

## CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 271 OF 2006

WITH

M.A.NO.: 276 OF 2006[Patna, this *Friday*, the *7<sup>th</sup>* Day of *December*, 2007].C O R A M

HON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.

HON'BLE SHRI AMIT KUSHARI, MEMBER [ADMN.].

Smt. Aruna Devi, W/o Late Ramakant Pandey [Ex. EDBPM], village – Mokarampur, P.O.: Mirchaiganj, P.S.: &amp; District – Nalanda [Bihar].

.....APPLICANT.By Advocate :- Shri Rakesh Kumar.

Vs.

1. The Union of India through Chief Postmaster General, Dak Bhavan, Sansad Marg, New Delhi-10 001.
2. Postmaster General [Bihar Circle], Patna [Bihar].
3. Superintendent of Post Offices, Nalanda Division, Nalanda, Biharsharif [Bihar].
4. Member [P], Department of Posts, Ministry of Communication, Govt. of India, Dak Bhavan, Sansad Marg, New Delhi-110 001.

.....RESPONDENTS.By Advocate :- Shri B.K.Prasad, ASC.O R D E R

Justice P. K. Sinha, V.C.:- Applicant is widow of Ramakant Pandey who, according to the application itself, was appointed as EDBPM [now GDSBPM] in the year 1978. On 14.03.1984 the Inspector of Post Offices complained to the department that the applicant's husband had not credited into the Government account amount of Rs. 6650/- deposited in four savings bank accounts as also did not credit three deposits amounting to Rs.2400. Having so complained, on the same date the Inspector of Post Offices lodged FIR with



police against the applicant's husband and a case under Section 409 of IPC was instituted bearing Noor Sarai PS Case No. 39 of 1984. Thereafter, the husband of the applicant was placed 'put off duty'. A departmental proceeding was contemplated against him under Rule 8 of the ED Agents [Conduct & Service] Rules, 1964 and an article of charge was issued to him. The departmental proceeding, according to the applicant, commenced and her husband participated in that so much so that he filed his defence but then expressed his inability to attend the same because of his poor financial condition as he was not being paid any subsistence allowance, while he was also made to face a criminal case.

2. The Inquiry Officer then submitted his report holding the charges to be proved which was relied upon by the disciplinary authority who passed order dated 06.08.1987, removing the applicant from service with immediate effect.

3. It has been admitted that the husband of the applicant did not prefer any appeal but the ground given is that the order of punishment at Annexure-1 that was served upon him did not intimate him that he could file an appeal.

4. The criminal case finally was decided by a judgment of the Judicial Magistrate delivered on 19.08.1994 in which, finding no evidence against him as no witness could be produced by the prosecution, he was acquitted [Annexure-3].

5. Thereafter the applicant's husband submitted representation dated 23.12.1994 to the concerned Supdt. Of Post Offices for his

reinstatement which was rejected by order dated 04.01.1995 stating that his acquittal had nothing to do with the decision taken in the departmental proceeding. Thereafter, the applicant went on filing representations and review applications.

However, the pending representations were considered treating those as revision petitions and an order was passed by the competent authority on 14.03.2002 rejecting the prayer. Thereafter the husband of the applicant expired on 26.10.2004.

6. In this application certain grounds have been given as to how departmental proceeding against the applicant was vitiated such as on ground of non -payment of any subsistence allowance, non-grant of a personal hearing before the disciplinary authority passed order at Annexure-1. It has also been contended that the departmental inquiry was initiated after institution of charge sheet in the criminal case hence under rules, once a charge sheet was submitted, a departmental proceeding could not be initiated. It has further been stated that necessary witnesses were also not examined. It has also been stated that no second show cause notice was issued to the delinquent employee.

7. The applicant in this application has prayed to quash the order of removal from service dated 06.08.1987 as well to quash order of the Supdt. Of Post Offices, Nalanda Division dated 04.01.1995 rejecting his representations as also quash the order dated 14.03.2002 as at Annexure-8 recorded by the Member [P] in the Department of Posts, Ministry of Communications, Govt. of India. This is a detailed order which is in response

*[Handwritten signature]*

to a petition dated 07.09.2000 preferred by the husband of the applicant to the Union Minister in the Ministry of Communications, also noting therein that no appeal was filed by the petitioner and that no action was taken on his review petition dated 20.06.1995 since that was time barred.

8. Since there has been abnormal delay in preferring this application, M.A. 276 of 2006 has been filed for condonation of delay which, according to the applicant was only for a period of three years two months and seven days. Limitation does not run from the date on which a last representation has been filed. Under Section 21 of the Administrative Tribunal's Act there is limitation of one year from the date the cause of action arose and, if any statutory remedy has been sought and application for that has been filed but if no order is passed on that application within six months of its filing, then upto one year to be counted from the date of expiry of the aforesaid period of six months. It is not that if an aggrieved employee keeps on filing a number of representations for years altogether, every such representation or some order passed on one of those subsequent representations would extend the date of limitation. In the application it has been admitted that the applicant was punished with removal from service by order dated 06.08.1987, hence the limitation commenced from the date of communication of that order. From the averments in the OA it is clear that the applicant though he knew about the order of dismissal from his engagement, he sat over that and did not make any advance till he was acquitted by the Court of Judicial Magistrate. After his acquittal, it was on 23.12.1994 that he filed a representation for his reinstatement. Obviously, from that



representation which is at Annexure-4 it will appear that reinstatement was sought only on the basis of his acquittal in the criminal case. Even this representation was not against the punishment awarded to him in the departmental proceeding.

9. When the applicant's husband was removed from service by order dated 06.08.1987 and when he did not file any appeal against that nor moved a legal forum for redressal of his grievance as against the order of removal, he knowingly allowed the order of removal to become final. This case was filed in this Tribunal on 25.04.2006, almost 19 years after his dismissal. Even supposing, for argument's sake, that there has been some irregularity in conduct of the departmental proceeding or in awarding the punishment, that could not by itself vitiate the entire proceeding unless the aggrieved employee shows, within a reasonable period, that he was prejudiced by such an irregularity. The applicant's husband by not filing any appeal against the order of dismissal and not coming to this Tribunal against that order has obviously allowed his right to move against such an order, to lapse.

10. Even though the subsequent representations were rejected in the year 2002 [relating to his representation to the Union Minister made in the year 2000], the applicant's husband again did not take up the matter before any legal authority or Court/Tribunal till he was alive. Even after his death in the year 2004, the applicant delayed the matter upto the year 2006 when this application was ultimately filed.

11. In that view of the matter, there would appear to be a galore of latches on the part of the applicant's husband during his life time and by the

applicant, after his death. In such circumstance, when the order of dismissal became final and was accepted as such, coming in a departmental inquiry, the matter cannot be reopened after so much delay, particularly in view of clear laches.


12. It is also well settled that simply because in a criminal case an employee has been acquitted would not automatically entitle him for reinstatement. Even after his acquittal departmental inquiry may be launched against him. It is also well settled that a departmental inquiry could be stayed if the matter involved in the criminal case as well in the departmental proceeding are exactly the same and involve the same witnesses. From the materials on record it will appear that the criminal case was launched for having committed an offence punishable under Section 409 of the IPC whereas the memo of charge was issued against the applicant for violation of departmental rules.

13. There does not appear to be any merit in this case in view of what has been discussed above.

The Misc. Application No. 236 of 2006, which is for condonation of delay, is hereby dismissed under the circumstances of the case.

15. In result, and, in view of what has been discussed in this order, O.A. is also dismissed. No costs.

  
[Amit Kushari]/M[A]

  
[P.K.Sinha]/VC