

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
LUCKNOW CIRCUIT BENCH
Registration O.A.No.262 of 1989(L)

G.P.Srivastava Applicant

Versus

Union of India & Others.....Respondents

Hon.Mr.Justice K.Nath, V.C.

Hon.Mr. K. Obayya Member(A)

(By Hon.Mr.Justice K.Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 seeks a large number of reliefs. A chargesheet of disciplinary enquiry alongwith the proceedings for recovery of the amount of loss caused to the Govt. are sought to be quashed.

Fixation of pay in the revised scale with effect from 1.1.86, i.e. from the enforcement of the IVth Pay Commission Recommendations, is sought. Full salary for the period of suspension under Annexure-A6 from 24.11.82 till the date of applicant's retirement from service on 31.10.87. is sought and the respondents are required to settle all the post retiral benefits of the applicant.

2. The applicant was appointed as a clerk in 1948 and was promoted to the post of Lower Selection Grade Postal Asstt. in the scale of Rs.425-640 in 1974 in the G.P.O. at Lucknow. It is alleged that between 3.12.79 and 14.9.81 the applicant had received articles on which foreign duty was due but he failed to

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Rs.10,964-65, credit the amount of customs duty/received by him to the Govt. Account. It is further said that on 20.5.80 and 21.10.80 he realised Rs.2469-70 as customs duty but failed to credit the amount to the Govt. Account. It is lastly urged that between 3.12.79 and 23.7.81, he failed to maintain register of foreign articles received and disposed of by him and that even the register for the subsequent period from 24.7.81 to 19.9.81 was full of erasures and over-writings. In short, he was alleged to have misappropriated Govt. money. For the alleged commission of that criminal offence an FIR, Annexure-A.37 dated 30.8.82 was lodged against him with the police. On 6.9.82, a chargesheet, Annexure-A1 was issued to him, and by order dated 24.11.82, Annexure-A6 he was placed under suspension on account of the aforesaid criminal offence being under investigation and also for disciplinary enquiry under contemplation. It was said that the order regarding payment of subsistence allowance would be passed later.

3. The chargesheet dated 6.9.82, Annexure-A1 however was withdrawn by order dated 19.11.82, Annexure-A7 because the papers which were concerned with the enquiry were in the custody of the police for the purposes of investigation. The cancellation was done without prejudice to a right to reissue a chargesheet at appropriate time.

4. The FIR led to criminal case No.293 of 1983 under Section 409, Indian Penal Code in the Court of the Chief Judicial Magistrate, Lucknow and the proceedings have not yet been concluded. The applicant was to retire on 30.10.87. Consequently, he was served with a new

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chargesheet dated 26.10.87, Annexure-A8 on 28.10.87. This chargesheet was issued by the Deputy Chief Postmaster. One Ashok Kumar Srivastava was appointed as Inquiry Officer by order dated 29.1.88, Annexure-A.16. The applicant applied for change of the Inquiry Officer on the ground that since the Inquiry Officer was working in the G.P.O. at Lucknow he might not be impartial and the applicant ^{may} not get justice. That was rejected by order dated 5.2.88, Annexure-A.17. The applicant, however, applied to the Chief Postmaster by application dated 26.2.88, Annexure-A.17A for change of the said Inquiry Officer; that application was also rejected but the Deputy Chief Postmaster *sua moto* changed Ashok Kumar Srivastava and after a couple of other changes ultimately appointed A.N.Srivastava, S.D.I.(E) Lucknow to be the Inquiry Officer by letter dated 14.5.88, Annexure-A.21.

5. The applicant attended the enquiry before A.N.Srivastava on 19.12.88, 4.1.89, 20.1.89, inspected the listed documents, demanded their photo copies which according to him were not supplied to him, as originals were not available; he claims to have applied for five additional documents which were not furnished to him; according to para 13 of the Counter Affidavit, the applicant had not made any such application.

6. The applicant stated in para 4(ix) of the Original Application that the Inquiry Officer had wrongly recorded in the proceedings of 20.1.89; that the applicant had requested for permission to conduct

the case himself which was accepted; the applicant says that he did not make any such request. According to para 14 of the Counter Affidavit, the Inquiry Officer had asked him to bring his defence assistant on the following dates.

7. On 28.1.89, the applicant made an application, Annexure-A.23 to the Deputy Chief Postmaster challenging the validity of the chargesheet dated 26.10.87. The ground stated was that his Appointing Authority was the Director of Postal Services and therefore the Deputy Chief Postmaster could not issue the chargesheet. It was further said that since the criminal case was pending for the same charges, enquiry would prejudice his defence in the criminal case. He lastly said that the recovery proceedings had already been initiated by issue of requisition to the District Magistrate for Rs.10,964-65 which could not be done as the applicant would suffer double jeopardy. According to the applicant he received no reply to this application; according to para 30 of the Counter Affidavit, the Deputy Chief Postmaster was fully competent to initiate the disciplinary enquiry.

8. The enquiry proceeded but the applicant did not appear on 3.2.89 or subsequent dates on the ground of his illness. He said that subsequent dates of enquiry were fixed without intimation to him and that intimations were always received by him after the date had already expired. The applicant made a large number of representations. Finally he was given a notice for personal hearing on 3.7.89 but he says that he received the notice on 4.7.89. In the proceedings dated 3.7.89, the Inquiry Officer gave one week's time after receipt of

the brief of the Presenting Officer for the applicant to submit his own brief. The applicant has mentioned in para 4(xviii) of the Application that the carbon copy of the Presenting Officer's brief, received by him on 18.7.89 was illegible in respect of which he wrote a letter dated 23.7.89 to the Inquiry Officer and demanded inspection of relevant documents. In paras 17, 18 and 22 of the Counter Affidavit, it has been stated that the proper notices were issued by the Inquiry Officer to the applicant in time and that the applicant had adequate opportunity to present his defence.

9. It appears that since the applicant did not take part in the disciplinary proceedings, the Inquiry Officer ultimately submitted his report to the disciplinary authority on 4.7.89 ex parte stating that the charges levelled against the applicant were proved. Since the applicant had already retired on 31.10.87, the case was submitted to the disciplinary authority under Rule 9 of the C.C.S.(Pension) Rules, 1972 for orders. It is stated in para 37 of the Counter Affidavit that disciplinary proceedings under Rule 9 aforesaid have remained pending in the office of the Director Postal Services Lucknow Region. It is added that after decision is taken, action for payment of various claims made by the applicant would be taken.

10. It may be mentioned that in the meantime, the Chief Postmaster G.P.O. sent a letter dated 8.9.89, Annexure-A.39 to the District Magistrate for recovery of Rs.10964-65 from the applicant as arrears of land revenue. The District Magistrate sent down the documents to the Tehsildar who issued notice, Annexure-A.40 to the

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applicant demanding the payment. The Amin approached the applicant for payment. When this application was filed, an interim order was passed at admission stage on 20.9.89 staying recovery of that amount as arrears of land revenue. But the respondents were allowed to withhold that amount out of the retiral benefits which might have accrued to the applicant.

11. We have heard Shri M.Dubey for the applicant and Shri V.K.Chaudhary for the respondents. We have gone through the documents on the record including the applicant's rejoinder, in which the case as stated in the Original Application was substantially reiterated.

12. The first point urged by the learned counsel for the applicant in this case is that the chargesheet, Annexure-A1 dated 6.9.82 was invalid because it had been issued by the Postmaster who was not the competent authority. The objection is correct, but is of no importance because that chargesheet was already recalled by the Department on 19.11.82 and a fresh chargesheet, Annexure-A8 dated 26.10.87 was issued by the Deputy Chief Postmaster. There is no reason to hold that chargesheet dated 26.10.87, Annexure-A.8 suffers from the vice of incompetence. It is not shown that the applicant's appointing authority was Director Postal Services, or that the Deputy Chief Postmaster could not initiate the proceedings. In reply to assertion in para 30 of Counter Affidavit that Deputy Chief Postmaster was competent, the applicant has not made any specific rebuttal in the rejoinder.

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13. The next point urged is that since during the pendency of the proceedings the applicant retired on superannuation with effect from 31.10.87 (AN), the suspension order automatically came to an end and the applicant must be treated to have been continuously on duty from the date of suspension to the date of retirement for which the applicant must be paid his salary. We may mention that Shri M.Dubey, the learned counsel for the applicant has placed reliance upon the law stated in the applicant's representation, Annexure.A31 and he laid emphasis thereon during the arguments. The contention is that Rule 14 of the CCS(CC&A) Rules, 1965 do not permit any enquiry to continue after retirement as held in the case of State of Punjab Versus Khemi Ram 1970 SC 714. That contention has no substance because the power to continue the enquiry instituted before retirement is contained in Rule 9 of the CCS(Pension) Rules, 1972. Sub Rule 2(a) of Rule 9 mentions in ~~an~~ unmistakable terms that the departmental proceedings commenced prior to retirement shall, after the retirement, be deemed to be proceedings under Rule 9 and "shall be continued and concluded by the authority by which they were commenced in the same manner as if the Govt. servants have continued in service". That Rule did not exist when Khemi Ram's case was decided. The learned counsel for the applicant however urged that under Rule 9 of the CCS(Pension) Rules proceedings could be taken in respect of misconduct or negligence within four years prior to retirement but the misconduct in the

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present case relates to the period 3.12.79 to 14.9.81 and therefore the proceedings could not be continued. This provision contained in Rule 9(2)(b) of the CCS (Pension) Rules applies to only those cases where the departmental proceedings could not be instituted while the Govt. servant was still in service. That is not the position before us. The learned counsel for the applicant has referred to a Full Bench decision of the Kerala High Court in the case of R.P.Nair Versus Kerala State Electricity Board 1979 Kerala 135 which concerned Rule 3 of Kerala State Rules which was perhaps similar to Rule 9 of the CCS(Pension) Rules, 1972. That decision does not say that the enquiry cannot be continued; it only says that an enquiry of a limited type could be proceeded with, viz an enquiry with a view to withhold or to withdraw pension or to order recovery from pension by reason of misconduct or negligence. That is precisely the object of the enquiry with which we are concerned. There is no question of imposing any of the punishments on the applicant which would otherwise be imposed under the CCS(CC&A) Rules; it is only a question of the manner in which his pensionary benefits could be dealt with in case misconduct or negligence could be proved. There can be no doubt that such misconduct or negligence has to be proved only by means of an enquiry which would be none else than the enquiry as being conducted in the present case against the applicant. This is

how the decision in the case of R.P.Nair Versus Kerala Electricity Board (supra) has been appreciated by a Full Bench of this Tribunal in ^{the} case of Amrit Singh Versus Union of India & Others O.A. No.61/87 decided at the Principal Bench on 6.9.88 and published by Bahri Brothers Delhi in the Compilation "Full Bench Judgement of Central Administrative Tribunals (1986-89) Page 227. The Full Bench has observed in para 7 of the judgement that the Kerala Full Bench holds that the Rule permits disciplinary proceedings, initiated before retirement, to be continued after the superannuation for the limited purpose of withholding or withdrawing pension or recovery from the pension of any pecuniary loss caused to the Govt. by creating a fiction that these proceedings are under this particular Rule.

14. The learned counsel for the applicant then referred to a decision of the Hyderabad Bench of this Tribunal in the case of K.Padmanabha Rao Versus A.G. A.P.I reported in ATL (1987) Vol.II CAT 39 for the proposition that disciplinary proceedings cannot continue beyond the date of superannuation and that it is not permissible to impose a cut in the pension or to withhold the pension or gratuity under Rule 9 of the CCS(CC&A) Rules. The view taken in the judgement is that the suspension order stands revoked on acquittal, that on retirement no suspension order is deemed to be subsisting and that the employee must be paid full pay and allowances for the period of suspension treating

him as on duty. This view has been dissented by the Full Bench in the case of Amrit Singh Versus Union of India and Others (supra). The Full Bench observed in para 8 that in the case before the Hyderabad Bench, the memo of charges had been quashed before the petitioner retired from service and that no disciplinary proceeding was pending against him when he was allowed to retire on attaining the age of superannuation. The Full Bench observed that therefore the question of continuing the proceedings after his retirement for any purpose whatsoever did not arise at all. It was on those facts that the limited question which fell for consideration of the Hyderabad Bench was whether the period of suspension should be treated as a duty as the criminal case had ended in acquittal and the chargesheet issued in disciplinary proceedings was quashed by the High Court. The Tribunal had held that the period should be treated as on duty. The Full Bench observed that the question whether any departmental proceedings pending on the date the officer attained the age of superannuation could be continued after his retirement for any purpose whatsoever, did not arise for consideration. The Full Bench further held that Rule 9 of the CCS(Pension) Rules gives power to the competent authority to find if any of the charges are proved and if any of them are proved, the competent authority is vested with the further power not only to order withholding of whole or part of the pension but also to order recovery of

whole or part of the pecuniary loss occasioned to Govt. as a result of grave misconduct or negligence of the employee concerned and is not confined only to the power to recover pecuniary loss, if any, caused to the Govt. It also appears to us that since the expression 'pension' under Rule 3 (o) of the CCS(Pension) Rules includes gratuity except when the expression 'pension' is used in contra-distinction to gratuity, the amount of gratuity is also capable of being withheld or reduced as a consequence of the final order under Rule 9. The case of D.D. Suri Versus Union of India 1976 SCC (L&S) 155 is of no help to the applicant because it only says that a suspension order comes to an end by compulsory retirement and that the employee cannot be deemed to be under suspension after retirement. Nobody says that the applicant is to be deemed to be continued under suspension even after retirement.

15. The next point raised is that since a criminal case is going on against the applicant for the same misappropriation the disciplinary proceedings should not continue because it is likely to prejudice the applicant's defence in the criminal case. The police chargeheet, Annexure-A.38 dated 21.10.82 mentions that on investigation of the FIR dated 30.8.82, Annexure-A37 the applicant, ~~suspected~~ was found to have committed an offence punishable under Section 409, I.P.C. and therefore he was challaned for trial and punishment accordingly. The FIR, Annexure-A.37 sets out 9 items of misappropriation amounting to Rs.11,161-35 by the applicant. The chargesheet in the disciplinary enquiry,

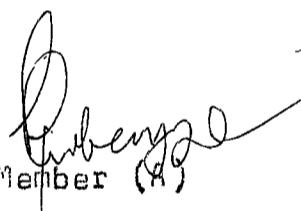
and where a Govt. servant is not only liable to be proceeded against departmentally but is also involved in the commission of a criminal offence, the law must reach both the defaults of the employee; the employee cannot take benefit of his own wrong. Whether the statement of defence in the disciplinary enquiry will or will not affect the defence in the criminal case, is entirely the concern of the employee and not of the law. The employee is liable to face punishments both under the general law and under the service law and there is no question of withholding the one for the other, the principle of double jeopardy applies only to action within one and the same forum, not between independent forums. The last point raised is that the recovery proceedings are invalid because no final orders have yet been passed in the disciplinary enquiry. This claim is absolutely correct. The proceedings of recovery therefore must be quashed. There can also be no doubt, that the applicant's pay must be revised in accordance with the accepted recommendations of the IVth Pay Commission ~~is~~ applicable to him.

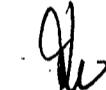
17. For the above reasons, the recovery proceedings against the applicant in Annexure-A39 and Annexure-A40 are quashed; no further recovery shall be made until and unless the disciplinary proceedings are completed. The respondents shall also revise the applicant's scale with effect from 1.1.86 unless already done. The respondents shall also conclude the enquiry and pass final orders under Rule 9 of the C.C.S. (Pension)

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Rules, 1972; but if the applicant so applies within a period of three weeks from the date of receipt of a copy of this judgement to participate in the disciplinary enquiry proceedings from the stage at which proceedings stood on 3.2.89, the respondents will allow the applicant to participate therein, and the proceedings may be concluded in accordance with the law. We further direct that the respondents shall carry out these directions within a period of six months from the date of receipt of a copy of this judgement. In all other respects, the Original Application is dismissed. Parties shall bear their costs.

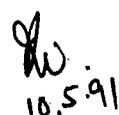

Member (A)


Vice Chairman

Dated the 10th May, 1991.

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We are pronouncing judgment at Allahabad in this case of the Lucknow Bench, because an appropriate Bench for pronouncement of the judgment is not likely to be available at Lucknow for several weeks. The Office at Allahabad will issue copies of this judgment to the parties and will thereafter, remit the record with the judgment to Lucknow Bench.


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Annexure-A.8 contains allegations regarding 10964-65 in Article I for 17 items and further to Rs.2469-70 in Article II for 2 items, in all 19 items. So the subject matter of the charge before the Criminal Court and that before the disciplinary authority is not identical. There is some overlapping. Further the disciplinary enquiry also charges the applicant for having failed to maintain register of foreign articles received and disposed of. That is not the subject matter of the criminal trial. Moreover, the element of mens rea in a criminal offence including an offence under Section 409, Indian Penal Code, is not involved in departmental disciplinary enquiry. In the case of Corporation of City of Nagpur Versus Ram Chandra G.Modak and Others 1984 SC 626 it has been held that departmental proceedings and criminal prosecution are two different things and the decision in a prosecution case is no bar to take disciplinary proceedings. Relying upon that law this Bench of the Tribunal has held in the case of Satish Chandra Versus D.R.M. in T.A. No.116/87 decided on 15.1.90 that a punishment order in disciplinary proceedings which has become final before acquittal in a criminal trial cannot affect the punishment already given in the disciplinary enquiry retrospectively. Having regard to the facts and circumstances of the present case we are satisfied that there is no worth in the applicant's case of possible jeopardy in proceeding with the disciplinary enquiry and of any prejudice to his defence in the criminal case. The general principle is that the law must take its course in all its aspects,

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