

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.**

O.A. No. 214/2002

DATE OF DECISION :

25-7-2003

Jeevraj Panwar : Petitioner

Mr.S. K. Malik : Advocate for the
Petitioner

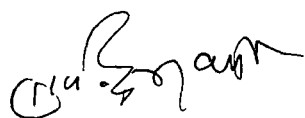
Versus

Union of India & Ors. : Respondent (s)

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

**Coram : Hon'ble Mr.Justice G.L.Gupta, Vice-Chairman,
Hon'ble Mr.R.K.Upadhyaya, Member (A).**

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?



**(R.K.UPADHYAYA)
MEMBER (A)**

**(G.L.GUPTA)
VICE-CHAIRMAN**

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of Decision : 25-07-03

Original Application No. 214/2002.

Shri Jeevraj Panwar S/o Shri Ramnathji, aged about 52 years, r/o. Village & Post Giri, district Pali (Rajasthan), presently working on the post of EDBPM (under Put Off), in the Post Office Giri, Via Sendara, District Pali Marwar (Rajasthan).

... APPLICANT.

V e r s u s

1. Union of India through the Secretary, Ministry of communication, Department of Post Offices, Dak Bhavan, New Delhi.
2. The Superintendent of Post Offices, Pali Division, Pali Marwar (Rajasthan).
3. Enquiry Officer Shri Kan Singh, Inspector of Post Offices, Jaitaran District Pali (Rajasthan).

... RESPONDENTS.

Mr. S. K. Malik counsel for the applicant.
Mr. Vinit Mathur, counsel for the respondents.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. R. K. Upadhyaya, Administrative Member.

ORDER

(per Hon'ble Mr. Justice G. L. Gupta)

The applicant was working as Extra Departmental Branch Post Master (EDBPM, for short), Post Office, Giri, Via Sendara, District Pali Marwar (Rajsthan). He was placed under put off duty vide memo dated 24.11.1970. On 10.04.1971 FIR was lodged against the applicant by the Superintendent of Post Offices, Pali, with the allegations that he had done manipulations in Pass Book Accounts of Account holders in the year 1969-70 and had mis-

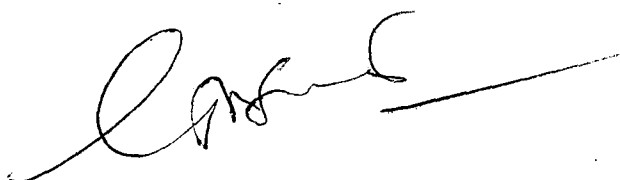


appropriated the money. The Police after investigation submitted a Challan in the Court of Judicial Magistrate Bar under Section 409 and 467 IPC . On completion of the trial, learned criminal court acquitted the applicant vide judgement dated 27.06.2000 (Annexure A-3). After his acquittal, the applicant made an application before the respondents to reinstate him. When it was not done he approached this Tribunal by filing OA No. 118/2001,. The same was disposed of by giving directions to the respondents to make ex gratia payment to the applicant as contemplated in the relevant rule and also to pay arrears up to 28.02.2000. Thereafter the respondents served the charge sheet Annexure A-1 on the applicant on 20.08.2001. This charge sheet is under challenge in the instant OA.

2. The say of the applicant is that the charge sheet has been given for the incident which had taken place in remote past i.e. 32 years ago and it is on the same set of facts for which he has faced the criminal trial and has been acquitted. It is prayed that the charge sheet be quashed.

3. In the counter, the respondents case is that the applicant has been acquitted giving benefit of doubt because some witnesses could not be examined. It is stated that there is no legal impediment in issuing the charge sheet after the acquittal of the applicant. It is stated that the applicant has been acquitted on 27.06.2000 and the charge sheet has been issued on 20.08.2001 and, therefore, it is not a case of remote past.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

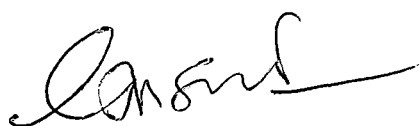


5. The contention of Mr. Malik, learned counsel for the applicant was that the criminal case was filed against the applicant for the embezzlement of Rs. 100 or 200/- and he has suffered the rigor of trial for number of years and the respondents therefore, should not be allowed to hold departmental enquiry against him more so when star witnesses Shri Narain Singh and Kuber Singh had not supported the prosecuted case in the criminal trial. Relying on the cases of State of Madhya Pradesh vs. Bani Singh [1991 SCC (L&S) 638], Captain M. Paul Antony vs. Bharat Gold Mines Ltd. & Anr. [1999 SCC (L&S) 810], State of Andhra Pradesh vs. S. Radhakishan [1998 SCC (L&S) 1044], Ashok Kapoor vs. Union of India & Ors. [2002 (3) ATJ 138], Nathu Lal vs. Union of India & Ors. (OA No. 230/99 decided on 28.09.2000 by this Bench) and Ranjit Lal vs. Union of India & Ors. (OA No. 390/99 decided on 27.06.2000 by this Bench), he canvassed that the charge sheet be quashed.

6. On the other hand Mr. Vinit Mathur, learned counsel for the respondents, contended that this Court cannot be justified in interfering with the charge sheet when the allegations are of misappropriation. His contention was that since criminal case was going on, the charge sheet was not given to the applicant in terms of Para 81 and 82 of the guidelines (full text not produced. Only photocopy of page 40 is produced). Pointing out that the applicant was not honorably acquitted, he canvassed that the charge sheet should not be quashed.

7. We have given the matter our thoughtful consideration.

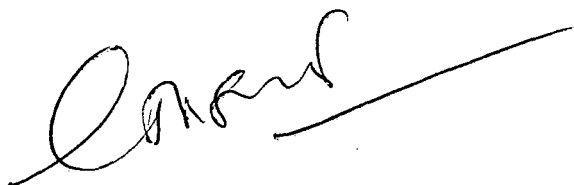
8. It is seen that the allegations against the applicant in the criminal case were that he had made entry of Rs.250/- in the



record of the Post Office in favour of Narain Singh but made entry of Rs.300/- in his Pass Book. So also he did not account for a sum of Rs.50/- deposited by Kuber Singh, though he had made entry in his Pass Book. The other charge was that the applicant withdrew Rs. 100/- from the SB Account of Narain Singh by making false entry. The prosecution examined as many as 13 witnesses. It is seen that Narain Singh, Depositor, and Kuber Singh did not support the prosecution. Narain Singh was declared hostile. The version of Kuber Singh was that he had not gone to post office to deposit the amount but had paid the amount to the applicant elsewhere. The criminal court has found that the charges of misappropriation were not established and has acquitted the applicant.

9. It cannot be denied that the charge sheet has been given to the applicant on the same set of facts and allegations which were the basis of the criminal case. Keeping in view the statements made by Narain Singh and Kuber Singh before the criminal court there is hardly any scope of success of the department in the disciplinary proceedings. It is significant to point out that Kuber Singh and Narain Singh are the witnesses cited in the charge sheet.

10. The alleged mis-conduct had taken place in the year 1969-70 that is more than 33 years have elapsed since then. The respondents have not been able to show the cause as to why the charge sheet was not given soon after the mis-conduct was detected. The contention that the respondents were waiting for the result of the criminal case can hardly be accepted. There is no



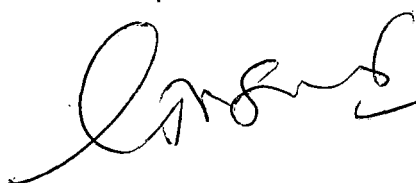
rule which says that if FIR is lodged or the criminal case is pending the disciplinary proceedings cannot be initiated.

11. Our attention was drawn to para 81 of the aforesaid guidelines which says that once a charge sheet is filed in the court against an employee, the departmental proceedings initiated against him on the same facts should be kept in abeyance till the finalisation of the criminal proceedings. Instant case is not covered by this provision because the disciplinary proceedings had not been initiated against the applicant when the charge sheet had been filed in the court.

12. It is true that under para 82 of the said guidelines there is no bar to hold a departmental enquiry on the same allegations if the criminal court had acquitted him on the same set of charges. However, the rule further says that it can be done only when better proof than that was produced before the court or was then available, is forthcoming. Learned counsel for the respondents could not point out the better proof which could not be produced before the criminal court and which may be produced in the disciplinary proceedings. As a matter of fact, as already stated ^a some set of witnesses are sought to be examined in the disciplinary proceedings who were examined in the criminal court.

13. The fact remains that the charge sheet has been served upon the applicant in respect of the alleged mis-conduct which had taken place about 32 years ago.

13.1 In the case of Ashok Kapoor (Supra), the Principal Bench of this Tribunal quashed the charge sheet on the ground of delay of 12 years caused in issuing the charge sheet. It is significant to point out that in that case the allegations against the employee



were that he had failed to maintain absolute integrity and devotion to duty in discharging of his duties as Head Clerk/T.T./Line. The allegations were not of minor nature.

13.2 So also in the case of Ranjit Lal (Supra), this Bench of the Tribunal quashed the charge sheet given in the year 1999 for the mis-conduct committed in the year 1987.

13.3 In the case of Nathu lal Ashwani also the charge sheet was quashed on the ground of delay of about 20 years in issuing the charge sheet. In that case also, the charge sheet was given after the applicant was acquitted by the criminal court. This court did not approve the act of the department therein.

13.4 In the case of Bani singh (Supra) their Lordship's upheld the order of the Tribunal quashing the disciplinary proceedings initiated 12 years after the alleged mis-conduct.

14. Keeping in view the petty amount involved in the case and that the alleged mis-conduct had taken place more than 32 years back, we think it a fit case in which the charge sheet should be quashed.

15. Consequently, we allow this application. The charge sheet impugned herein is hereby quashed. No order as to costs.



(R. K. UPADHYAYA)
MEMBER (A)



(G. L. GUPTA)
VICE CHAIRMAN

R/C
229/12/9
by DAYARAM
ADV

W/1
10/12

Part II and III destroyed
in my presence on 25/2/09
under the supervision of
section officer () as per
order dated 19/2/09

Section Officer (Record)