

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No. 1015 of 2006

Delhi day, this the 1st day of April; 2009

Hon'ble Mr. Ashok S. Karamadi, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

Mangat Ram Son of Sri Bhagwat Ram R/o Village Ismilpur, Post Office-Dhanstri viz. Nazibabad, District Bijnor.

Applicant

By Advocate: Sri Avnish Tripathi

Vs.

1. Union of India through its Secretary, Department of Post, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Bareilly region, Bareilly.
3. Superintendent of Post Offices, Bijnor Division, Bijnor.
4. Sri R.K. Mittal (Retired) S.S.P.Os. Enquiry Officer at Adarsh Colony, Muzzafar Nagar.
5. Senior Superintendent of Post Offices, Bareilly Division, Bareilly (Adhoc Disciplinary Authority).

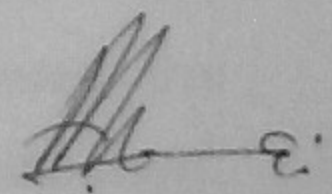
Respondents

By Advocate: Sri Saurabh Srivastava

ORDER

By Ashok S. Karamadi, Member (J)

This application was filed initially for quashing the inquiry officer's report dated 06.01.2006, and the communication dated 17.01.2006, and subsequently amended and prayed for quashing of the impugned order of dismissal dated 29.05.2008 passed by respondent No. 5.



2. The case of the applicant is that the inquiry conducted against the applicant is against the rules, and no opportunity was given to the applicant and the respondents are biased against the applicant, and therefore the inquiry held and conducted is illegal and report submitted cannot be accepted. Subsequently the applicant amended the O.A. and challenged the order of dismissal dated 29.05.2008, and stated that the Inquiry Officer, i.e. Mr. R.K. Mittal, who is a retired official of the Postal department and no more a public servant, and could not be appointed as an Inquiry Officer and as such his appointment as an Inquiry Officer is bad in law, and further on the basis of the inquiry report submitted by him, who did not come under the purview of the Government servant, is illegal and against the rules, as held by the Hon'ble Supreme Court, Hon'ble High Court and this Tribunal.

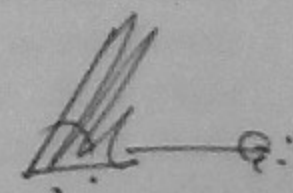
3. The respondents filed the Counter Affidavit and the Objection to the Amendment, and stated that the disciplinary action against the applicant has been initiated under Rule 14 of the CCS (CCA) Rules, 1965 and moreover, provision of para 23 B of Act, 1850 is not applicable in instant case, since the provision of Public Servant (Enquiries) Act, 1850 are totally applicable to the case wherein the enquiry is being conducted under the said Act but in the instant case the enquiries being conducted under the CCS (CCA) Rules, 1965 and as such the plea taken up by the applicant is misleading and hence not admitted. As a matter of fact, Sri B.M. Pant the then Assistant Superintendent of Post Offices, Dhampur Sub Division, Dhampur was appointed as enquiry officer in his case but due to his unavoidable engagement in a major fraud case and subsequently severe heart attack, he was changed with the kind approval of the competent authority and Sri R.K. Mittal, who is a retired class I officer from the department of post was appointed as Enquiry Officer vide order dated 09.08.2004 under intimation to the applicant. It is further submitted that during the course of enquiry there was no objection raised by the applicant as to prejudice or biased of Enquiry Officer till Sri R.K. Mittal Enquiry Officer submitted his enquiry report dated 06.01.2007, copy of which was supplied to the applicant for submission of his defence thereon, he blamed the Enquiry Officer ^{as} biased without any valid reason or justification.

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Here it is worth to mention that the applicant never worked either with Sri R.K. Mittal Enquiry Officer or under him as a subordinate in the department, hence the question of being biased or prejudice of said Sri R.K. Mittal Enquiry Officer does not arise. His blame of bias was totally baseless and was nothing except to jeopardize/frustrate the enquiry to escape from the offence committed by him i.e. embezzlement of Government money to the tune of Rs.64,306.30. It is also submitted by the respondents that the whole inquiry was conducted under prescribed Rules and regulations i.e. CCS (CCS) Rules, 1965 providing him all the opportunities prescribed in the Constitution. The applicant did not cooperate and tried his level best to delay, frustrate and jeopardize the departmental enquiry adopting dilatory tactics. Hence, his request is liable to be rejected. It is submitted by the respondents that the Rule "Public Servant (Enquiries) Act 1850-Rule 23-B" quoted by the applicant has no relevancy in the present O.A. as the enquiry under reference was conducted under Rule 14 of CCS (CCA) Rules, 1965 and not under the provision of "Public Servant (Enquiries) Act 1850 hence the question of applicability of the provisions of said Act does not arise. The citation quoted by the applicant is nothing except profoundly misleading to all concerned, hence the respondents pray for dismissal of the O.A.

4. We have heard the learned counsel for the applicant and the respondents, having regard to the admitted fact that the Inquiry Officer Sri R.K. Mittal-retired S.S.P.O., has held the inquiry against the applicant, and submitted his report on 06.01.2006, and subsequently final order of dismissal was passed based on the said report in the inquiry held by him during the pendency of the O.A. As contended by the learned counsel for the applicant, relying on the decision of this Tribunal passed in **O.A. No. 859 of 2008 Ratneshwar Singh vs. Union of India and others** dated 21.08.2008, and also the other order passed by this Tribunal in **O.A. No. 479 of 2007 Ram Bahaor Yadav vs. Union of India and others** dated 05.10.2007, he submits that the impugned order of dismissal is unsustainable in law. The learned counsel for the respondents submits that the decisions are not applicable to the facts of the case.



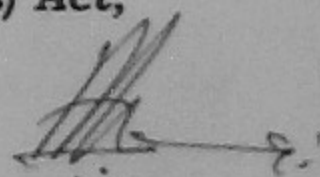
5. To consider the rival contention of the parties with regard to whether a retired employee can be appointed as an Inquiry Officer. The decision relied upon by the learned counsel for the applicant of this Tribunal passed in O.A. No. 479 of 2007 dated 05.10.2007, relevant paragraphs of which read as under: -

"5. Relying on Ravi Mallick Vs. National Film Development Corporation (2004) 13 Supreme Court Case Page 427, decision dated 13.9.07 of Hon'ble Allahabad High Court in Civil Misc. Writ Petition No. 44002 of 2007, Kendriya Vidyalaya Sangathan vs. Central Administrative Tribunal & Ors. Decision dated 22.1.07 of this Bench in O.A. No. 41/07, Balbir vs. Union of India & Ors., Shri K.K. Mishra has argued that under Sub-rule (2) of Rule 9 of the Rules of 1968, no retired railway servant could have been appointed as Inquiry Officer and so inquiry report dated 15.3.07 submitted by Shri P.C. Gaur and the dismissal order dated 16.4.07 based on the said report deserve to be quashed on this ground alone. Shri Anil Kumar, the learned counsel for the Railways has submitted that the cases relied on by Shri Mishra had different facts and were mainly confined to the phraseology used in Sub-rule (2) of Rule 14 of CCS (CCA) Rules, 1965 and there no such guidelines/rules were issued Shri Anil Kumar contends that here the Railway has made a specific provisions for holding of such inquiries by retired railway servants on the terms and conditions provided in order dated 29.7.1998.

6. With a view to properly appreciate the arguments on the said point, it would be used to reproduce sub-rule (2) of 9 of the Rules of 1968, but also sub-rule (2) of Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short the Rules of 1965, for the decision cited by Shri Mishra are mostly in the context of sub-rule (2) of Rule 14 of the Rules of 1965.

7. Sub-rule (2) of Rule 9 of the Rules of 1968 reads as under: -

"(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a railway servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act,



1850, as the case may be, (a Board of Inquiry or other authority) to inquire into the truth thereof."

Sub-rule (2) of Rule 14 of CCS (CCA) Rules reads as under: -

"Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof."

EXPLANATION- where the Disciplinary Authority itself holds The inquiry, any reference in sub-rule (7) to sub-rule (20) and In sub-rule (22) to the Inquiring Authority shall be construed as a reference to the Disciplinary Authority."

8. In Ravi Mallick's case (Supra) the Apex Court considered the meaning of word "Public Servant" appearing in Rule 23 (b) of Service Rules and Regulation 1982, relating to the servants of National Film Development Corporation. Their Lordships took the view that words "Public Servant" used in Rule 23 (b) would not include retired officer. What is important is that in that case Central Vigilance Commission had issued instructions, permitting retired officers to be appointed as Inquiry Officers. In that context Hon'ble Court observed that the directions issued by the Central Vigilance Commission could not override. Relying on the ratio of Ravi Mallick's case (supra) and decision dated 19.4.06 of Principal Bench of this Tribunal in O.A. No. 766 of 2006 (Sangeeta Ashok's case), a Bench at Allahabad set aside the enquiry report, submitted by a retired servant as well as the punishment order based on it by order dated 22.1.2007 in O.A. No. 41 of 2007. That was a case, relating to a servant of Kendriya Vidyalaya Sangathan (K.V.S.), formal enquiries against whom were regulated by the Rules of 1965. The Bench ruled that Retired servant, would not fall within the expression "an authority" used in sub-rule (2) of Rule 14 of the Rules of 1965. The view was upheld by Hon'ble High Court, in decision given in Writ Petition No. 4402 of 2007, filed by K.V.S. The Hon'ble court observed, that any executive instructions, providing for enquiry by a retired servant, will be of no use, unless the rules were amended.

9. Shri Anil Kumar, the learned counsel for the Railways, is absolutely right in saying in none of the above judicial pronouncements, so relied on by Shri Mishra, sub-rule (2) of

Rule 9 of the Rules of 1968 or the value of guide lines/ instructions dated 29.7.1998 (SCA-1), were under consideration. Argument of Shri Mishra is that it has been ruled in the context of an expression "an authority" used in sub-rule (2) of Rule 14 of the rules of 1965, will hold good as regards the scope and meaning of words "other authority" appearing in sub-rule (2) of Rule 9 of the Rules of 1968.

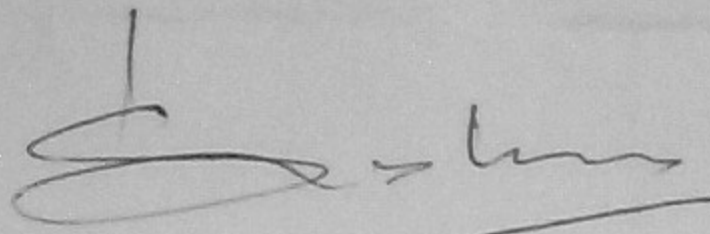
10. A close reading of sub-rule (2) of Rules 9 of the Rules of 1968, reveals that it is *pari materia* with sub-Rule (2) of Rule 14 of the Rules of 1965. If the words "an authority" in sub-Rule (2) of Rule 14 of the Rules of 1965, does not include retired servant, the expression "other authority" used in Sub-rule (2) of Rule 9 of the Rules of 1968, will also not include retired servant of the Railways. Moreover, sub-Rule (3) and (4) of Rule 9, which provide for officers of superior rank, on the Board of enquiry, also lends support to the same conclusion. We think, concept of seniority or superiority of officers in the Board of enquiry, *vis-à-vis* the charged railway employee, is conceivable only if they are in service. We do not think Rule makers, visualized rank of retired servant, *vis-à-vis* serving servant. Perhaps they thought of serving officers on Board of Enquiry, while providing for their superior rank in sub-rule (3) of Rule (9) of the rules of 1968. If no retired servant can be on the Board of Enquiry, while providing for their superior rank in sub-rule (3) of Rule 9 of the Rules of 1968. by rule of *ejusdem generis*, such retired servant will not be included in the expression "other authority".

11. Guide lines/order dated 29.7.1998 (SCA-1) will not supersede sub-rule (2) of Rule 9 of the Rules, 1968. Executive instructions cannot enlarge the meaning of words "other Authority" used in sub-rule (2) of Rule 9. If the Railway wants that retired servant should also be brought within the scope of "Other Authority" suitable amendments in the rule itself will be required."

6. In view of the above reasoning and the discussions made in respect of the contention taken with regard to the above issue, we are of the considered view, the same is applicable to the present facts and circumstances of the case, and as such accepting the

contention of the applicant, we reject the contention of the respondents and accordingly pass the following order: -

7. O.A. is allowed, impugned order of dismissal dated 29.05.2008 and the inquiry report dated 06.01.2006 are hereby set aside. However, respondents are given liberty to appoint fresh Inquiry Officer, if so advised, in accordance with law. The position of the applicant will remain the same as it was on 06.01.2006, when inquiry report was submitted. No cost.



Member (A)



Member (J)

/M.M/