IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE 14TH NOVEMBER, 1986

Present

The Hon'ble Shri Ch. Ramakrishna Rao : Member (JM)

The Hon'ble Shri L.H.A. Rego : Member (AM)

Application No.1532 of 1986(T)
W.P.No.15358 of 1985

Shri Venkatesh Hanamantro Itagi,
Retired Postal Assistant,
R/o H.No.2/1/18 Nai Kaman,
Bidar. .....Applicant

(Shri G.A. Nadgir, Advocate)

1. The Sub-Divisional Inspector of Post Offices, Bhalki Post Office, District Bidar.
2. The Superintendent of Post Offices, Bidar Division, Bidar.
3. The Regional Director of Post Offices, Dharwar Region, Dharwar.
4. The Director General of Postal Services, New Delhi, Post Master General's Office, New Delhi.
5. The Sub-Post Master, Bhalki Post Office, Bhalki District, Bidar.

Respondents

(Shri N. Basavaraju, Advocate)

This application has come up for hearing before this Tribunal on 26.9.1986; the Hon'ble Shri L.H.A. Rego, Member (AM), made the following:

O R D E R

This is a writ petition filed under Articles 226 and 227 of the Constitution of India in the High Court of Judicature, Karnataka which has been transferred to this Bench under Section 29 of the Central Administrative Tribunals Act, 1985 and has been renumbered as Application No.1532 of 1986. The main prayer of the petitioner is that a writ of certiorari,

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direction or order be issued quashing the impugned order dated 30.1.1984 of his premature retirement, by the second respondent and that the notice dated 8.7.1985 served on the petitioner by the third respondent to refund the amount of subsistence allowance paid to him be annulled and that the petitioner be allowed to continue in service till he attains the date of his normal retirement, rendering him eligible for all consequential relief.

2. The factual background leading to this application is concisely as follows. The petitioner was appointed as a Postman on 25.9.1952 under the Central Civil Service (Temporary Services) Rules and was terminated on 1.1.1959 i.e. after a period of nearly 7 years, by giving him a month's prior notice. The petitioner was thereafter appointed as Postman afresh, on 7.7.1967 and was posted to Bidar. He was appointed as Clerk on 4.4.1972 after fulfilling the prescribed qualifications and was serving as Postal Assistant at Bhalki Post Office in Bidar district till he was compulsorily retired with effect from 1.2.1984.

3. On 28.8.1982, the first respondent visited the office of the fifth respondent at Bhalki in Bidar district, where the petitioner was serving as Postal Assistant and asked the petitioner to produce the Stamp Advance Book (SAB, for short). The petitioner, however, informed the first respondent that as the SAB had been closed for the morning session, he would produce the same in the afternoon session. The first respondent directed the fifth respondent to note down his instructions to the petitioner in the Order Book. The petitioner while giving reasons in writing in reply to this Order in the Order Book, stated that he would produce the SAB at the commencement of the afternoon session on 28.8.1982. The petitioner states that the first respondent did not visit the office of the fifth respondent

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during the afternoon session but paid a surprise visit the next day when he found the SAB with the petitioner correct and up-to-date.

4. However, the petitioner was placed under suspension with effect from 31.8.1982 by the second respondent on the ground that disciplinary proceedings were contemplated against him, ostensibly for disobeying the orders of the first respondent to produce the SAB. This order of suspension was, however, revoked with immediate effect by the second respondent on 4.10.1982.

5. A departmental enquiry was held against the petitioner, wherein he was penalised by the second respondent by reducing his monthly pay from Rs.360/- to Rs.260/- for a period of three months from 1.6.1983 without permanent effect. Aggrieved by this Order, the petitioner appealed to the third respondent, who was the appellate authority for redress. As the departmental proceedings suffered from many lacunae and did not fulfil the requirements of Article 311 of the Constitution of India, the third respondent did not accept the Order of punishment passed by the second respondent in this case and directed him on 18.8.1983 to initiate the departmental enquiry de novo from the stage of issue of the chargesheet. No further action seems to have been taken by the second respondent in compliance with this direction of the third respondent.

6. On the other hand, the second respondent issued a notice of premature retirement to the petitioner on 31.3.1983 under Rule 56(j)(ii) of the Fundamental Rules (FR, for short) and directed him on 30.1.1984 to retire prematurely on the forenoon of 1.2.1984. The petitioner appealed thereon, to the third respondent, requesting him to treat his period of

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suspension from 30.1.1982 to 2.5.1982 as on duty and to pay his salary and allowances accordingly, as the former had not agreed with the order of punishment passed by the second respondent in the departmental proceedings and had directed that they may be initiated de novo as aforementioned. The petitioner had also represented therein against his premature retirement unjustly. The third respondent, however, turned down his appeal on 8.2.1984, stating that he had ordered proceedings de novo in the departmental enquiry against him, owing to certain lacunae therein. He also observed that the de novo proceedings were not initiated by the disciplinary authorities on the pretext, that the petitioner was retired under the provisions of FR 56(j) (ii). However, he directed that the period of suspension of the petitioner from 1.9.1982 to 5.10.1982 be treated as leave eligible to him. Thereon the petitioner appealed to the third respondent again on 26.11.1984, bringing to his notice, that the disciplinary authority had not yet initiated the departmental enquiry against him de novo, as directed by the third respondent and therefore, requested that his period of suspension be treated as duty. In reply, the third respondent informed the petitioner through the second respondent on 11.3.1985, that as the petitioner had already been retired from service, his case could not be reopened. The petitioner finally appealed to the fourth respondent on 8.7.1985 but to no avail. The third respondent issued a notice to the petitioner on 8.7.1985 to refund the amount of subsistence allowance paid to him during the period of suspension on the score, that no leave other than extra-ordinary leave was to his credit. The petitioner has therefore come before this Bench for redress through his prayer as set out earlier.

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7. We have given our earnest consideration to the arguments advanced before us by both sides. The fact that the second respondent did not comply with the explicit directions given to him by the third respondent, on 18.8.1983 on the appeal of the petitioner, to initiate departmental proceedings de novo from the stage of issue of the chargesheet, on account of many deficiencies noticed therein (which violated the requirement of Article 311 of the Constitution of India) even till premature retirement of the petitioner, reveals that the entire matter relating to this departmental enquiry became non est, and that the petitioner was not given due opportunity to vindicate his innocence in respect of the charges framed against him. It therefore follows as a corollary, that the charges were not proved conclusively against the petitioner in the aforesaid departmental enquiry. In this connection, it is pertinent to reiterate the remarks of the third respondent on 8.2.1984 on the appeal addressed to him by the petitioner. They are as follows:

> ".....De novo proceedings are not initiated by the disciplinary authority under the pretext (sic) that the official was issued notice for retirement under FR 56(j)(ii)....."

8. The above remarks bewray that the third respondent had tacitly acquiesced, in recourse having been taken to the provisions of FR 56(j)(ii) (as such action could not have been taken without his approval) to circumvent initiation of the departmental enquiry de novo and its completion as initially directed by him. If not, he should have obtained the explanation of the second respondent for not complying with his explicit instructions in this regard and enjoined compliance of the same forthwith. Nowhere is it seen that he did so. The petitioner seems to have come out unscathed in his service at the age of 50 and 55 years when usually a departmental review is taken to retire the employees prematurely, on grounds

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of inefficiency and/or lack of integrity. The proximity of the dates namely, 18.8.1983 on which the third respondent directed the second respondent to initiate the departmental enquiry de novo against the petitioner and 31.10.1983, when the second respondent issued notice of premature retirement to the petitioner under FR 56(j)(ii) clearly brings out the mala fides in the act of the respondents, who found it burdensome to hold the departmental enquiry anew and pursue it to its logical end, after rectifying the various lacunae therein in strict compliance with procedure and what is more important, to prove the charge conclusively against the petitioner. They therefore apparently gave it a short shift, by by resorting to the provisions of FR 56 (j)(ii) summarily, in doing away with the services of the petitioner. This action is therefore tainted with mala fides.

9. Be that as it may, the fact remains, that the disciplinary authority had neither carried out the directions given by the appellate authority nor did he pass any order giving a quietus to the proceedings initiated against the applicant. Such an order seems to be necessary, since in the absence thereof, it will leave an impression that there is a nexus between the disciplinary proceedings not dropped and the order of compulsory retirement.

10. In this connection, reference may be usefully made to a decision of the Division Bench of the Allahabad High Court in STATE OF U.P. v. P.S. JOHARI (1976(2) ALR 316), in which the earlier decisions rendered by the Supreme Court in JAGDISH MITTER v. UNION OF INDIA (AIR 1964 SC 449) and STATE OF PUNJAB v. SUKHRAJ BAHADUR (AIR 1968 SC 1089) were considered and it

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was observed:

> "When Government initiates disciplinary proceedings against a Government servant on the basis of charges of misconduct or inefficiency, it is obvious that Government does so with the intention of punishing him. If in such proceedings an Enquiry Officer has been appointed, a charge-sheet has been submitted, explanation has been called for and considered and thereafter an order of compulsory retirement is passed, it can legitimately be inferred that the misconduct or inefficiency is the foundation or basis of the order and that the order has been passed by way of punishment. In these circumstances, the order of compulsory retirement will amount to an order of dismissal or removal from service and will attract the provisions of Article 311(2)."

The Division Bench also repelled the contention that the Court cannot examine the facts and circumstances to ascertain the true character of the order of compulsory retirement. The Division Bench decision was followed by another Division Bench of the seme High Court in G.S. SIAL v. UNION OF INDIA (1978 AISLJ p.88) and the entire case law bearing on the subject has been reviewed in extenso.

11. It is also pertinent to note that tha applicant had already superannuated and as no order retaining him in service has been passed prior to his superannuation, it is not legally permissible to hold any de novo enquiry, pursuant to the order passed by the appellate authority.

12. The departmental enquiry against the petitioner having become non est in the above circumstances, suspension of the petitioner in connection with that enquiry becomes a nullity and therefore the notice dated 8.7.1985 served on the petitioner by the third respondent, to refund the subsistence allowance loses its basis.

13. The respondents have not even cared to file a statement of objections despite the fact that they had more than ample time - nearly a year - since the writ petition

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was filed in the High Court of Judicature, Karnataka. This lapse on their part implies their acquiescence in the contentions of the petitioner in that writ petition.

14. In the result, we pass the following order:

(i) The impugned notice dated 8.7.1985 issued by the third respondent directing the petitioner to refund the amount of subsistence allowance paid to him, during the period of his suspension from 1.9.1982 to 5.10.1982 (both days inclusive) is set aside. The petitioner should be paid full pay and allowances during the period of his suspension i.e. from 31.8.1982 to 5.10.1982 (both days inclusive - which is the actual period of suspension) exclusive of the amount of the subsistence allowance already paid.

(ii) The impugned order of premature retirement of the petitioner with effect from 1.2.1984 (FN) by the second respondent which is mala fide, is hereby annulled and as a consequence, the petitioner shall be entitled to full pay and allowances from 1.2.1984, till the normal date of his superannuation when he would have attained the age of 58 years.

(iii) These orders be given effect to within a period of two months from the date of their receipt.

(L.H.A. Rego)
Member (AM)
14.11.1986

(Ch. Ramakrishna Rao)
Member (JM)
14.11.1986

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