

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI

Original Application No.471/2000

Date of decision: 7.6.2004

CORAM: HON'BLE SHRI V.K.MAJOTRA, VICE CHAIRMAN
HON'BLE SHRI S.G.DESHMUKH, MEMBER (J)

Shri Anant Shivram Utekar
Last Place of Employment
Bhandup (East) Post Office
Residing at Sai Sadan Chawl
Saibaba Road, Parel,
Mumbai 400 012.
(Applicant by Shri K.B.Rajan, Advocate)

Applicant

vs.

1. Union of India
Through the Chief Post Master General
Maharashtra State, G.P.O.
Mumbai 400 001.
2. Sr. Superintendent of Post Offices,
Mumbai City
North (E), Division,
Bhandup (E)
Mumbai 400 042.

... Respondents

(Respondents by Shri V.S. Masurkar, Advocate)

O R D E R (ORAL)

[Per: S.G.Deshmukh, Member (J)]:

The present O.A. is filed for quashing and setting aside the impugned order dated 10.01.1995 passed by the Disciplinary Authority and order dated 8.10.1999 and also for directing the respondents to reinstate the applicant with full backwages with all benefits.

2. The applicant was working as a night watchman in the Bhandup (East) Post Office in the year 1985. It is alleged by the Officers of the respondents that the applicant along with another person i.e Postman Pandurang Muktaji Nadekar secretly opened the insured packets lying in the safe and again sealed the said packets after taking out a few currency notes from the said insured packets. A complaint was lodged before the Inspector of

Police, Bhandup Police Station. The applicant and the other postman were arrested ~~and~~ kept in police custody for a week and thereafter they were released on bail. After completion of investigation the charge sheet was filed against the applicant and the other co-accused under section 381 r/w 114 of Indian Penal Code bearing No.745/P/1985. The applicant and other postman were acquitted in the said criminal case on 31.3.1999.

~ The applicant was suspended in the year 1985 and given half of his wages till 1996 at rate of Rs.680/- per month. The charge sheet was issued by the respondents on 19.9.1986. However, the departmental proceedings ~~were~~ not proceeded. The respondents appointed one S.J.Range, ASP (I),Bombay GPO as the Enquiry Officer on 31.12.1986. The first sitting was held on 10.02.1987 wherein the applicant refuted all the 3 articles of charges framed against him. The applicant's Defence Assistant Shri S.V. Joshi argued on the proceedings on 7.5.1987 that the inquiry should be suspended under Rule 81 of P&T Manual,Vol. III as it then stood. In spite of the said legal objection, the departmental proceedings continued. It is the contention of the applicant that the departmental proceedings was based on a document dated 29.04.1985 which was already produced before the Metropolitan Magistrate in the criminal case. The Enquiry Officer had adjourned the inquiry sine die and remitted the same to disciplinary authority by the order dated 15.10.1987. The enquiry officer reopened it on 21.12.1988 and ordered to proceed with the inquiry in continuation from 061.01.1989. The Defence Assistant objected to the reopening of the case. The Enquiry Officer allowed the objection raised by the Defence Assistant by his order dated 8.9.1989 and remitted back the case to the disciplinary authority. The disciplinary authority ordered

appointment of a new Enquiry Officer Shri S.M. Joshi in place of Shri S.J.Range by order dated 22.04.1991 and directed to finalise the case within 3 months. The new Enquiry Officer fixed the date of hearing on 18.2.1992. The applicant had requested to adjourn the enquiry proceedings to May 1992. The Enquiry Officer started the inquiry proceedings *de novo* observing that the departmental proceedings shall be continued regularly, even when the criminal case was pending. It is the contention of the applicant that the Enquiry Officer assured the applicant that if the applicant admits the article of charges a lenient view will be taken and the subsistence allowance shall be enhanced. The applicant admitted the Article I of the charges and did not even appoint a Defence Assistant. The applicant had denied the charge under Article I in the first instance when the proceedings originally started on 10.02.1987. The assurances given by the enquiry officer prompted him not to press his demand raised earlier vide letter dated 17.02.1992 not to proceed with the inquiry proceedings, in view of the provisions of Rules 80, 81 and 82 of P&T Manual, Vol.III. The Enquiry Officer observed in his report that Article No. I is proved as the same is admitted by the applicant and the rest of 2 Articles of Charges were held to be "Not Proved". The applicant made his written submission on the inquiry report on 14.06.1994 and submitted to the same to the Disciplinary Authority. The applicant contended that his statement recorded during the Preliminary Inquiry on 29.04.1985 was made under coercion. It is contended that the entire proceedings and the final order of penalty were based on the said statement dated 29.04.1985. The signature of witness Shri P.D. Acharekar was also obtained under coercion when the statement was recorded in the absence of witness Acharekar. It is contended

that the entire proceedings and the penalty order passed are vitiated and liable to be struck down. The disciplinary authority after perusal of the inquiry report passed the penalty of dismissal of the applicant from service on 10.1.1995. The disciplinary authority deferred from the findings of the Enquiry Officer and held that the Articles of Charges II and III are also proved in view of the admission of the applicant of the same charges in his preliminary inquiry. The order is liable to be quashed and set aside as bad in law based on coercive statement obtained and recorded in the preliminary enquiry. It is also contended that the disciplinary authority failed and neglected to forward the reasons for his disagreement with the findings of the disciplinary authority whereby the applicant was denied the opportunity of being heard before passing the impugned penalty order. It is contended that the respondents has acted maliciously and with malafide intentions on a false case. The allegation against the applicant regarding theft are false and malacious and thus the O.A. has been filed.

3. The respondents filed their counter affidavit. The Police authorities after completion of the investigation filed the charge sheet against both the officials under section 381 r/w 114 of IPC. Meanwhile the departmental action were initiated against both for violation of the provisions made under Rule 3 (1) (ii) , Rule 16 (4) (I) (B) of CCS (Conduct) Rules, 1964. The charges levelled against the officials stand proved in enquiry proceedings and the disciplinary proceedings were conducted resulted in dismissal of the officials on 22.6.1993 and 10.1.1995 respectively. It is contended that both of them were acquitted in the criminal case. They had requested for reinstatement in the Govt. service on the ground of acquittal which were rejected. It is contended that both of them were acquitted on

technical grounds pointing out the lacunae in the seizure Panchanama. The departmental proceedings are based on preponderance of probability. The applicant and the other persons were chargesheeted for having committed offence punishable under Sec.. 381 r/w 114 of IPC and dismissal of the officials from the Govt. service was for the violation of the relevant Conduct Rules. They have no claim for reinstatement on the ground of acquittal. The matter was referred to the Ministry of Law. The request for reinstatement on the ground of acquittal by the court is rejected and the punishment imposed under letter dated 10.1.1995. It is contended that the disciplinary authority is empowered to place the Govt. servant under suspension. The ● dismissal of the official was for violation of relevant conduct rules. Thus his reinstatement on the ground of acquittal was not considered. The nature of charges framed by the department in the departmental charge sheet are totally different and the charges framed in the court of law. The applicant had accepted the charge No.1 in toto. As the charge No.1 are totally different, than the charges framed by the police authority. The Rule 81 of P & T Manual Vo.III does not apply. The department is free to examine the case separately. Even the court acquitted the applicant as the acquittal is on technical ground, the applicant is not entitled to be reinstated.

4. The applicant filed the rejoinder reiterating the contentions in the O.A.

5. Heard Shri K.B.Rajan, learned counsel for the applicant and Shri V.S.Masurkar, learned counsel for the respondents. The learned counsel for applicant submitted that the applicant in the criminal case has been acquitted on merit. He submitted that

the findings on the same charge in the domestic enquiry cannot be sustained. The applicant was required to be reinstated. The respondents erred in rejecting the representation of the applicant for the reinstatement for allowing him to reinstate. The learned counsel relied on the ratio of judgement in the case of *M. Paul Anthony, vs. Bharat Gold Mines Ltd AIR 1999 SC 1416*.

6. It is not disputed that the applicant along with one more official was chargesheeted for the offence under section 381 r/w 114 of IPC. It is also not disputed that the applicant was given the charge sheet and the enquiry was held simultaneously during the pendency of criminal case. Under Rule 81 of P & T Manual the departmental enquiry ought to have been kept in abeyance. It is apparent that the applicant was held guilty under charge No.1 which was said to be proved by the Enquiry Officer. Charges No.2 and 3 were held to be not proved by the E.O. The disciplinary authority disagreed with the findings of the E.O. and held that all the charges were proved. It is apparent that the disciplinary authority had held charges as proved on the basis of so called statement dated 29.4.1985 alleged to have been given by the applicant. It appears that the statement of applicant was alleged to have been recorded in preliminary enquiry on 29.4.1985 by the Enquiry Officer S.J. Range. The applicant has stated that no other evidence is recorded by the Enquiry Officer in the departmental proceedings. In regular trial the applicant and the other official were acquitted for the offence under section 381 r/w 114 of IPC.

7. It is true that there is no rigid or inflexible rule that the findings of the criminal court is conclusive in every sense upon the administrative authority. In the instant case the disciplinary proceedings and the criminal case are based on the identical and similar set of facts. Not only that but the ..7/-

disciplinary proceedings as well as the criminal case are based on the identical evidence, the departmental proceedings ought to have been kept in abeyance as per existing rule 81 of the P & T Manual. But it appears that after change of the Enquiry Officer he proceeded with the enquiry simultaneously with the criminal case. It also appears from the record that the departmental proceedings was kept at *sine die* and was sent back to the disciplinary authority for orders as per Rule 81 of P & T Manual. As the disciplinary proceedings was grounded on same set of grounds and on the same set of facts and evidence it would have been better if the disciplinary proceedings would have been kept in abeyance till the disposal of the criminal case. However, after deletion of Rule 81 in the P & T Manual it appears that the Enquiry Officer proceeded in the departmental enquiry.

8. On perusal of the judgement of criminal court bearing No.745/P/1985 it appears that the acquittal in the case is substantially on the merit as there is no evidence, both the accused were acquitted. It also appears that the statement of the accused dated 29.4.1985 alleged to have been recorded during the course of preliminary enquiry was brought on record before the criminal court. The criminal court has dealt with the statement in question and refused to accept the same in the evidence. It appears from the judgement of the criminal court that as there was no evidence the accused were acquitted on merit.

9. It is apparent that the findings in the disciplinary proceedings is also solely based on the statement of the applicant dated 29.4.1985. The said statement is alleged to have been recorded during preliminary enquiry by the investigating authorities viz. Shri Samban and Mr. Shival in the presence of

witness P D Acharekar. The criminal court has denied to rely the statement in question. It is apparent from the papers that the evidence of Acharekar in whose presence the statement of the applicant accused was alleged to have been recorded by the Investigating Officer in the departmental proceedings, has been recorded in the departmental enquiry. It appears that Acharekar has stated before the Enquiry Officer that he and one Pawar were sitting in the adjacent room and the statement was recorded in the canteen and after the statement was recorded his signature was obtained by Shri Samban. He was told that the applicant Utekar admitted the guilt.

10. We have mentioned above that the findings of the departmental enquiry is based on so called statement of applicant recorded in the preliminary enquiry. The statement of the applicant has been thrown out by the criminal court in the trial. The evidence which has been thrown out by the criminal court cannot be used in the departmental proceedings against the same delinquent.

11. In para 35 in M. Paul Anthony's case (supra) Their Lordships of the Apex Court has observed that *since the facts and evidence in both the proceedings viz. departmental proceedings and the criminal case were the same without their being any iota of difference the distinction which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof would not be applicable to the instant case.*" We have mentioned that ^{thee} is no evidence and the acquittal in the criminal case is on the basis of merits, the departmental proceedings cannot lead a different conclusion on

the same charges. The distinction regarding the burden of proof in such cases would not be applicable as per Paul Anthony's case. As the acquittal is based on merits the contrary findings on the same charge and on the same evidence in the enquiry cannot be sustained. We have mentioned that the Enquiry Officer had held only charge No.1 as proved and charge No.2 and 3 as not proved.

12. It is also apparent that the Enquiry Officer held charge No.1 as proved as the applicant was said to have admitted the charge No.1. It is the contention of the applicant that he has admitted ~~that~~ Article of Charge No.1 on the assurance of the Enquiry Officer for taking a lenient view. The charge No.1 was that during the period with effect from 1.2.77 till 29.4.1985 allowed Shri P.M. Nadekar, Watchman, Vikhroli P.O. Bombay-79 to enter into Bhandup P.O. premises unauthorisedly and thus failed to maintain devotion to duty and thereby contravened the provision of rule 3 (i) (ii) of CCS (Conduct) Rules 1964. The main allegation is that the applicant did not take objection for the visit of the said Watchman. Thus he admitted the charge No.1. The charge No. 2 and 3 in departmental proceedings which are identical with the charges before the criminal court are held to be not proved by the Enquiry Officer. But those have been held to have been proved by the disciplinary authority on the basis of admission of charge No.1 only. The mere fact of allowing a person from the same department to enter the office by the applicant cannot be said to be a misconduct when the main charges regarding removal of currency notes from the insured parcel could not be proved. The disciplinary authority had disagreed with the findings of the Enquiry Officer in respect of charge No.2 and 3 and held both the charges 2 and 3 proved. The disciplinary authority held those charges as proved on the basis

of the statement of applicant dated 29.4.1985 and the said statement has been thrown out by the criminal court. The evidence which has been thrown out by the criminal court cannot stand in departmental proceedings also. And thus the findings in the proceedings cannot be sustained. The applicant had filed the representation for reinstatement which had been rejected by the respondents. The applicant was suspended under Rule 10 of the CCS (CCA) Rules 1965. As the findings of the disciplinary authority cannot be sustained in view of the acquittal of the applicant for criminal charges by the criminal court, the suspension period is required to be regularised.

13. For the reasons discussed as above, we are of the considered view that the order dated 18.9.1999 passed by the respondents cannot be sustained and accordingly the same is quashed and set aside. The respondents are directed to reinstate the applicant in service with immediate effect with all consequential benefits including the backwages during the suspension period which shall be released within a period of three months from the receipt of a copy of this order. In the result, the O.A. is allowed. No order as to costs.

M.G.D.
(S.G. Deshmukh)
Member (J)

V.K. Majotra
(V.K. Majotra)
Vice Chairman

Sj*

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**CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI**

Dated this Monday the 16th day of August, 2010

Coram: Hon'ble Shri Jog Singh - Member (J)
Hon'ble Shri Sudhakar Mishra - Member (A)

**Contempt Petition No. 91 of 2004
in
O.A. 471 of 2000**

A.S.Utekar,
Watchman,
R/o Sai Sadan Chawl,
Saibaba Road, Parel,
Mumbai.

(None) - Applicant

Versus

Shri K.Noorjehan,
Chief Postmaster General,
Maharashtra GPO, Mumbai.

Miss Suchita Shrivastav,
O/o Sr.Supdt. Of Post Offices,
Mumbai City North (E) Division,
Bhandup (East), Mumbai.

(By Advocate Shri V.S.Masurkar) - Respondent

O R D E R (Oral)

Per: Shri Jog Singh, Member (J)

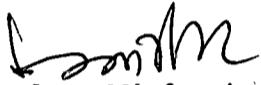
The present Contempt Petition has been preferred for non-implementation of Order dated 07.06.2004 passed in OA No.471/2000 (Anant Shivram Utakar Vs. Union of India & another).

2. Heard the learned counsel for respondents and perused the file. At the outset it has been brought to our notice

[Signature]

by learned counsel for respondents that the respondents have approached the Hon'ble High Court of Judicature at Bombay in Writ Petition No.2757 of 2004 (**Union of India & ors. Vs. A.S.Utekar**) and the matter is *sub judice*. In the circumstances, no orders are required to be passed at this stage. The Contempt Petition is accordingly disposed of. However, in case any eventuality arises after the disposal of the said Writ Petition by the Hon'ble High Court, the applicant will be at liberty to re-agitate the matter by appropriate proceedings and in accordance with the rules.

Notices discharged.



(Sudhakar Mishra)

Member (A)



(Jog Singh)

Member (J)

mf



D. P. Dabholkar
20/8