

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW

ORIGINAL APPLICATION No. 430 of 2008

ORDER RESERVED ON 11.11.2014

ORDER PRONOUNCED ON 20-11-2014

HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Vinod Kumar Shukla, aged about 51 years, GDS, Dak Wahak Kursi, Sidhuli, District-Sitapur.

Applicant

By Advocate : Sri Praveen Kumar.

1. Union of India through the Secretary, Department of Post, Dak Bhawan, New Delhi-110001.
2. Superintendent of Post Offices, Sitapur.
3. Sub Divisional Inspector Postal (Central) Sitapur.
4. Sri M. C. Pandey, Senior Superintendent of Post Offices, Sitapur.
5. Director, Postal Services, Office of the Chief Post Master General , Lucknow.

Respondents

By Advocate: Sri Alok Trivedi for Sri G. K. Singh.

ORDER

By Hon'ble Sri Navneet Kumar, Member(J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

(i) *To quash and set aside the order dated 24.11.2008 as contained in Annexure No. 1.*

(i)(a) *To quash the impugned notice dated 09.3.2009 and removal order dated 28.5.2009 with all consequential benefits.*

(i)(b) *To allow the applicant to work on the post on which he was working at the time of issue of impugned orders with due seniority, continuity in service and back wages etc.*

(ii) *Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.*

(ii) Allow the original application with cost."

2. The brief facts of the case are that the applicant was appointed in the respondents organisation and was charge sheeted under Rule 10 of the GDS(Conduct & Employment) Rules 2001 and three charges were levelled against the applicant in which, it is indicted that the applicant's son along with the applicant is involved in the distribution of the daks and he has misbehaved and un-parliamentary language with one Sri Krishan Kumar and his wife as well as with one Sri H. C. Chatuarvedi. After the issuance of the said charge sheet, the copy of the charge sheet was served upon the applicant. The learned counsel for the applicant has categorically indicted that after service of the charge sheet, the inquiry officer was appointed and the inquiry officer submitted the report in which, it is categorically indicated that the charge No. 1 is proved whereas, charge No. 2 and 3 are partly proved. The copy of the inquiry report was served upon the applicant and the applicant has also submitted the reply. After the reply so submitted by the applicant, the disciplinary authority passed an orders and imposed the punishment through which the applicant has been debarred to appear in the examination for the post of Postman/Dak Sahaik for a period of three years. The said orders were passed on 18.9.2008. After the service of the said orders, the respondents again issued a show notice on 24.11.2008 through which the applicant was asked to submit the representation. The applicant was again served with a fresh notice vide notice dated 9.3.2009 through which, again he was asked to submit the representation within a period of 15 days to which the applicant submitted a reply and indicated to the respondents that the applicant challenged the show cause noticed dated 24.11.2008 and the Tribunal in the present O.A. passed an orders on 11.12.2008 to maintain the status quo. As such, any notice issued after 11.11.2008 on the same subject is illegal without the permission of the Tribunal, the same cannot be issued. The learned counsel appearing on behalf of the applicant has vehemently argued and

submitted that despite that the respondents have passed an orders of removal from service vide order dated 28.5.2009 which is patently illegal and against the provision of Section 19 (4) of the A.T Act. Not only this, it is also argued on behalf of the applicant that the applicant has been deprived of reasonable opportunity to make a representation against the pre-decided mind of removal. Not only this, the learned counsel for the applicant has also argued that as per Rule 14 of the GDS (Conduct & Employment) Rules 2001 , the period of limitation for appeal is three months from the date on which the employee received the copy of the order and the authorities without waiting for mandatory period of three months, passed the impugned order of removal on 28.5.2009. As such, the same is also patently illegal and also to be interfered with. The learned counsel for the applicant has also pointed out that the revisionary authority has given his contradictory finding which is against the provisions of Section 19 of GDS(Conduct & Employment) Rules 2001. The learned counsel for the applicant has also relied upon three decisions of the Tribunal such as **Jai Prakash Gupta Vs. Union of India and Others reported in (1988) 7 ATC-947, Gokul Chandra Barua and Others Vs. Union of India and Others reported in (1989) 9 ATC 579 as well as Prem Baboo Vs. Union of India and Others (1987) 4 ATC 727** and has indicated that the Hon'ble Tribunal dealt with the issue of Section 19 (4) of the AT Act as well as observed that the departmental inquiry must be conducted according to the prescribed procedure. Not only this, he has also relied upon a case of **K. Venkata Raju Vs. Government of Andhra Pradesh reported in 1999(3) ATJ-221** in which the Hon'ble High Court has again dealt with the provisions of Section 19 (4) of the A.T Act and observed that Section 19(4) is a declaratory law which mandates compliance by all the concerned irrespective of the fact whether they are parties to the proceedings in question or not.

3. On behalf of the respondents, reply is filed and through reply, it is indicated that the orders under challenged are speaking and reasoned orders and the respondents have not committed any illegality and there was no arbitrary action on their part. It is also argued that the applicant has not pointed out any short fall or illegality or arbitrary ness on the part of the respondents. Not only this, it is also argued by learned counsel for the respondents that the respondents have only modified the show cause notice by means of show cause notice dated 9.3.2009 as such provisions of Section 19(4) of the AT Act, 1985 will not attract in the present case.

4. Apart from this, it is also indicated by the respondents that all three charges indicating in the charge sheet are in violation of Rule 21 of GDS(Conduct & Employment)Rules 2001 and the nature of offence mentioned in the memo of charges is clearly related to the misconduct committed by the applicant. The learned counsel for the respondents has also indicated that as per Rule 21 of the aforesaid Rules, every sewak shall at all times maintain absolute integrity and devotion to duty. Which the applicant fail to do. As such, the punishment was awarded to the applicant. The learned counsel for the respondents also indicated that the applicant admitted the first charge before the inquiry officer and has categorically indicated that his son was associated with him in distribution of Daks as alleged in the charge sheet. The learned counsel for the respondents also indicated that the inquiry report and the witnesses were examined and after due examination, the inquiry officer given his report. As indicated above, it is once again pointed out that the respondents emphasized that they have only corrected their mistakes as such, the impugned notices were issued as such, there is no violation of Section 19 (4) of the AT Act.

5. In rejoinder, the applicant mostly reiterated the averments made in the O.A. and the contents of the counter reply are denied. Not only this, it is also argued on behalf of the applicant that though the

misbehaviour is not proved fully, but even it is presumed that it is proved even then it is only private action and it cannot be clubbed with the departmental action.

6. Heard the learned counsel for the parties and perused the record.

7. The applicant was appointed in the respondents organization and was served with a charge sheet dated 29.7.2005 wherein, three charges were levelled against the applicant. In charge No. 1, it is indicated that the applicant's son namely Sri Sunil. Kumar is unauthorisedly involved in distribution of daks whereas in the charge No. 2 and 3, it is indicated that the applicant misbehaved with Sri Kamlesh Kumar on 16.5.2005 and on the same day with one Sri Harish Chandra Chaturvedi who are working as Deputy Branch Post Master , Gadi Kherwa. Along with the charge sheet, the statement of imputation and misconduct and the list of witnesses and list of documents are also mentioned. The inquiry officer so appointed and after conducting the detailed inquiry after due opportunity of hearing to the applicant submitted the report to the disciplinary authority where in, the charge No. 1 stands fully proved whereas, the charge No. 2 and 3 stands partially proved. The applicant was provided the copy of the inquiry report who has submitted the reply but the said reply is not available on record. The disciplinary authority finally by means of an order dated 18.9.2008 imposed a punishment of debarring the applicant for a period of three years to appear for the post of PM/Dak Sahaik. After imposition of the said punishment order, SPO, Sitapur, Mandal , issued a show cause notice upon the applicant on 24.11.2008 asking the applicant to submit his representation and coming to the conclusion that in case, the applicant does not submitted any representation an order of removal from service would be passed. The applicant feeling aggrieved by the said show cause notice dated 24.11.2008 preferred the O.A. before this Tribunal indicating there in that the order has been issued illegally against the rules with the

preconceived mind with imposing a punishment of removal. As such after hearing the counsel for the parties, this Tribunal by order dated 11.12.2008 passed an orders whereby it is directed that the parties will maintain status quo till the next date of listing. The said interim stay was subsequently extended. It is also to be made clear that the O.A. was admitted by the Tribunal by order dated 11.12.2008 itslef. . After the said orders are passed, the respondents are bound by section 19 (4) of the AT Act 1985. The respondents thereafter, modified the said notice through order dated 9.3.2009 and again asked the applicant to submit his representation within a period of 15 days. The applicant in response to the same has informed the respondents that after the orders of the Tribunal, dated 11.12.2008, the respondents are barred by Section 19 (4) of the AT Act as such any order passed thereafter is illegal. The respondents soon thereafter imposed the punishment of removal upon the applicant Vide order dated 28.5.2009. The applicant moved an amendment application and also challenged the noticed dated 9.3.2009 and removal order dated 28.5.2009. Now the question which requires determination is whether after the order dated 11.12.08 the respondents can modified their earlier orders and thereafter passed a removal order dated 28.9.2009. As observed by this Tribunal , in the case of **Jai Prakash Gupta Vs. Union of India and Others (Supra)**, this Tribunal observed as under:

As a matter of fact, in accordance with section 19(4) of the Administrative Tribunals Act, 1985, once the application has been filed, the respondents are debarred from passing any order on his representations, favourable or unfavourable to him. In the instant case, by passing an ostensibly favourable order on his representation regarding premature retirement, the respondents seem to deprive him of getting the intervening period counted as on duty.

Not only this in the case of **Gokul Chandra Barua and Others Vs. Union of India and Others (Supra)**, this Tribunal observed as under:

Under sub-section (4) of Section 19 “Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.”

In the case of Prem Baboo Vs. Union of India and Others (Supra), the Tribunal has also observed as under:-

In view of sub-section (4) of Section 19 of the Act extracted above, when once the original application has been admitted by this Tribunal, the appeal that was pending before the appellate authority abates, so that in the eye of the law, there was no appeal as such for consideration and disposal on 12.8.1986. The result is that the order dated 12.8.1986 by which the appeal is stated to have been dismissed is non est. To be clear, we hereby declare it to be so.

Not only this, the *Hon'ble Andhra Pradesh High Court in the case of K. Venkata Raju Vs. Government of Andhra Pradesh (Supra)*, has been pleased to observe that provisions contained under the Section 19(4) is a declaratory law which mandates compliance by all the concerned irrespective of the fact whether they are parties to the proceedings in question or not. The Hon'ble High Court further observed that:-

“The only contention, which remains to be dealt with is, as contended by the learned counsel for the petitioner, while the suspension order passed by the Commissioner was subject matter of O.A. 7979 of 1996 and when such suspension order was suspended by the Tribunal, whether it was opened to the Govt. to pass the impugned orders dated 8.7.1997, suspending the petitioner. This contention is based on the prohibition enjoying in Sub Section 4 of Section 19 of the AT Act, 1985 which reads as follows:-

“19. Applications to Tribunals

(4) Where an application has been admitted by a Tribunal under sub section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.”

11. It is also to be pointed out that after the receipt of the second show cause notice dated 9.3.2009, the applicant indicated the respondents that after status quo order of the Tribunal, the respondents are not competent to take any action in the matter and the issuance of any notice is in violation of the orders of the Tribunal and the same is also against the provisions of Rule 19 of GDS(Conduct &Employment) Rules 2001 which does not provide for issuance of the Second show cause notice despite that the respondents passed the orders of removal on 28. 5.2009. The learned counsel for the respondents though taken a ground that the second show cause notice is just a modification of the earlier notice but even then, after the order of the status quo by the Tribunal, without the permission of the Tribunal any orders passed by the respondents are against the provisions of law. Not only this, the respondents have thereafter passed an orders of removal from service which is also clear violation of law. It is also to be indicated that after the due inquiry, the respondents have passed an order on 18.9.2008 awarding penalty of withholding promotion to the post of Postman/PA cadre by not allowing the applicant to appear in the promotional examination for a period of three years. Subsequently, respondent issued suo moto notice dated 14.11.2008 for enhancing the punishment is unjustified. The applicant has not challenged the order dated 18.9.2008 in the present O.A. He has only challenged the notice dated 24.11.2008, second notice dated 9.3.2009 and the removal order dated 28.5.2009.

12. Considering the observations of the Hon'ble High Court as well as the decisions rendered by this Tribunal as mentioned above, and also on the basis of the facts of the notice dated 24.11.2008 , we deem it appropriate to interfere in the present O.A. and issuance of the notice dated 24.11.2008, second show cause notice dated 9.3.2009 and the removal order dated 28.5.2009 are liable to be quashed and are accordingly quashed.

13. With the above observation, the O.A. is allowed. No order as to costs.


(Ms. Jayati Chandra)

Member (A)


(Navneet Kumar)

Member (J)

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