

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NO. 1390 of 2008

(Dated this Thursday the 17th day of February, 2011)

CORAM:

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A
HON'BLE MR. SANJEEV KAUSHIK, MEMBER-J

Jamuna Prasad S/o Late Sri Ram Dhani

Resident of C-6/10 Sector-31, Noida,

District Gautam Budh Nagar

... Applicant

By Advocate: Shri V. Budhwar

Versus

1. Union of India, through the Secretary Department of Posts, Ministry of Communication, New Delhi.
2. Director Postal Services, Department of Posts, Ghaziabad.
3. Senior Superintendent of Post Offices, Department of Posts (Ad-hoc Disciplinary Authority), Agra Division, Agra.

..... Respondents

By Advocate: Shri S. Srivastava, Counsel for the Union of India.

ORDER

PER: MR. SANJEEV KAUSHIK, MEMBER (J)

The applicant has filed the instant Original Application seeking the following main reliefs:

- (i) To set aside the order dated 1.12.2008 passed by the respondent No.2 rejecting the appeal of the applicant dated 14.6.2008 (Annexure No.1 to Compilation No.I)
- (ii) To set aside the order dated 28.5.2008 passed by the respondent No.3 dismissing the applicant from service (Annexure No.2 to Compilation No.I)

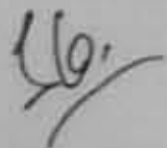
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- (iii) To issue, order direction in the nature of mandamus commanding the respondents to reinstate the applicant in service and to grant him all consequential benefits attached thereto including the salary as well as other consequential benefits attached thereto ignoring the orders dated 1.12.2008 and 28.5.2008.

2. Brief facts of the case are that the applicant was employed in the Postal Department and was posted as Postal Assistant in the Office of Senior Supdt. of Post Offices, Ghaziabad Division, Ghaziabad. He was served with chargesheet dated 1.11.2002 wherein four Article of Charges were leveled against the applicant. In response to the above chargesheet the applicant is stated to have submitted a representation denying the entire charges vide representation dated 4.11.2002. The applicant was placed under suspension vide order dated 31.1.2007 and thereafter vide order dated 8.5.2007 the subsistence allowance of the applicant was reduced from 70% to 50%. It is further submitted that the orders were passed on 16.1.2007 as well as on 3.4.2007 whereby disciplinary proceedings were sought to be initiated against the applicant despite the fact that the criminal proceedings against him is pending in the Special Court at Ghaziabad vide case No. 2/2005 being C.B.I. vs. Maya Ram Bhatt. It is also stated earlier to the instant Original Applicant the applicant has also filed O.A. No. 484/2007 and O.A. No. 669/2007 challenging the suspension order dated 31.10.2007 and 8.5.2007. Apart from the same, the applicant has also filed O.A. No. 246/2008 against the action of the respondents for dispossessing from the staff quarter. In O.A. No. 484/2007, the applicant has sought the following reliefs:

- "1. To quash/set aside the impugned order dated 03.04.2007 and 16.01.2007 passed by the Senior Superintendent of Post Offices, Ghaziabad Division, Ghaziabad.



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2. To issue any other suitable order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
3. To allow this claim petition/application with costs in favour of the applicant."

The aforesaid Original Application came up for preliminary hearing on 20.8.2007 and this Tribunal was pleased to pass the following order:

"It is directed that the departmental proceedings may go on but the final orders may not be passed till next date of hearing."

All the above stated Original Applications along with Civil Contempt Petition were clubbed together and were finally decided by this Tribunal vide its order dated 22.4.2008 (Annexure A.5). It is further submitted that the Inquiry Officer submitted his inquiry report on 31.3.2008 to the Disciplinary Authority on 3.4.2008. Consequent thereupon the applicant was issued a show cause notice on 11.4.2008 whereby reply was sought. On 24.4.2008, the applicant is stated to have submitted his objection. On 28.5.2008 the respondent No.3 passed an order and inflicted the punishment of dismissal from service. (Annexure A.2). The applicant preferred statutory appeal in terms of Rule 23 of CCS (CCA) Rules 1965 before Respondent No.2 on 14.6.2008. The above stated statutory appeal was also rejected by respondent No.2 by its order dated 1st December, 2008 (Annexure A.1). The applicant has challenged these two orders i.e. order dated 28.5.2008 passed by respondent No.3 dismissing the applicant from service and order dated 1.12.2008 passed by respondent No.2 rejecting his appeal, on the ground that the respondent have not conducted the inquiry in a fair manner and also violated the judgement passed by this Tribunal in O.A.

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No. 484/2007 which was decided on 2.4.2008. It is further submitted that the principle of natural justice has been violated by the respondents inasmuch as the documents which were sought to be relied upon by the respondents have not been supplied to him despite letter dated 19.1.2005. Therefore, prejudice has been caused to the applicant in filing an effective reply to the chargesheet. It is further submitted in para 26 of the Original Application that the applicant was not allowed to cross-examine the witnesses whose statements were relied upon against the applicant. Lastly it is submitted that the representation for change of the Inquiry Officer was also rejected by the respondents on 16.1.2007, without referring to any reason.

3. Upon notice, the respondents have filed detailed counter affidavit. In the counter affidavit the respondents have taken a stand that after the order passed by this Tribunal in an earlier round of litigation the applicant was provided all documents which were asked for by the applicant and the inquiry was conducted in a fair manner. It is further submitted in the counter affidavit that the criminal case is still pending in the court of law.

4. The applicant has also filed rejoinder wherein all the averrments made by the respondents in the counter affidavit have been denied.

5. We have heard Shri Vikas Budhwar, Counsel for the applicant and Shri S.Srivastava Counsel for the respondents and have perused the material on record.

6. During the course of the arguments, the ld. Counsel for the applicant Shri Budhwar has vehemently argued that the respondents have violated the order passed by this Tribunal on 2.4.2008. He drew our attention to paragraph 15 of the order wherein it is stated that the

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inquiry officer and disciplinary authority shall keep in mind the observations made hereinabove and to provide the legible copies of all relied upon documents to the delinquent employee as required under law. He submitted that in terms of this order the respondents are bound to conduct a fresh inquiry after providing him all documents which has been sought by him vide letter dated 19.01.2005. Despite that Inquiry Officer submitted Inquiry Report on 03.4.2008. It is submitted that order of this Tribunal was of 2.4.2008, whereby direction was issued to respondents to provide copies and Inquiry Officer submitted his report on 3.4.2008. Therefore the stand of the respondents of having supplied copies of relied upon documents to the applicant is against the fact and incorrect. This conduct of the respondents show malafide on the part of respondents against applicant in conducting Inquiry and in passing final orders. It is alleged that they proceeded on the earlier inquiry report which was been set aside by this Tribunal in earlier round of litigation with direction to provide all legible copies of documents therefore, the inquiry as well as punishment order is liable to be set aside having been passed against the order of this Tribunal. It is further argued that the respondents have not followed the principles of natural justice as fair opportunity has not been given to him as indicated in the order dated 2.4.2008.

8. On the other hand Shri S. Srivastava, Counsel for the respondents is not able to rebut what has been argued by the counsel for the applicant. He only submitted that in terms of the order passed by this Tribunal the copies of the documents had been already supplied to him. But this fact has not been denied that the earlier inquiry was taken into

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account and no fresh inquiry was conducted by the respondents after the order dated 2.4.2008 passed by this Tribunal.

9. We have considered the rival submissions made by Ld.Counsel for the parties. It is admitted fact that in earlier round of litigation in O.A. No. 484/2007, wherein the applicant sought quashing of the Departmental Proceedings, this Tribunal on 20.8.2007 granted an Interim Relief in favour of the applicant that **"it is directed that the departmental proceedings may go on, but final orders therein will not be passed till next date of hearing."** Ultimately this Tribunal vide its order dated 2.4.2008 disposed of the Original Application observing as under:

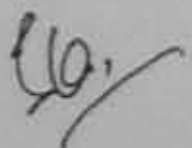
"15. Taking into account the totality of the circumstances of the instant case and without entering into the merit of the above noted O.As., we direct the respondents authorities to proceed with the enquiry forthwith in accordance with law and conclude the same expeditiously preferably within a period of six months from the date of receipt of a certified copy of this order. The enquiry officer and disciplinary authority shall keep in mind the observations made hereinabove and to provide the legible copies of all relied upon documents to the delinquent employee as required under law. Sri S. Singh, Senior Standing Counsel for respondents states that the legible copies of the relied upon documents have been furnished to the applicants and the applicants are not cooperating in the enquiry. We also refused to enter into the disputed question. The applicant, if still aggrieved by the orders of the disciplinary authority, they shall have to seek their grievances by filing departmental appeal etc. as may be provided under Rules wherein all the points including the disputes raised by the applicants in the present O.A. regarding non-supply of legible copies of the relied upon documents and inspection of original records may be raised before the appellate authority."

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From the above stated facts it is clear that this Tribunal firstly by Interim Order stayed the passing the final order against the applicant and subsequently by the final order directed the authorities to proceed with the inquiry forthwith in accordance with law and conclude the same expeditiously preferably within a period of six months from the date of receipt of a certified copy of this order. It is further directed that the Inquiry Officer and the Disciplinary Authority shall keep in mind the observations made therein to provide the legible copies of the relied upon copies to the delinquent employee as required under law. It is thus clear that this Tribunal directed the respondents to provide legible copies of the relied upon documents and thereafter to conduct a fresh inquiry and the same will be completed within a period of six months. There is no ambiguity in the order passed by this Tribunal as this Court directed the Inquiry Officer as well as to the Disciplinary Authority to provide legible copies and thereafter to proceed further in accordance with law, Meaning thereby the earlier enquiry report had lost its sanctity and the inquiry is to be conducted afresh after providing legible copies. The Court was conscious of this fact that if the delinquent officer further raise any grievance the same will be dealt with in accordance with law.

10. Admittedly after passing the order on 2.4.2008, the Disciplinary Authority himself considered the case of the applicant for supply of documents and without recording any reason, came to the conclusion that it is the mechanism adopted by the applicant to delay the proceedings as the proceedings are pending for last more than five years. From this fact, it is clear that the Disciplinary Authority has not even considered the order passed by this Tribunal on 2.4.2008 and proceeded on the same



very inquiry and passed the order of punishment removing the applicant from service. We find that even the Learned Counsel for the respondents has not shown any documents to the effect that after passing of the order dated 2.4.2008 the applicant was provided adequate opportunity in terms of directions given therein or fresh inquiry was conducted.

11. Without going into the merit of the case, we are satisfied that the respondent~~s~~ has not complied with the order passed by this Tribunal on 2.4. 2008 and thus, on this count alone the impugned order is liable to be set aside. We order accordingly. The matter is remanded back to the Respondents with liberty to proceed with the Inquiry from the stage from where the fault was detected by this Tribunal in earlier round of litigation vide order dated 2.4.2008. While proceeding further in this matter observations made in earlier order passed by this Tribunal on 2.4.2008 *are* be kept in mind.

12. With the above observation, the O.A. is thus, disposed of. No order as to costs.

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MEMBER (J)

K. J. M. Tam
MEMBER (A)

SJ*