और पाया गया कि उक्त श्री मुसाफिर राय ने दिनांक 24.2.87 को लेखा कार्यालय चन्दौली द्वारा शाखा डाकघर पर्ची में दर्ज कुलावा साउथ बम्बई बीमा पत्र संख्या 188 दिनांक 20.2.87 वास्तु रु 800/प्रापक श्री धुरन सिंह ग्राम विसुन्धरी पो0 जमुनी पुर चन्दौली वाराणसी को नहीं बांटा।

#### अनुच्छेद 3

जमुनीपुर शाखा डाकघर स्थित आवर्ती जमा संख्या 53396 के जमा कर्ता श्री शिवपूजन सिंह चौहान ग्राम व पो0 जमुनीपुर वाराणसी ने अपनी उक्त पास बुक फार्म एस0 वी0 7 (निकासी फार्म) के साथ भर कर अंतिम निकासी हेतु उक्त श्री मुसाफिर राय को दिनांक 31.1.87 को दिये जिसके बदले में उन्हे एक रसीद उक्त श्री मुसाफिर राय ने एक सादे कागज पर लिख कर तथा मोहर छाप कर उन्हे दी।"

We may also reproduce the relevant paragraph of the Judgment passed by the Chief Judicial Magistrate, District Chandauli in Case Crime



No. 60/87, case No. 565/99, Police Station Chandauli, District Chandauli, which are as under:-

“अभियोजन पक्ष के तरफ से तथ्य के साक्षी परिवादी श्री नन्द लाल कुशवाहा पी० डब्लू० श्री गिरजा सिंह पी० डब्लू० 2 श्री घूरन सिंह पी० डब्लू० 3 श्री जगन्नाथ प्रसाद पी० डब्लू० 4 एवं श्री परावन राम पी० डब्लू० 6 परिक्षित हुए। उपर्युक्त गवाहो ने पत्रावली में दाखिल लिखित तहरीर प्रदर्शक 2 जगन्नाथ प्रसाद द्वारा जांच की गयी आख्या प्रदर्शक 2 नक्शा नजरी प्रदर्शक 3 प्रथम सूचना रिपोर्ट प्रदर्शक 4 नकल रपट प्रदर्शक 5 आदि पुष्टि की गयी। अभियोजन साक्ष्य समाप्त हुए।

अभियुक्त का बयान अन्तर्गत धारा 313 प्र० सं० के लिये गये जिसमें अभियुक्त ने माह फरवरी 87 में डाक खाना जमुनीपुर में डाकपाल के पद पर नियुक्त होना स्वीकार किया है परन्तु इस कथन से इन्कार किया है कि उसने दिनांक 24.2.87 को बीमा पत्र सं० 188 मु० रु० 800/ का वितरण घूरन सिंह को नहीं किया और उसे फर्जी ढग से वितरण दिखा कर गमन कर लिया। गवाहो के बयान को गलत और झुठा बताया। दौरान विचारण इसके पूर्व परिवादी के कुछ प्रालेखिय साक्ष्य व घूरन सिंह के हस्ताक्षर के सम्बन्ध में विशेषज्ञ का रिपोर्ट जांच रिपोर्ट दिनांक 3/3/87 रपिस्ट्री रसीद बी० ओ० स्लीप प्रार्थना पत्र प्रवर अधीक्षक शपथ पत्र की छाया प्रति आदि दाखिल किया है। बचाव साक्ष्य समाप्त हुए।”

14. In view of above there is no scope of doubt in our mind that in both the proceedings the similar witnesses were examined, thus in view of the decision rendered by Hon'ble Supreme Court in the case of **Caption M. Paul Anthony – reported in 1999 SCC (L&S) 810**, the action of the respondent cannot be sustained. Hon'ble Supreme Court in para 34 and 35 of aforesaid judgment has held as under:-

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"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicates that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, 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 but the Court, on a consideration of the entire evidence , came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore,, where the appellant is acquitted by a judicial pronouncement with the finding that the 'raid and recovery' at the residence of the appellant were not proved , it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceeding.

35. Since the facts and evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of

approach and burden of proof, would not be applicable in the instant case.”.

The Supreme Court took into consideration the following facts while deciding this aforesaid case: -

“The appellant requested for stay of departmental proceedings till conclusion of criminal case on the ground that the raid conducted at his residence was also the subject-matter of criminal proceedings. His request was however not acceded to. When the appellant approached the High Court, liberty was given to the respondents to stay departmental proceedings if they considered it appropriate but the respondents decided to continue the disciplinary proceedings.”

(Underlined to lay emphasis)

15. Similar view has also been taken into consideration by the Hon’ble Supreme Court in the case of **G.M. Tank Vs. State of Gujarat and Others – (2006) 5 Supreme Court Cases 446**. Hon’ble Supreme Court in para 31 and 32 of aforesaid judgment has held as under: -

“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 court 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.

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32. In the instant case, the appellant joined the respondent in the year 1953. He was suspended from service on 8-2-1979 and got subsistence allowance of Rs. 700 p.m. i.e. 50% of the salary. On 15-10-1982 dismissal order was passed. The appellant had put in 26 years of service with the respondent i.e. from 1953-1979. The appellant would now superannuate in February 1986. On the basis of the same charges and evidences, the department passed an order of dismissal on 21.10.1982 whereas the criminal court acquitted him on 30.1.2002. However, as the criminal court acquitted the appellant on 30-1-2002 and until such acquittal, there was no reason or ground to hold the dismissal to be erroneous, any relief monetarily can be only w.e.f. 30-1-2002. But by then, the appellant had retired, therefore, we deem it proper to set aside the order of dismissal without back wages. The appellant would be entitled to pension.”

16. In the present case also, as per para 4.8 of O.A, the applicant represented the matter before the respondents for staying the departmental proceedings during pendency of the criminal proceedings on the ground that both are based on same charges and evidence.

17. We also find from the order dated 31.08.2000 (Annexure-B of O.A) passed by the Appellate Authority and 23.01.2002 (Annexure-C of O.A) passed by the Revisional Authority both are cryptic and non-speaking and have been passed without application of mind as the same have not been decided in accordance with the decision of Hon'ble Supreme Court rendered in the case of

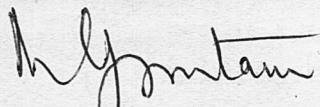
**Chairman/Disciplinary Authority, Rani Laxmi Bai Gramin Bank**

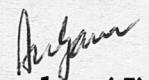


**Vs. Jagdish Varshney (JT 2009 Vol 4 SC 519), N.M. Arya Vs. United India Insurance Company (2006 SCC (L&S) 840), D.F.O Vs. Madhusudan Das (2008 Vol I Supreme Today page 617), Director, I.O.C Vs. Santosh Kumar (2006 Vol. 11 SCC page 147) and State of Uttarakhand Vs. Karag Singh (2008 Vol 8 SCC page 236),** in which it has been held by the Hon'ble Apex Court that while deciding the representation/appeal/revision by the competent authority, speaking order should be passed. As the matter is very old, it would not be appropriate to remit the matter back to the concerned competent authority for reconsideration of the matter.

18. In view of the observations made above, we do not find any justifiable ground for not interfering with the impugned orders dated 29.01.1992, 31.08.2000 and 23.01.2002 (Annexure A-1, Annexure-B and Annexure-C of O.A respectively). Accordingly the O.A is allowed. The orders dated 29.01.1992, 31.08.2000 and 23.01.2002 (Annexure A-1, Annexure-B and Annexure-C of O.A respectively) are hereby quashed and set aside. The respondents are directed to treat the applicant to be in service with all consequential benefits except back wages.

19. There will be no order as to costs.

  
Member (A)

  
Member (J)

/Anand/