

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1107 of 2003.

Monday, this the 19th day of April, 2004

Hon'ble Maj. Gen. K.K.Srivastava, A.M.
Hon'ble Mr. A.K. Bhatnagar, J.M.

Chandra Shekhar,
S/o Shiv Nath Ram,
R/o Village Paramanand Pur,
Post-Sajehi, District - Varanasi.

.....Applicant.

(By Advocate : Shri R. Trivedi
Shri V. Srivastava)

Versus

1. Union of India,
through its Secretary,
Ministry of Communication,
Depot of Post, New Delhi.
2. Director, Postal Services, Allahabad.
3. Post Master General, Allahabad.
4. Superintendent, Post Offices,
West Division, Varanasi. Respondents.

(By Advocate : Shri R.C. Joshi)

O R D E R

By Hon'ble Maj. Gen. K.K.Srivastava, A.M. :

In this OA filed under Section 19 of A.T. Act, 1985,
the applicant has prayed for quashing the impugned order
of removal dated 28.2.1994 (Annexure-A-4), order dated
24.9.1994 (Annexure-A-6) by which the Appellate Authority

.....2.

remitted the matter back to the Disciplinary Authority for de-novo trial, order dated 28.6.1995 (Annexure-A-7) i.e. order of removal passed by Disciplinary Authority after de-novo trial and order dated 8.5.2003 (Annexure-A-13) rejecting the appeal of the applicant.

2. The facts, in short, are that the applicant was working as Extra Departmental Delivery Agent (EDDA) Bazardiha Post Office District Varanasi. As per the respondents a case of misappropriation of the Govt. money through the payment of money order remitted by District Harijan and Social Welfar Officer, Varanasi came to light and the applicant was put off duty vide order dated 17.2.1992. He was served with a charge sheet dated 10.12.1992. An enquiry was held and after conclusion of inquiry the disciplinary authority passed the order dated 28.2.1994 awarding the punishment of removal from service. The applicant submitted his appeal and the Appellate Authority remitted the matter to the disciplinary authority for de-novo proceedings vide order dated 24.9.1994. In pursuance of the same, the disciplinary authority passed another order awarding the punishment of removal from service vide order dated 28.6.1995. The applicant challenged the same before this Tribunal by filing OA No.1062/95. The Tribunal disposed of the OA with direction to the applicant to file an appeal. The applicant submitted his appeal on 26.8.2002, which was rejected by Appellate Authority by order dated 18.9.1992 on the ground of latches. Aggrieved by the same, the applicant filed another OA No.116/03 which was disposed of by this Tribunal by its order dated 17.2.2003 with direction to the Appellate Authority to decide the appeal of the applicant dated 26.8.2002 treating the same as having been filed in time. In pursuance to direction of this

Tribunal the Appellate Authority considered the appeal of the applicant and passed order dated 8.5.2003 rejecting the appeal. The same has also been impugned. Simultaneously, the department also instituted a criminal case No.517/98 in the court of Additional CJM, Varanasi. Aggrieved with the action of the respondents the applicant filed this OA, which has been contested by the respondents by filing counter.

3. Shri R. Trivedi, learned counsel for the applicant submitted the following points :-

- (i) The Inquiry Officer vide report dated 18.11.1993 exonerated the applicant of all the three charges levelled against him. However, another enquiry was held when the matter was remitted back by the Appellate Authority to the Disciplinary Authority for de-novo proceedings and the Inquiry Officer by his report dated 27.9.1993 held the applicant guilty of all the charges levelled against him. Thus, it seem that respondents were out to punish the applicant because two Enquiry Officers cannot take exactly opposite views.
- (ii) The applicant has been acquitted in the criminal case No.517/98 instituted against him by the department vide order of Additional CJM, Varanasi dated 16.10.2002 (Annexure-A-14).
- (iii) In the departmental proceedings as well as the criminal case there was same set of witnesses and once the applicant was acquitted by the criminal court, the case of misappropriation of the Govt. money is not established and the applicant is entitled for relief.

4. Learned counsel for the respondents resisting the claim of the applicant submitted that the Disciplinary

remitted the matter back to the Disciplinary Authority for de-novo trial, order dated 28.6.1995 (Annexure-A-7) i.e. order of removal passed by Disciplinary Authority after de-novo trial and order dated 8.5.2003 (Annexure-A-13) rejecting the appeal of the applicant.

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Authority served the enquiry report dated 27.12.1993 on the applicant and the applicant did not file any reply thereto. The order of the Disciplinary Authority as well as Appellate Authority are detailed and speaking orders and they do not call for any interference as there is no manifest error of law.

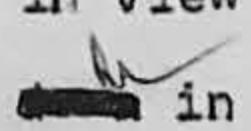
5. We have heard the counsel for the parties, carefully considered their submissions and closely perused the records.

6. Admittedly, the criminal case for mis-appropriation of Govt. money was instituted against the applicant. Simultaneously, the disciplinary proceedings were also instituted against the applicant. From the perusal of the record, we find that two enquiries have been conducted, firstly, after the charge sheet was served on the applicant and before the order dated 28.2.1994 was passed by the Disciplinary Authority and secondly after the Appellate Authority remitted the matter back to the Disciplinary Authority for de-novo trial on the ground that during the first inquiry the Disciplinary Authority was one of the prosecution witnesses.

7. It would be appropriate to observe that in the first inquiry dated 18.11.1993 the applicant was completely exonerated of the charges levelled against him, whereas in the subsequent inquiry the applicant has been held guilty of all the charges. It appears that the inquiries have not been conducted properly because both the inquiry reports are exactly contradictory to each other. Not only this in the first inquiry report dated 18.11.1993 on the basis of which the impugned order dated 28.2.1998 was passed, the Disciplinary Authority was himself a prosecution witness. Besides by the same inquiry report the applicant was exonerated of the charges but without serving any

dis-agreement memo, the Disciplinary Authority passed the order dated 28.2.1994. However, after the case was remitted back, fresh enquiry was held and a fresh punishment order dated 28.6.1995 was passed.

8. We do not find any illegality in the action of the Appellate Authority in passing the order dated 24.9.1994 (Annexure-A-6), remitting the matter back to the Disciplinary Authority for de-novo proceedings, because of which another inquiry was held and inquiry report dated 27.12.1993 was submitted. In this inquiry report all the charges levelled against the applicant are stated to be proved on the basis of which another order of removal dated 28.6.1995 was passed by the Disciplinary Authority. We have perused both the orders of the Disciplinary Authority i.e. impugned orders dated 28.2.1994 and 28.6.1995. To our utter surprise, we find that the Disciplinary Authority passed exactly the same order on 28.6.1995 which was passed earlier by the Disciplinary Authority. Thus, we have no hesitation to observe that while passing the order dated 28.6.1995 the Disciplinary Authority did not apply his mind and copied the previous order dated 28.2.1994 verbatim without any reference to earlier punishment order dated 28.2.1994, orders of the Appellate Authority for de-novo proceedings and also the enquiry reports dated 18.11.1993 and 27.12.1993. Further in the criminal case instituted against the applicant the Additional CJM, Varanasi vide order dated 16.10.2002 has acquitted the applicant. It is not disputed that in the criminal case before Additional CJM and in the departmental Disciplinary Proceedings there was same set of witnesses. In view of the Judgment of the Hon'ble Supreme Court

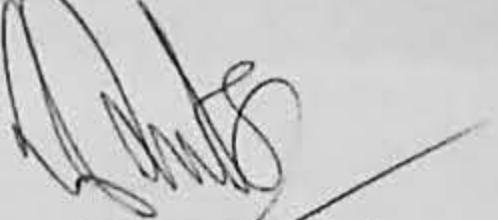
 in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. (1999) 3 SCC 679, since the charges are the same

and set of witnesses is the same and the applicant has been acquitted by the criminal court, we have no hesitation to hold that the impugned orders are liable to be quashed, as Disciplinary Authority cannot hold the charges, ^{in which were some before Trial Court} as proved.

9. In the facts and circumstances and our aforesaid discussions, the O.A. is allowed. The impugned order dated 28.2.1994, order dated 28.6.1995, and order dated 8.5.2003 are quashed. The applicant shall be entitled for all the consequential benefits except the back-wages.

10. Learned counsel for the respondents submitted that there is no such prayer for consequential benefits. The same is very well covered under prayer No.8.2. No costs.


MEMBER (J)


MEMBER (A)

RKM/