

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH,
JAIPUR.
* * *

Date of Decision: 26.5.93

OA 243/93

P.D. JEF

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

HON. MR. JUSTICE D.L. MEHTA, VICE CHAIRMAN.

HON. MR. O.P. SHARMA, ADMINISTRATIVE MEMBER.

For the Applicant

... SH. J.K. KAUSHIK.

For the Respondents

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J U D G E M E N T

(DELIVERED BY HON. MR. O.P. SHARMA, ADMINISTRATIVE MEMBER)

By order dated 16/29.3.88, a penalty of reduction of pay to the minimum of time scale for a period of three years was imposed on the applicant, a Postal Assistant. Accordingly, his pay was reduced to Rs.975/- in the scale of Rs.975-1660. The said penalty was imposed by the Supdt. of Post Offices, Sikar. The applicant did not prefer any appeal against the said order. The Director, Postal Services, Jodhpur, the Appellate Authority, revised the penalty order suo-motu and thereby enhanced the penalty of removal from service vide order dated 16.2.89 (Annexure A-3). The applicant filed an OA before the Jodhpur Bench of the Tribunal (OA 280/89). Vide order dated 15.9.89, the Tribunal quashed the order passed by the Director, Postal Services, removing the applicant from service, directing that he may be reinstated in service with effect from the date (21.2.89 F/N) when his removal from service came into effect, with all consequential benefits.

2. After receipt of the said order of the Tribunal, the authorities in the department were of the view that with the quashing of the order of the Revisionary Authority, the earlier penalty order dated 16/29.3.88 stood ^{revived} ~~revised~~. The respondents, accordingly, proceeded to take further action against the applicant in the light of the said original order of penalty. The applicant is aggrieved by Annexure A-1, which is a letter dated 23.3.93 to the applicant informing him, inter-alia, that only the order dated 16.2.89, passed by the Director, Postal Services, has been quashed by the Tribunal. The applicant was further informed that since the penalty imposed by order dated 16/29.3.88 stands and adverse remarks ^{in the ACK} have been recorded on the basis of these orders, such remarks cannot be expunged. The applicant has prayed that the order dated 23.3.93 (Annexure A-1) may be quashed, and the applicant may be allowed all consequential benefits.

3. During the hearing, the learned counsel for the applicant drew our attention to para 129 of P & T Manual Vol.III, which reads as under :-

"Effect of setting aside of appellate order - An appellate order replaces the punishment order. Accordingly, if an appellate order is set aside for procedural defects, the punishment order will also simultaneously stand quashed. In such a case, it should, therefore, be necessary to initiate de novo proceedings against the concerned officer."

He has also pleaded that since the order passed by the DPO replaces the original penalty order, the original penalty order also stood quashed, when the Revisionary Authority's order stood quashed by the Tribunal. According to him, therefore, no penalty at all is imposable on the applicant. In support of this plea, he has also cited the judgement of the Hon'ble Supreme Court in the case of Tekraj Vasandi Vs. UOI & Ors.

(1988 AIR SC 469), in which it was held by the Hon'ble Supreme Court that once dismissal was set aside and proceedings were restored to the stage of enquiry, the appellant was deemed to have been restored to service and that the order of suspension passed earlier would not be ^{revived} ~~revised~~. The Hon. Supreme Court held that the order of suspension, which had merged into dismissal, has been vacated.

carefully
4. We have gone through the records and considered the submissions of the learned counsel for the applicant. In this case, the subsequent order enhancing the penalty was passed on revision of the original order and not in appellate proceedings. Therefore, strictly speaking the provisions of para 129 of the P & T Manual Vol.III, reproduced above, would not apply to this case. Even if however it is considered that these provisions are applicable ~~orders~~ in revision also, one has to see the actual order passed by which the penalty imposed on revision has been set aside, before one takes a view on the question whether the original order of penalty stood ^{revived} ~~revised~~ or not. These provisions of P & T Manual Vol. III are not a rule but are a mere interpretation or clarification of the rules. These cannot be said to be binding in any way. We have to go through the order of the Jodhpur Bench of the Tribunal to find out what exactly was the intention of the Tribunal when they quashed the order in revision enhancing the penalty imposed on the applicant. Paras 9 and 10 of the said order are reproduced below :-

"9. In view of the above propositions of law laid down by the Apex Court, we hold that in the instant case, the impugned order having been passed in utter violation of principles of natural justice is liable to be set aside. The settled view by now is that the Appellate Authority either while disposing of an appeal preferred by the delinquent employee or exercising the powers of revision under the Rules has to

conform to the principles of natural justice i.e. afford an opportunity to the delinquent employee to make his submission in writing or orally or both and then pass a speaking order. If there is failure to follow the above procedure, the order will be liable to be quashed as violative of principles of natural justice. In the instant case, the Appellate Authority substituted its order of punishment of removal from service in place of reduction of pay imposed by the Disciplinary Authority without affording an opportunity to the applicant to make his submissions; rather the impugned order was passed more or less on the back of the applicant.

10. In view of what has been said and discussed above, the application is allowed in that the impugned order dated 16.2.89 issued by the Director removing the applicant from service is quashed and the respondents are directed to re-instate the applicant in service with effect from 21.2.89 (F.N.) when his removal came into effect with all consequential benefits. In the circumstances, the parties are left to bear their own costs."

5. Earlier in para 6 of their order, the Tribunal have stated that during the course of arguments, the learned counsel for the applicant did not press the applicant's prayer for quashing the order awarding the penalty issued by the Supdt.

6. The applicant had himself agreed before the Tribunal that the original order imposing the penalty passed by the Supdt. of Post Offices need not be quashed. The implications of this concession before the Tribunal are clear. It was neither the intention of the Tribunal to quash even the original order of penalty nor was it in the mind of the applicant at that time that original order of penalty also stood quashed because of the order of the Tribunal quashing the order of the Revisionary Authority. It is not proper now at this stage for the applicant to claim that since the original order had merged with the order of the Revisionary Authority, both stood quashed by the order of the Tribunal.

7. Apart from that, a reading of the paras 9 and 10 of the Tribunal's order dated 15.9.89, reproduced above, make it