

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

(9)

O.A.134/91

Kishore Shrichand Shende,
Ex-Extra Departmental Branch Postmaster,
R/o.Saoli-Dongargaon Branch Post Office
(Amgaon S.o) Tah.Salekasa,
Dist.Bhandara.

.. Applicant

vs.

1. Union of India
through
Secretary,
Department of Posts,
Ministry of Communications,
New Delhi - 110 001.
2. The Postmaster General,
Maharashtra Circle, P.O.
Shankarnagar,
Nagpur - 440 010.
3. The Director Postal Services,
Nagpur Region,
O/O P.M.G.Maharashtra Circle,
Nagpur - 440 010.
4. The Sr.Suptd. of Post Offices,
Nagpur Mfl. Dn. Nagpur 440 012.
5. The Asstt.Suptd. of Post Offices,
Gondia Sub. Dh. Gondia 441 601.
6. Shri M.S.Nimje, Inquiry Officer,
and Platform Inspector,
Nagpur R.M.S., Nagpur 440 001.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava
Vice-Chairman

Hon'ble Shri P.S.Chaudhuri,
Member(A)

Appearances:

1. Mr.D.B.Walthare
Advocate for the
Applicant.
2. Mr.Ramesh Darda
Counsel for the
Respondents.

ORAL JUDGMENT: Date: 10-7-1991
(Per U.C.Srivastava, Vice-Chairman)

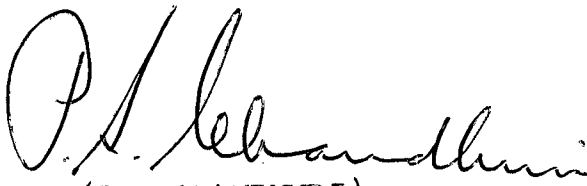
The applicant was Extra Departmental Branch Postmaster. Vide order dated 18th November, 1988 the applicant was put off from duty even though by that time no inquiry against the applicant has been started. Thereafter a discharge sheet was issued

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against the applicant on 23.1.1989. The applicant made a representation against the same. Inquiry Officer conducted the inquiry and without supplying the copies of the inquiry report the Disciplinary Authority passed an order by which the applicant was removed from service on 25.8.1989. Against that the applicant filed an appeal. The appellate order dated 31.1.1990 directed a denovo inquiry from the stage of examination of documents. The applicant filed review application against the same. Another Inquiry Officer was appointed and it appears that the said inquiry has not yet concluded. The applicant has challenged the order by which he was put off from duty which is still continuing and denovo proceedings started without reinstating him on duty.

2. On behalf of the respondents it has been pleaded and contended that the review application which was preferred by the applicant against the appellate order was dismissed by the Post Master General who in that order has also made it clear that the applicant will be deemed to be continued on put off duty. Obviously Post Master General has no jurisdiction in the matter to pass any such order and even if he has passed any such order this order can be ignored. When the denovo enquiry was ordered the removal order automatically stood set aside. The proposition would be that the applicant will be deemed to be reinstated in service and the original order putting him off duty came to an end the day the removal order was passed as it merged with the same, with the result that after the reinstatement no put off on duty order stood and no fresh order has been passed in this regard.

3. Accordingly the applicant would be deemed to ^{be} continuing in service till a fresh order putting him off from duty or removal from service is passed. The application is allowed and the respondents are directed to treat the applicant as on duty and pay him full salary for the entire period. The application is disposed of with the above observation. There will be no order as to costs.


(P.S. CHAUDHURI)
Member(A)


(U.C. SRIVASTAVA)
Vice-Chairman

Certified True Copy
From

Secretary,
Central Board of Secondary Education,
New Delhi.

in

- .. Review Petitioner

versus

.. Respondent

Hon'ble Shri M.Y.Priolkar,
Member(A)

Appearances :

- ..2/-

TRIBUNAL'S ORDER; Date: 16-9-1992
{Per S.K. Phoon, Vice-Chairman}

This is an application seeking the review of the order dt. 10th July, 1991 passed by this Tribunal in O.A.134/91.

2. In this aforementioned O.A. this Tribunal has given certain directions to the respondents. A contempt Petition No. 62/91 has been preferred by the applicant in the O.A. viz. Shri Kishore Shende with the grievance that the respondents have wilfully disobeyed the directions given by this Tribunal. In the Contempt Petition a reply has been filed on behalf of the respondents to the effect that they had preferred a review petition No.79/91 in this Tribunal and therefore they did not comply with the directions given by this Tribunal.

3. The contempt petition is listed before us for hearing today. With the consent of the learned counsel for the parties we have heard the review petition filed by the Union of India and others and we are disposing of the same.

4. The applicant was on or before 18th November, 1988 working as Extra Departmental Branch Postmaster. On that day he was put off from duty even though disciplinary proceedings have not commenced against him. Later on, a chargesheet was given to him on 23rd January, 1989. He was removed from service on 25th August, 1989. On 31st January, 1990 the Appellate Authority directed a denovo enquiry from the stage of examination of documents. The review application

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preferred by the applicant was dismissed. The applicant challenged the order by which he was put off from duty.

5. This Tribunal took the view that when the appellate authority directed a denovo enquiry the order of removal passed against the applicant stood automatically set aside. Therefore, the applicant would be deemed to be reinstated in service and the original order putting him off duty came to an end the day the removal order was passed as it merged with the same. The result was that after the reinstatement of the applicant the order of put off from duty did not exist as a fresh order to that effect had not been passed. This Tribunal accordingly directed that the applicant would be deemed to be continuing in service till a fresh order putting him off from duty or removal from service is passed. The respondents were directed to treat the applicant as on duty and pay him full salary for the entire period.

6. It may be noted that in the Review Petition only one ground has been taken. It will be profitable to extract the said ground in extenso:

"GROUNDS

6. It is respectfully submitted that this Honourable Tribunal has committed an error of law in holding that the denovo enquiry ordered by appellate authority by order dt. 31.1.90 means a fresh enquiry whereas fact remains that the denovo enquiry which is ordered by appellate authority by order dt. 31.1.90, which was confirmed

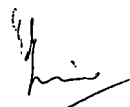
by the Reviewing authority is from the stage of examination of documents, and hence this Honourable Tribunal may be pleased to review its order, directing the reinstatement of the respondent and payment of full salary of the entire period holding that since the order of removal passed by the Disciplinary Authority was set aside by the Appellate Authority by its order dt. 31.1.90, entitles, the respondent treating that order of put off from duty to be automatically cancelled."

7. The only argument advanced before us in support of this application is that this Tribunal committed an error of law in taking the view that as a result of the order of appellate authority directing a denovo enquiry the applicant was entitled to be reinstated in service. We may reiterate that this Tribunal in its order dtd. 10th July, 1991 has taken full note of the order of the appellate authority that denovo enquiry has to be held from the stage of examination of the documents. We have analysed the arguments advanced in support of this application. In our view the substance of the arguments is that this Tribunal took an erroneous view in directing the respondents to pay the applicant the backwages. Be that ^{as} it may, in our opinion, that cannot be a ground for reviewing the order. The Tribunal had jurisdiction to decide wrongly as well as rightly. It did not fail to take into account any relevant fact, it also did not fail to take into account any relevant law. It may have misinterpreted the relevant rule but that error, even if committed, would not amount to an error apparent on the face

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of the record. The remedy of the petitioner, if any, is or was to prefer an appeal before the Supreme Court against the order of the Tribunal.

8. The review petition is rejected.


(M.Y. PRIOLKAR)
Member (A)


(S.K. BHAGAT)
Vice-Chairman

MD

C.P.No.62/91
in
C.A.No.134/91.

Tribunal's Order:

Dated : 17.3.1993.

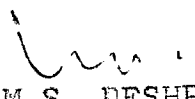
Heard Shri D.B. Walthare, Counsel for the applicant and Shri A.B. Chaudhary, Counsel for the respondents.

The applicant has joined his duties on 14.1.1993 in pursuance of the order passed by this Tribunal. But the arrears of his wages are yet to be paid inspite of the order passed by this Tribunal on 16.9.1992, giving one month for compliance.

Shri Chaudhary states that a SLP has been filed in the Supreme Court against the order passed by this Tribunal but ^{no} stay order has been obtained.

In view of the order passed by this Tribunal we do not think that there is any justification for not paying the amount to the applicant so far. If the applicant is not paid the arrears within 2 months from today as directed by this Tribunal, we direct the respondent Nos.2 to 6 to remain present before the Tribunal on 21.6.1993.


(M.Y. PRICKAR)
MEMBER(A).


(M.S. DESHPANDE)
VICE CHAIRMAN.

H.

s/c
dismissed
appeal by order
on 19.4.93
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