

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Q.A.No.

T.A.No.

100/86

198x

1986

DATE OF DECISION

13.2.98

Shri D.G. Mane Applicant/s.

Shri B.C. Kamble Advocate for the Applicant/s.

Versus

The Union of India, through Respondent/s.

The Secretary, Min.of Communications & Others

Shri S.R. Atra Advocate for the Respondent(s).

CORAM:

The Hon'ble Member (A) J.G. Rajadhyaksha

The Hon'ble Member (j) M.B. Mujumdar

1. Whether Reporters of local newspapers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether to be circulated to all Benches? *Yes*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Transferred Application No. 100/86

Shri D.G. Mane
Residing at Shirol
Tal. Shirol
Dist. Kolhapur

.. Applicant

v/s.

1. Enquiry Officer,
(R.K.Joshi, A.S.P. Phaltan,
Officiating Post Master
(NSG-I), Karad, Dist.Satara
2. Sub-Post Master, Shirol
Dist. Kolhapur (M.N.Joshi)
3. Inspector of Post Offices,
Complaints, Kolhapur
(S.R. Tanawade)
4. Senior Superintendent of
Post Offices, Kolhapur Divn.,
Kolhapur
5. Secretary, Ministry of
Communications, Govt. of India,
New Delhi, representing
The Union of India

Respondents

Coram : Hon'ble Member(A) J G Rajadhyaksha
Hon'ble Member(J) M B Mujumdar

Appearance :

1. Mr. B.C. Kamble
Advocate
for the applicant
2. Mr. S.R. Atre
Advocate
for the respondents.

JUDGEMENT

Dated : 13th feb, 1987

(PER: J.G. Rajadhyaksha, Member(A)

Writ Petition 2216 of 1984 filed by the applicant
has been transferred to this Tribunal and is Transferred
Application No. 100/86.

2. The facts in brief are that the applicant joined the Post & Telegraphs Department as a Clerk in 1956. He alleges that he was transferred about 22 times between 1956 and 1976. He came to be posted in October, 1974 as Savings Bank Clerk at Shirol, District Kolhapur. It was alleged that in 1975-76 when there was a special campaign for collections in Small Savings a large number of accounts came to be opened at Shirol Sub-Post Office. In March, 1976 one Shri Wanawade who is Respondent No.3 visited the Shirol Post Office, called the applicant examined the drawer of the applicant's desk and allegedly discovered shortage of money. The applicant felt that some amounts might have been taken away by the Sub-Post Master. The Post Master made a report upon which investigations were held and the applicant was prosecuted in a Court of Criminal Law. This was Criminal Case No.9411 of 1979 in the Court of Chief Judicial Magistrate, Kolhapur, who acquitted applicant honourably by his order dated 12.8.1980. Thereafter on or about 29th June, 1982 the Post Master General, Maharashtra Circle, Bombay, ordered applicant's promotion to the lower selection grade. The applicant was never relieved to join his promotional post at Alibag but instead on 12th August, 1982 he was informed by a memorandum that a departmental enquiry would be held against him. Charges and statements of imputation were served on him, lists of witnesses and documents were also made available to him. Relying upon whatever evidence was produced in the absence of certain documents which were filed in the Criminal Court, the Inquiry Officer concluded that the guilt of the applicant had been proved. Thereupon, the disciplinary authority

passed an order on 29.11.1983 removing the applicant from service with immediate effect. There was no appeal filed by the applicant, but he filed the present writ petition which has been transferred to us. The applicant's prayers are that the order dated 29.11.1983 passed by the Senior Superintendent of Post Offices, Kolhapur should be set aside and the applicant reinstated with all consequential reliefs.

3. Mr. B.C. Kamble, Advocate, appeared for the applicant and Mr. S.R. Atre for the respondents. We heard both of them at length.

4. Mr. Kamble's arguments were that the applicant was being placed in double jeopardy firstly by being proceeded against in a Court of Criminal Law and then by being proceeded against departmentally. Mr. Kamble argues that applicant was honourably acquitted by the Chief Judicial Magistrate of the charges of misappropriation of money which was given to him by depositors for deposits in Savings Bank as well as Recurring Deposits Accounts. The Judgment of the Learned Chief Judicial Magistrate eloquently brings out the fact that the Sub-Post Master harboured some grudge against the applicant. The Chief Judicial Magistrate also discussed the preponderance of probability that the money supposed to be held by the applicant must have been taken away by the Sub-Post Master for reasons best known to himself. He, therefore, held from the evidence before him that the charge had not been proved, and acquitted the applicant. Mr. Kamble points out that though applicant was promoted, he was not relieved to join his promotional post and instead he was proceeded against. Since Post Master General ordered

the applicant's promotion he should be deemed to have been promoted and in that case the disciplinary authority for him would, if at all, be the Post Master General and not the Senior Superintendent of Post Offices, Kolhapur, who has passed the order of Penalty. Therefore, the order is bad in law and deserves to be set aside. Further, Mr. Kamble argues that even the CCS (CCA) Rules require that if applicant has been honourably acquitted by a Court of Criminal Law it would not be correct for the disciplinary authorities to hold an enquiry on the same grounds and come to the conclusions which are different from those arrived at by the Chief Judicial Magistrate. It is on this ground that the findings in the departmental enquiry and the disciplinary orders passed thereon are illegal and wrong and deserve to be set aside. Mr. Kamble also points out that on some pretext or the other the applicant was denied access to the documents, he was not allowed to defend himself properly. The disciplinary authority did not apply his mind to the matter before him and merely relying upon the enquiry report inflicted the punishment. In any case, Mr. Kamble argues that considering acquittal by the Criminal Court, even if there was a technical lapse on the part of the applicant, the penalty imposed on him is disproportionate and excessive and therefore deserves to be quashed.

5. Mr. Atre for the respondents states that an appeal was filed but rejected on 23.10.1984, It is Mr. Atre's contention that whereas the Criminal Case was for a criminal misappropriation of public funds. In the departmental enquiry, the charge was not misappropriation but was non-compliance with rules regarding handling of cash,

cash box etc. The rules have been extracted and attached to the reply at Ex. 1 and 2. As for the promotion of applicant Mr. Atre contends that the Senior Superintendent of Post Offices was justified in not relieving applicant in view of the contemplated disciplinary action against him. He contends further that applicant was given full opportunity to defend himself. He feels that the documents in the criminal case could not be relied upon in the departmental enquiry. He adds that applicant had accepted the fact that Rs. 803 were found in the drawer of his table in his presence. He made good the balance of Rs. 1,400 and that, therefore, though there was no loss to Government, the fact remains that he had violated rules. Mr. Atre also contends that the Chief Judicial Magistrate has really given benefit of the doubt to the applicant as he observed that other persons having access to the drawer and access to the room in which the table was placed might have taken away the cash. This in his view is not clean acquittal. Mr. Atre, therefore, prays that the application be dismissed.

6. We have heard the Learned Advocates for the applicant as well as the respondents and have perused the entire record very carefully. Though it is the contention of the respondents that the Criminal Prosecution and the departmental inquiry were on different counts, we feel that this is only a technical distinction being drawn by the respondents. From the decision given by the Learned Chief Judicial Magistrate at Kolhapur it is seen that the charges were that applicant (accused in that case) received money from various people, but did not issue index cards and pass books promptly, and, therefore, there was

a suggestion that there was a temporary misappropriation of the funds. The charge in the departmental enquiry was that of misconduct or misbehaviour and it is produced at page 12 of the application. The allegation there is that the applicant received an amount of Rs. 2,206/- for deposits but did not credit them to the Government Accounts on the day of the receipt and thus violated the provisions of Rule 4 of F.H.B. Vol.I. Thus virtually the charges in the Criminal case and the departmental enquiry are the same though in the Criminal case the department perhaps did not rely upon the rules in this respect. What is material is the fact that the Learned Chief Judicial Magistrate found that the accused, in that case the applicant, had received the amounts and had kept them in the drawer of the table. The Learned Chief Magistrate further held that there could be no misappropriation as the money had not been taken out of the post office. He further deduced that there was possibility of some one else tampering with the cash and, therefore, the applicant accused was acquitted. In the departmental enquiry also the charge is that the applicant received the cash but did not credit it to the Government Account on the same day. From the rules produced with the reply we find that there is indeed a duty on the postal subordinate to credit the cash "without undue delay". There is no suggestion that the money has to be paid in on the date of receipt. Such a suggestion would also be impracticable, as is established, if it is also expected that hundreds of new accounts have to be opened by the applicant single handed in one day. It would be impracticable to expect that he would have the time to complete all documents and pay in the money on the same day. If at all,

therefore, he retained the money for some period, it must have been done out of necessity of official circumstances namely heavy work and we do not see any intention of violating the rules particularly when there is no averment that the applicant was not over worked or that he had been given extra assistance to cope with the rush of investments in Small Savings at the relevant point of time. Having considered the fact that the Criminal case and the departmental inquiry are practically on the same grounds, we feel that it was incorrect of the department to start a departmental enquiry after the applicant got a clean acquittal in the Court of the Chief Judicial Magistrate, Kolhapur. It would be of relevance to note that Rule 14 CCS (CCA) Rules has been explained at page 91 of Muttu Swamy's compilation of CCS (CCA) Rules. There is a note (14) which says that in spite of an acquittal in a Criminal trial, disciplinary proceedings can be started but it would be incorrect for the disciplinary authority and the Inquiry Officer to record findings which are at variance with the conclusions drawn by the Judicial Authority in the Criminal Court on the same charges and on the same evidence. This is precisely what seems to have happened here, though it is claimed that technically the prosecution and the departmental enquiry are not on absolutely identical grounds. What is more significant is that, whereas the acquittal took place on 12.8.1980 and admittedly government did not appeal against it, the inquiry was commenced some time after April, 1983 and was completed in November, 1983. Here again this lapse of almost 3 years between the acquittal in Criminal Case and the findings and conclusions of the departmental enquiry is sought to be explained away by saying that the matter was sub judice in a Criminal case.

It is difficult to accept this contention as the applicant had been acquitted in the Criminal Court in August, 1980. Further, there is an important aspect which we cannot, but look into. The applicant was prosecuted in a Criminal Court and was acquitted in August, 1980. In June, 1982 the Post Master General ordered promotion of certain staff including the applicant from T/S Clerk to L.S.G. Cadre with immediate effect. He was transferred from Kolhapur to Alibag by that order. True that these orders contain in the 2nd paragraph, the directions that the Supervisory Officers will ensure that no disciplinary case is pending or contemplated before the staff are promoted/relieved on promotion. It is obvious that the applicant was not relieved to go on promotion and instead a departmental inquiry was started against him, much later in order to deprive him of the promotion. We would like here to take note of a decision reported in AIR 1967 M.P. 284, the case of Lal Audhraj Singh V/s. The State of M.P. where the High Court has observed that where a promotion is ordered after a lapse on the part of a Government Servant is noticed, it will have to be deemed that the lapse has been condoned. This is a very significant decision because if applicant was acquitted in August, 1980 and in June 1982 there was no disciplinary proceeding pending against him, it will be too far fetched to hold that what was started in April, 1983 was in contemplation in June, 1982. Therefore, if the Post Master General ordered promotion, it must be held that he also condoned the lapse on the part of the applicant.

7. The applicant has alleged harassment inasmuch as he has been transferred 22 times in a span of about 20 years.

This allegation has been denied out of hand merely by saying that applicant had chosen a transferable job and had to submit to such transfers. The allegations of ill-will between him and the Post Master have also been similarly, lightly denied. We, however, feel from the circumstances that there is some substance in applicant's allegation that some one is harbouring ill will towards him and he is being harassed, victimised.

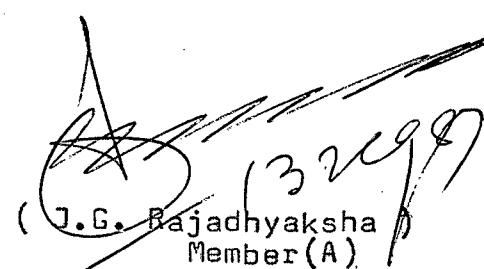
8. We, therefore, conclude in this case that applicant has a good case and he deserves relief.

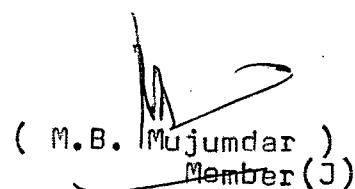
ORDER

- 1) We, therefore, set aside the order said to have been issued on 23.10.1984 by the Appellate Authority and consequently, the order issued by the disciplinary authority on 29.11.1983 removing the applicant from service. We further order that the applicant be reinstated forthwith and shall be deemed to have been in service from 1.12.1983 continuously. He will, therefore, be eligible to get the pay and allowances that are due to him as T/S Clerk in the P&T Department at Kolhapur.
- 2) It is further directed that the question of his promotion to the lower selection grade should be re-examined by the Post Master General, relating it to the earlier order dated June, 1982 and the Post Master General should decide whether the applicant should be deemed to have been promoted under that order of June, 1982 and he should be placed in the appropriate place in the seniority list of

the L.S.G. cadre, with all consequential benefits.

3) In our opinion, this is a fit case for ordering costs to be paid to the applicant. We quantify the total cost at Rs. 500/- and award the same to the applicant. The respondents should make payment thereof within two months of the date of receipt of this order.


(J.G. Rajadhyaksha)
Member (A)


(M.B. Mujumdar)
Member (J)