

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 8/2006

This the 11th day of November, 2008

Hon'ble Mr. M. kanthaiah, Member (J)

Hon'ble Dr. A. K. Mishra, Member (A)

Maneshwar Singh Yadav EDBPM, Ghaila (Karya Prathak) District
Lucknow, r/o Village and P.O. Ghaila, District- Lucknow.

Applicant

By Advocate: Sri R.S. Gupta

Versus

1. Union of India, through the Secretary, Department of Post ,
Dak Bhawan, New Delhi.
2. Director, Postal Services, Office of Chief Post Master General,
U.P., Lucknow.
3. Senior Superintendent of Post Offices, Lucknow.
4. Sri K.K. Yadav, SSPOs, Lucknow now as SSRM at Kanpur.

Respondents

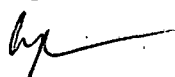
By Advocate: Sri G.K.Singh for Sri S.K. Awasthi.

ORDER

HON'BLE DR. A.K. MISHRA, MEMBER (A)

This application has been made against the order dated 5.7.2005 of Respondent No.3 putting the applicant off duty and the order dated 6.12.2005 in which a charge sheet was issued against the applicant. Subsequently, the application was amended to include the fresh charge sheet dated 30.12.2005 issued against the applicant by the respondent No. 3.

2. The applicant was working as Extra Departmental Branch Post Master (presently called GDS BPM) on the basis of the appointment letter dated 8.8.94. He sat for the departmental examination held on 26.6.2005 for promotion to the regular post of Postman/Village Post Master/mail




Guard. During the course of the examination, he was caught red handed while writing the mathematics paper on the allegation that he was adopting unfair means.

3. On the basis of the report of the invigilating authority, he was put off duty vide the order dated 5.7.2005 of respondent No.5. Further, a regular charge sheet was issued against him on 6.12.2005 which was amended on 30.12.2005 as the original charge sheet was not issued in the prescribed format. Further, an FIR has been filed in the Police station concerned for investigation into the incident involving leakage of the question paper.

4. The main contention of the applicant is that the departmental proceedings should be kept in abeyance when a regular criminal investigation is underway on to the same facts and circumstances of the case. In the memo of the written arguments submitted by the applicant, Rule 81 of Postal Manual Volume III has been extracted as under:-

“Once a charge sheet has been filed in the court against an employee, the departmental proceedings, if any, initiated against him on the same facts of the case should be kept in abeyance till the finalization of criminal proceedings. Similarly, an appeal filed against the penalty imposed in the departmental case should not be disposed of, if in the meantime criminal proceedings on the same facts of the case have been initiated.”

5. The Counsel for the applicant has also cited the decision of CAT, Lucknow bench dated 2.4.2004 in O.A. No. 479 (Ajay Kumar Gupta Vs. UOI and others) which reiterates the same principle that criminal prosecution and departmental proceedings should not continue simultaneously on the same facts and circumstances of a case and that the departmental proceedings should be desirably stayed till conclusion of the criminal case.




6. The counsel for the respondents both in the counter reply as well as the written arguments has contended that the facts of the criminal investigation and the disciplinary proceedings were not the same. Whereas FIR has been filed for investigation and appropriate criminal prosecution in the matter of leakage of question paper, the departmental proceedings have been initiated against the applicant on the allegation of his adopting unfair means in the departmental examination held on 26.6.2005. These are two different matters and initiation of criminal investigation by the police into the charges of leakage of question papers, which is still underway, does not preclude the disciplinary authority to initiate proceedings against the applicant who is allegedly guilty of infringement of departmental Rule No.12 Part II Appendix 37 P&T Manual Volume IV Part II (A) in respect of instructions to candidates appearing in departmental examination.

7. The applicant in the Rejoinder Reply has rebutted this assertion and invited our attention to the charges contained in the departmental proceedings as well as the criminal investigation. Annexure -6 relates to FIR U/Ss 417, 418, 419, 420 IPC relating to the alleged leakage of question papers. A scrutiny of this FIR reveals that it is primarily about leakage of question papers. Further, the investigation as stated by the respondents is still underway and has not yet culminated into specific charges against the applicant. Therefore, there is no force in the contention of the applicant that the disciplinary proceedings should be kept in abeyance as a criminal charge sheet has been filed against him in the court of law on similar facts. Rule 81 of Postal Manual Volume III on which reliance has been placed by the counsel for the applicant also speaks clearly that the departmental proceedings on the same facts of the case should be kept in abeyance once a charge sheet has been filed in the court on those very facts. On the same ground, the judgment in O.A. No. 479/2001 can be distinguished.



8. The counsel for the respondents has mentioned in the Memo of written arguments that the application was filed against the order putting him off the duty. Meanwhile, the disciplinary proceedings have been concluded and the applicant has since been removed from service. The applicant has filed a separate O.A. No. 124/2008 Muneshwar Singh Vs. UOI and others challenging the order terminating his service. In that view of the matter, the present application against putting him off duty has ceased to have any more significance.

9. Be that as it may, we hold that there was no infirmity in initiating disciplinary proceedings against the applicant on the charge of misconduct involving adoption of unfair means during departmental examination when no charge sheet in any criminal proceedings on the same very facts have been filed against him. As a result, the application is found to be devoid of any merit, hence dismissed. No costs.


(DR. A.K. MISHRA)
MEMBER (A)

HLS/-


(M. KANTHAIAH)
MEMBER (J)
11-11-08