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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 191/1997
~~XXXXXX~~

~~XXXX~~

DATE OF DECISION 21.09.1999

Kishore Kumar Charan .. Petitioner

Self .. Advocate for the Petitioner(s)

Versus

Union of India & Others .. Respondent

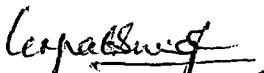
Mr. Vinit Mathur .. Advocate for the Respondent(s)

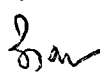
CORAM :

The Hon'ble Mr. A.K. MISRA, JUDICIAL MEMBER.

The Hon'ble Mr. GOPAL SINGH, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter ~~XXXX~~? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(Gopal Singh)
Adm. Member


(A.K. Misra)
Judl. Member

(2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

.....

Date of order : 21.9.99 .

O.A.No. 191/1997

Kishore Kumar Charan S/o Shri Bhagumalji Charan, R/o Opp.
M.I.Factory, Samadari Road, Balotra, Compulsorily Retired Sub
Post Master, Parlu, District Barmer (Raj).

.....APPLICANT

VERSUS

1. Union of India through the Secretary to the Government of India, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Member (P), Postal Services Board, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
3. Director, Postal Services, Rajasthan Western Region, office of the Post Master General, Jodhpur.
4. Superintendent of Post Offices, Barmer Division, Barmer.
5. Shri Jetharam Suthar (Retd. Superintendent of Post Offices), Ginani Near Ghantel House, Bikaner (Raj).

.....RESPONDENTS

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CORAM :

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

.....

Applicant present in person.

Mr.Vineet Mathur, Counsel for the respondents.

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PER MR.GOPAL SINGH :

Applicant, Kishore Kumar, has filed this Application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 31.3.1993

Gopal Singh

(Annex.A/55), order dated 18.8.1993 (Annex.A/63) and order dated 8.2.1996 (Annex.A/74), with all consequential benefits. The applicant has also prayed for interest at the rate of 24% p.a. on pay and allowances for the period from April 1993 till his reinstatement. The applicant has also prayed for compensation of Rs. 1,08,000/- for mental harassment.

2. Applicant's case is that he was initially appointed as Postal Assistant on 16.12.1982 in the respondent department. Shri Daya Ram Prajapat, Postal Assistant, Samdari Railway Station had come to Parlu Post Office and asked the applicant to give the charge of that office to him and he also informed the applicant that had had been placed under suspension. The applicant demanded the suspension order before giving the charge of the post. Shri Prajapat also approached the applicant again on 19.7.1992 and 20.7.1992 and asked him to handover the charge. When the applicant persisted in his refusal to hand over the charge Shri Prajapat came with a police Constable on 22.7.1992 and the police/also pressurised the applicant to hand over the charge. However, the applicant did not give the charge of his office in absence of any order from the authorities. In the evening of 22.7.1992, two police Constables came in a Van to the residence of the applicant and asked him to accompany them as the Sub Inspector of the police station had called him. The applicant had gone to the police station where the Sub Inspector threatened him that if he would not hand over the charge he would be implicated in some police case. The applicant requested the Sub Inspector to allow him to go but he was not allowed to leave the police station. Shri Prajapat and Shri Bihari Lal, Sub Divisional Inspector (Posts), were also present in the police station on that day and on the basis of their combined persuasion, the Police Inspector kept the applicant in police

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custody on that night and on 23.7.1992 the applicant was produced before the Sub Divisional Magistrate and he was released on bail under Section 107 of CrPC. The applicant gave charge of his office to Shri Dayaram Prajapat on 25.7.1992 when a copy of his suspension order was shown to him. Subsequently, the applicant was served with a Chargesheet dated 11.8.1992 which was received by him on 26.8.1992 and only/ ^{after} three days of receipt of the Chargesheet, the Disciplinary Authority had appointed inquiry officer and presenting officer on 31.8.1992. In the meantime, the applicant was acquitted in case No. 24/1992. On conclusion of the inquiry, the Disciplinary Authority imposed the punishment of compulsory retirement upon the applicant vide its order dated 31.3.1993 (Annex.A/55). The appeal against the orders of the Disciplinary Authority submitted by the applicant was rejected by the Appellate Authority vide its order dated 18.8.1993 (Annex.A/63). Vide order Annex.A/74 the respondent department has shown calculation of pensionary benefits to the applicant. Feeling aggrieved, the applicant has approached this Tribunal.

3. Notices were issued to the respondents and they have filed their reply.

4. We have heard the applicant and the learned counsel for the respondents.

5. We have carefully perused the records of the case.

6. The applicant's case as narrated above, has not been contested by the respondents or the learned counsel for the respondents. Apparently, the respondents department was bent upon harassing the applicant and it is very clear from the fact

unpalatable

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that an official was deputed to the office of the applicant to take-over the charge from him on the plea that the applicant has been suspended, before the actual suspension order was issued. That the respondents tried to bring pressure from the police authorities upon the applicant to hand over charge. The respondents even persuaded the police authorities to book the applicant under Section 107 CrPC. It would be interesting to go through the Court's order acquitting the applicant in the above mentioned case.

"We have gone through the file presented before us by Superintendent, Post Office, Barmer and found that the applicant has been suspended vide order dated 17.7.1992 but without giving the order or any memo the applicant has been asked to hand over charge on 22.7.1992. The Report of Shri Bihari Lal, Inspector, dated 24.7.1992 is available on record. Thus, the action taken by the department to take over charge seven days before the order of suspension was wrong. Therefore, it was natural to protest on the part of the applicant. In such case, it cannot be taken as appropriate to bound-down a state employee under Section 107 CrPC. Therefore, lower Court's order dated 23.7.1992 is set aside. (Original Order is in Hindi, English Translation ours)."

7. It has been held by the Session Judge, Balotra that it was wrong on the part of the department to have initiated action for taking over charge from the applicant seven days before the order of suspension was passed. This is a clear case of high handedness and colourable exercise of power. The Government departments are not expected to take police assistance in such cases. A perusal of the departmental inquiry proceedings also reveal that the inquiry officer had fixed the dates for hearing on 16.12.1992, 17.12.1992, 18.12.1992 and 26.12.1992 without intimating these dates to the applicant. Earlier, the inquiry officer had fixed the date of 16.11.1992 for hearing the case. However, the applicant could not present himself on that day because of illness and he had sent a telegram well in time in this regard to the inquiry officer. The

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learned counsel for the respondents could not produce before us any document regarding intimation of these dates of hearing to the applicant.

8. It is also seen from the records that no preliminary inquiry was conducted into the alleged misconduct of the applicant for which he was chargesheeted. All the statements which have been exhibited in the chargesheet, were taken in mid July 1992 whereas the alleged misconduct occurred on 22.6.1992. The alleged misconduct was such as to have come to the notice of the superior authorities immediately the next day or the day / the next day. Even the Inspector of Posts, who was charged with the responsibility of over seeing the functioning of moving of Dak did not detect the alleged misconduct and made a report immediately after the alleged misconduct.

9. In the circumstances, we have no option but to conclude that the applicant was not given reasonable opportunity to defend his case before the inquiry officer and thus, it was in clear violation of the principles of natural justice.

10. In the light of the above discussion, we allow this Application with the following directions :-

- (i) Orders at Annex.A/55 dated 31.3.1993, Annex.A/ dated 18.8.1993 and Annex.A/74 dated 8.2.1996 are quashed. The applicant would be reinstated service within three months from the date of receipt of a copy of this order and he would be entitled full pay and allowances from the day he was dismissed till the date of reinstatement. Less per drawn by the applicant as per Annex.A/74. The per

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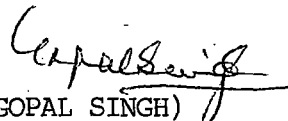
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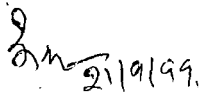
of suspension would also be treated as duty and paid for accordingly. This we are ordering because the respondents department has indulged in highhandedness and colourable exercise of power.

(ii) The applicant would be entitled to all consequential benefits like promotion, seniority etc.

(iii) For the colourable exercise of power on the part of the respondents that has led to harassment and mental agony to the applicant, we award a cost of Rs. 5,000/-.

The above directions would be complied with by the respondents within three months from the date of receipt of a copy of this order.


(GOPAL SINGH)
Adm.Member


(A.K.MISRA)
Judl.Member

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Hon'ble member (A)
Ltr - copy
Reproducible copy
to Sh. Kameshwar. } 27-9-99
A.S.

Received copy cost bill
along with the
Ramesh Singh
27/9/99

Copy of the order along with
cost bill amounting to Rs 5000/-
(Rs Five thousand only) sent to
applicant at his residential
address vide
No 293
dt 28-9-99
A.S.