

C
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

ORIGINAL APPLICATION NO. 703 OF 1998
Cuttack this the 27th day of April 2000

Braja Mohan Bhoi

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 25
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 27

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

X

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

ORIGINAL APPLICATION NO. 703 OF 1998
Cuttack this the 27th day of April 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM VICE-CHAIRMAN
AND
THE HON'BLE SHRI G. NARASIMHAM MEMBER (JUDICIAL)

...

Braja Mohan Bhoi
aged about 46 years
S/o. Baishnaba Bhoi
Permanent resident of Mocchida PO: Rengali
Dist: Sambalpur - presently working
as F.D.B.P.M. Mochhida B.O. (Under put-off duty)

...

Applicant

By the Advocates : M/s. A.K. Mishr (2)
S.P. Dash

-Versus-

1. Chief Post Master General
Orissa Circle, Bhubaneswar
Dist: Khurda
2. Director of Postal Services
Sambalpur Division P.M.G. Circle
Post/Dist: Sambalpur
3. Senior Superintendent of Post Offices
Sambalpur Division P.M.G. Office
Post/Dist: Sambalpur

...

Respondents

By the Advocates : Mr. S.B. Jena
Addl. Standing Counsel
(Central)

...

ORDER

MR.G.NARASIMHAM MEMBER(JUDICIAL): Issue involved in this case is whether a departmental respondent can be restrained from proceeding against the applicant who as E.D.B.P.M. Machhada Branch Office was placed under put off duty on 18.9.1984 for alleged misappropriation of amounts amounting to Rs.14160.20 between 18.19.1983 to 6.8.1984.

After placing the applicant under put off duty F.I.R. was lodged on 7.8.1985 and consequently G.R. case 575/85 under Section 409 I.P.C. was registered. At first this case ended in conviction of the applicant on 9.8.1988 and consequently on 31.10.1988 he was dismissed from service. But the Higher Court remanded the case to the Trial Court for framing of charges afresh and for further trial. Ultimately the Trial Court acquitted the applicant on 17.3.1994. The applicant submitted representation (Annexure-A/1) on 30.10.1994 for his reinstatement. By order 25.9.1996(Annexure-A/2) order of dismissal was set aside but the applicant was placed under put off duty with effect from 24.7.1989 in contemplation of initiation of departmental proceedings. This application has been filed for quashing that portion of Annexure-A/2 placing him under put off duty with effect from 24.7.1989 under Rule-9(1) of E.D.Agents(Conduct & Service) Rules 1964 in contemplation of proceedings against him under Rule-8 of the said E.D.A.Rules.

These facts are not in controversy.

2. The main ground urged by the applicant is that since no disciplinary proceedings have been

initiated in spite of several years the Department is estopped from initiating disciplinary proceedings and that he shall have to be reinstated.

3. In the counter filed by the Department on 16.2.2000 there is no averment that in fact charges have been framed though there is sequence of facts upto the stage of passing of the order under Annexure-2. It is conspicuously silent as to what further steps if any were taken by the Department in regard to framing of charges and so on after the order under Annexure-A/2 was passed.

In the rejoinder filed by the applicant on 24.3.2000 he has asserted that even by that date no charge memo was served on him and even otherwise since he has been acquitted on merits on the charges of misappropriation the Departmental proceedings on the very same charges cannot further lie.

4. We have heard Shri A.K.Mishr(2) learned counsel for the applicant and Shri S.B.Jena learned Addl.Standing Counsel appearing for the Department. Also perused the records.

5. As already stated facts are not in controversy. Even during hearing there was no submission that the charge memo has since been served on the applicant. Law is well settled that even after initiating a criminal case the departmental proceedings can also be initiated simultaneously on the very same charge ~~for the~~ similar offence. The alleged misappropriation said to have taken place in the years between 1983 and 84. We are in the year 2000. There is nothing on record that charges have since been framed inspite of passage of about 16 years. At least there should be some explanation from the

Department as to why proceedings have not been initiated from the date of acquittal i.e. 17.3.1994. As earlier stated the counter is conspicuously silent. It is all the more interesting that even after receipt of notice in this Original Application the Department have not woke up from their slumber in expediting the framing of charge memo and serving the same.

Be that as it may even if the charge memo had been framed and served by the time this Original Application was filed in the year 1998 still a question would arise whether the Department would have been allowed further to proceed against the applicant on the basis of the charge without any explanation for this abnormal delay.

In AIR 1990 SC 1308 (State of Madhya Pradesh vs. Bani Singh) while interpreting Sections 14 and 19 of the Administrative Tribunals Act 1985 the Apex Court quashed the disciplinary proceedings initiated against the concerned employee after more than 12 years because even though the Department was aware of involvement of the officer about the alleged irregularities no satisfactory explanation for inordinate delay in issuing charge memo was furnished. Again in State of Punjab vs. Chanan Lal reported in 1995 SCC(L&S) 541 (At Page 545(Para-9)) the Apex Court held that it is ~~tride~~ to say that such disciplinary proceedings must be conducted soon after the irregularities are committed or soon after discovering the irregularities; that they cannot initiate after lapse of a considerable time; that it would not be fair to the delinquent officer; that such delay also makes the task of proving the charges

difficult and is thus not also in the interest of administration; that delayed initiation of proceeding is bound to give room for allegation of bias, malafides and misuse of power; that if the delay is too long and is unexplained the Court may well interfere and quash the charges.

Further the case decided on 7.4.1998 in State of Andhra Pradesh vs. N.Radhakishan reported in 1998 (3) SCW 162 the Supreme Court reiterated the same view and quashed the charges issued in the year 1987 which was not finalised even in the year 1996 when the Original Application was filed.

In view of this legal position even if the charge memo would have been served by the time this Original Application was filed the impugned order would have been quashed because of this inordinate and unexplained delay. From another angle also such charge memo would have been quashed. The criminal case with an allegation of misappropriation of amounts ended in acquittal on merits. Hence such charge memo containing the same imputations in the guise of committing misconduct would not necessitate further departmental enquiry as has been observed by the Apex Court in **Sulekh Chand vs. Commissioner of Police** reported in 1995 SCC(L&S) 196 wherein also it was held that once acquittal under Section 5(2) of the Prevention of Corruption Act was on merits the consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service.

6. For the reasons discussed above we quash the impugned order at Annexure-2 containing the

contemplation of the Department to initiate the proceedings and placing the applicant under put off duty with retrospective effect from 24.7.1989 and ^{direct the respondents} treat the period from 17.3.1994 i.e. the date of acquittal on wards as duty with consequential service benefits. We make it clear if in the meanwhile charge memo has been made ready and/or served on the applicant the same also stands automatically quashed.

6. Respondents are directed to reinstate the applicant forthwith with consequential service benefits as ordered above. They are also directed to take a decision ^{on} the treatment of the period from the date of put off duty till the date of acquittal on merits in the criminal case within a period of 60(Sixty) days from the date of receipt of copies of this orders.

7. In the result the Original Application is allowed but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 27.4.2000

B.K.SAHOO

G. Narasimham 27.4.2000
(G.NARASIMHAM)
MEMBER(JUDICIAL)