

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 297/2009

This the 25th day of August, 2011

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

Hon'ble Shri S.P. Singh, Member (A)

Chandrika Prasad aged about 53 years son of late Shri Makhan Lai r/o A Block, Ambedkar Nagar, Sitapur working as Accountant Sitapur Head Post Office.

Applicant

By Advocate: Sri R.S. Gupta

Versus

1. Union of India through the Secretary, Department of Posts, Dak Bhawan, New Delhi-110001.
2. DPS (HQ), Office of Chief PMG, U.P.Circle, Lucknow.
3. SPOs, Sitapur.

Respondents

By Advocate: Sri G.K. Singh

ORDER

BY HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)

This O.A. has been filed for the following reliefs:-

- i. That this Hon'ble Tribunal may kindly be pleased to quash the disciplinary proceedings including the orders of recovery initiated through charge sheet dated 11.12.2008 and recovery order dated 27.3.2009 and appellate order dated 29.6.2009 as contained in annexures no. 2 and IA , 1B be quashed and the amount already recovered from the pay of the applicant be refunded.
- ii. Any other relief deemed just and proper in the circumstances of the case in favour of the applicant.

2. The case of the applicant is that he joined as Postal Assistant on 12.4.1980. He was promoted as an Accountant w.e.f. 21.5.1996 and BCR w.e.f. 1.7.2007. Then all of sudden, he was served with a charge sheet under Rule 16 of CCS (CCA) Rules vide memo dated 11.12.2008 illegally for a matter which related to October, 1997 i.e. more than 11 years old. It is said that the delayed initiation of enquiry is violative of principle of natural justice. Therefore, proceedings initiated against the applicant and recovery of Rs.1,94,791/- passed by SPOs Sitapur dated 27.3.2009 along with appellate order dated 29.6.2009 are void and

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deserve to be quashed. It has been further said that the file relating to Vth Pay Commission was being maintained by Sri B.K.Tripathi, Accountant I, Sitapur Head Post Office and the order of obtaining undertakings was never communicated to the applicant. The applicant was working as Accountant No.2 and therefore, it was not his duty to obtain undertakings without any specific order from the authorities. Sri Tripathi however, got matter decided in his favour and against him, only a recovery of Rs. 24442/- has been ordered. This apparently shows discrimination in the matter of recovery. Moreover, the punishment order is non-speaking and against the provisions of Rule 8 of Postal Manual Volume III.

3. The respondents have contested the O.A. by filing counter reply saying that consequent upon a judgment rendered by Principal Bench, New Delhi in O.A. No. 283/2003 on 13.9.2004 and also an order dated 2.12.2004 passed by Hon'ble High Court, Karnataka Bench in Writ Petition No. 24010 and 24920 of 2001, the Chief Post Master General, U.P. Circle, Lucknow vide order dated 13.11.2006 passed directions to all Circle Officers for implementation of the above two orders. In respect of obtaining undertakings, it has been pleaded that vide Office Memorandum dated 14.7.1997 passed by the Ministry of Finance, circulated by the Department of Posts under cover of their Office Memorandum dated 15.10.1997, an undertaking was required to be obtained to guard against the over-payment. Therefore, after holding enquiry, disciplinary authority i.e. Opposite Party No. 3 passed punishment order on 27.3.2009. The applicant filed an appeal which was rejected on 29.6.2009. The applicant was supposed to file petition before the Chief Post Master General, U.P. Circle but he failed to do so and therefore, this O.A. deserves to be dismissed. In respect of enquiry, it has been pleaded that the issue was enquired by Shri Durga Prasad, C.I. Office of Superintendent of Post Offices, Sitapur and Sri R.C. Sinha, the then Assistant Post Master- Accounts, Sri B.K.Tripathi

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,Accountant I and Shri Chandrika Prasad, Accountant II (Applicant) were found responsible for not obtaining undertakings. Sri R.C.Sinha has retired on 31.1.2005. No disciplinary action was taken against him. Under Rule 16 , the disciplinary action was taken against the applicant and Sri B.K.Tripathi and on conclusion of the enquiry , a penalty of recovery of Rs. 1,94,791/- and Rs. 24442/- respectively was ordered. The applicant preferred an appeal and also filed an O.A. No.184/2009 before this Bench , in which a direction was given to dispose of the appeal of the applicant. Accordingly, the appeal was disposed of and rejected. Under Rule 11 of CCS (CCA) Rules, 1965, the disciplinary authority can recover the amount from the pay of an official the whole or part of any loss caused to the Govt.

4. In the Rejoinder Reply, the contents of Counter Reply have been denied and the pleadings contained in O.A. have been reiterated.
5. Heard the learned counsel for the parties and perused the material on record.
6. The learned counsel for the applicant placed reliance on the following case laws/ judgments:-

i) **P.V. Mahadevan Vs. M.D. Tamilnadu Housing Board**
reported in 2005 AIR SCW s 690:- *In this case, the Hon'ble Apex Court found that there was an inordinate delay in initiation of departmental enquiry for which no convincing explanation was given. Therefore, the charge memo issued in this case was quashed and the departmental enquiry was put to an end. Further the appellant was held to be entitled to all retrial benefits. It was further held in this case that the appellant suffered lot of mental agony due to protracted enquiry. Such protraction should be avoided not only in the interest of the Govt. employee but in public interest and also in the interest of inspiring confidence in the minds of Govt. employees.*

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ii) **State of M.P. Vs. Bani Singh reported in AIR :** *In this case also there was an inordinate delay of more than 12 years in initiating the departmental proceedings and there was no satisfactory explanation for such delay. The Hon'ble Apex Court also found in this case that the deferment of selection for selection grade by the Screening Committee on the ground that there were some complaints about integrity of officers was not proper because on such complaints, not even a preliminary enquiry was conducted. In this case when the matter was before the Administrative Tribunal, it gave the relief of retrospective promotion on over all consideration of entire facts and circumstances. The Hon'ble Apex Court refused to interfere.*

iii) **State of A.P. Vs. N. Radhakrishnan reported in (1998) 4 SCC, 154:** *In this case , it was laid down that there are no predetermined principles applicable to all cases and in all situations in respect of delay in conclusion of departmental enquiry which may vitiate the proceedings. A balance has to be maintained between purity of administration and the adverse effect which the prolonged proceedings have on an employee. It was further observed that un-explained delay in conclusion of the proceedings is itself an indication of prejudice caused to the employee. Therefore , the disciplinary proceedings in this case were quashed. According to the facts of this case, on the basis of report of anti-corruption bureau, charges were framed against several employees of a Municipal Corporation regarding unauthorized construction taken place with their collusion. Role of each employee not particularized in the charges. Generalization of charges was therefore, criticized by the Hon'ble Apex Court. The initial charge memo was issued in 1987 in accordance with then existing Andhra Pradesh Civil Services (CCA) Rules, 1963. But upto March, 1995, several enquiry*

officers were changed but the enquiry made no significant progress for which there was no valid explanation. On 31.7.1995, another charge memo was issued on the ground that in the mean time new set of Rules of 1991 had come into force. During the pendency of second charge memo, the respondent became due for consideration for promotion, for which the DPC was held on 16.8.95. Two more charge memos dated 27.10.95 and 1.6.1996 were issued. The Administrative Tribunal quashed the memo dated 31.7.95 and directed that the respondent be promoted on the basis of recommendation of the DPC, ignoring the subsequent two memos. It was no body's case that respondent at any stage tried to delay the enquiry proceedings. The Hon'ble Apex Court found the judgment of the Tribunal as justified.

iv). **O.A. No.427/2006 , Jhabbar Yadav Vs. Union of India and others decided on 16.10.2008 by the Division Bench consisting of Hon'ble Mr. M.Kanthaiah, Member (J) and Hon'ble Dr. A.K. Mishra, Member (A) of this Bench.** According to the facts of this case, the applicant was appointed as LDC in November, 1969. He was promoted as UDC in 1988. In July, 2001, he was promoted to the cadre of Sr. Tax Assistant. Thereafter, he was transferred from Basti to Behraich in July, 2003. He made a request for cancellation. This request was acceded on 18.8.2003. Then he was again transferred on 17.10.2003. He again made a request for cancellation. But there was no response, therefore, he filed an O.A. No.1331/2003 and thereafter, another O.A. No. 423/2004 before CAT, Allahabad Bench. During 2004-05 and 2005-06, his juniors were promoted on the post of Office Superintendent but the claim of the applicant was ignored. When the applicant approached the Chief Commissioner of Income Tax, Lucknow, the charge sheet was

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issued against him on 18.8.2006 saying that he has two wives and that he brought political and outside influence to bear upon his superior authority to further his interests in respect of his service under the Govt. and that he flouted financial norms and misused LTC advance. This Bench observed that charge pertaining to two wives related to the year 1994. Similarly, the charge that he brought political and outside influence in respect of his transfer pertained to the period of 1994-95 and the third charge in respect of flouting financial norms and misusing the LTC advance pertained to the year 1989. Thus, the charges No. 1 and 2 were found to be 10-12 years old, while charge No.3 was found to be 18 years old. No satisfactory explanation for such delay was found from the other side. In view of the preposition of law laid down in the case of **P.V. Mahadevan (supra)** and one in the case of **Kailash Naik Vs. Union of India and others reported in 2006(3) ATJ page 77 (11 years delay)** this CAT Bench allowed the O.A., quashing the impugned charge sheet and consequential disciplinary proceedings against the applicant.

7. In the backdrop of the aforesaid preposition of law laid down by the Hon'ble Apex Court in the case of **P.V. Mahadevan (supra)**, **State of A.P. Vs. N. Radhakrishan (supra)** which have been followed earlier by CAT of this Bench in the aforesaid case of **Jabbar Yadav (supra)**, we have to consider the merits of the case in hand.

8. From the side of the applicant, the main emphasis has been laid on the ground of inordinate delay of about 11 years in the initiation of the disciplinary proceedings. It has been specifically pleaded in para 4.2 and 5(a) of the O.A. that the matter pertained to the year 1997. Para 4.2 has been replied in para 24 of the C.A. which has not been admitted. But, mere not admitting a fact or its simple denial is not sufficient. There should be specific denial. In the absence of which, pleading of the applicant would have to be considered as proved and substantiated.

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In this whole paragraph of C.R., the factum of 11 years old matter has not been denied. As far as para 5(a) of O.A. is concerned, it has not been specifically replied in any of the paragraph of the C.A. Therefore, the aforesaid pleading stands proved that the matter pertains to 1997 in respect of which the enquiry proceedings were initiated after more than 11 years by serving a charge sheet on 11.12.2008. The perusal of the charge sheet (Annexure -2) also shows that it pertains to the year 1997 in respect of non compliance of the relevant orders for obtaining undertakings from the officials concerned while making fixation of pay in accordance with the recommendations of the Vth Pay Commission. Therefore, undoubtedly, there was an inordinate delay of about 11 years in initiation of enquiry.

9. It is true that as laid down in the case of **N. Radhakrishnan (supra)**, there are no pre-determined principles applicable to all cases and in all situations, in respect of delay and therefore, a balance has to be maintained between the purity of administration and the adverse effect which the prolonged proceedings have on an employee. Let us therefore, consider the explanation/ justification if any, offered by the respondents for such an inordinate delay. The only explanation which has been offered is that vide O.M. dated 14.7.97 passed by the Ministry of Finance, which was circulated in the Postal Department vide O.M. dated 15.10.97, an undertaking was required to be obtained from the employees at the time of fixation of pay to guard against the over-payment. It is further stated that three persons namely R.C. Sinha, the then Assistant Post Master (Accounts), Sri B.K. Tripathi, Accountant I and Chandrika Prasad (applicant), Accountant II were found responsible for not obtaining undertakings. As Sri R.C. Sinha has retired in 2005, no disciplinary action was taken against him. But even against the aforesaid two persons, including the applicant, the disciplinary proceedings were started only when an order dated 13.9.2004 was passed in O.A. No. 283/2003 by Hon'ble Tribunal and another order

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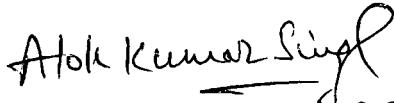
dated 2.12.2004 was passed by the Hon'ble High Court, Karnataka Bench in Writ Petition No. 24010 and 24920/2001 as pleaded in the C.A.. In compliance of these orders the then Post Master General passed directions to all Circle Officers for implementation. But , in the present case, the charge sheet was served towards the fag end of the year 2008 i.e. after about 2 years of passing of the aforesaid order by Chief Post Master General. Moreover, there is no explanation as to why the Department concerned itself did not initiate enquiry for taking proper action in respect of the lapse on the part of his concerned officials simultaneously at the time when it was detected that excess payment has been made and directions were issued for recovery of excess amount or immediately thereafter within a reasonable time. It appears to be merely an eye wash to initiate proceedings against the applicant only when the orders of the Hon'ble High Court , Karnataka Bench and orders of the Tribunal were passed as mentioned above, saying that the recovery from the employees in respect of over payment can be made only if undertakings have been obtained from them in terms of O.M. dated 14.10.1997.

10 Finally, therefore, in view of the aforesaid discussions, we come to the conclusion that there was an inordinate delay of about 11 years in issuing the charge sheet for initiating disciplinary proceedings for which there is no proper explanation from the side of the respondents. Therefore, having regard to the aforesaid preposition of law laid down by the Hon'ble Apex Court in the above cases, the disciplinary proceedings in question, deserves to be quashed, including the order of recovery against applicant initiated through charge sheet dated 11.12.2008 along with recovery order dated 27.3.2009. For the same reasons, the appellate order dated 29.6.2009 is also liable to be quashed and accordingly it is so ordered. It is further directed that the amount already recovered, if any from the pay of the applicant, shall also be refunded.

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11. The O.A. is accordingly allowed to the above extent. No order as to costs.


(S.P.Singh)
Member (A)
HLS/-


(Justice Alok Kumar Singh) 25. 8.11
Member (J)