

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 989 of 2004

Indore this the 18th day of October 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Munnalal Awasthy, S/o. Shri Sitaram
Awasthy, aged about 46 years, Mailman,
Office of Chief Accounts Officer, Rail
Mail Service, M.P. Circle, Bhopal (MP). Applicant

(By Advocate – Shri Rajneesh Gupta)

Versus

1. Union of India, through Secretary,
Department of Posts, Govt. of India,
Dak Bhawan, New Delhi.
2. Director, Postal Services, M.P.
Circle, Bhopal (MP).
3. Superintendent Rail Mail Service,
M.P. Circle, Bhopal.
4. Chief Accounts Officer, Rail Mail
Service, M.P. Circle, Bhopal (MP). Respondents

(By Advocate – Shri S.A. Dharmadhikari)

ORDER

By Madan Mohan, Judicial Member –

By filing this Original Application the applicant has claimed the following main reliefs :

“(i) to quash and set aside the order dated 21.9.2004 (Annexure A-1) passed by the appellate authority and the order dated 31.3.2003 (Annexure A-2) passed by the disciplinary authority imposing punishment of reduction in pay of the petitioner by three stages in the interest of justice,



- (ii) to quash the charge sheet issued to the applicant,
- (iii) to direct the respondents to pay all arrears of pay after adding all increments in the pay of the applicant with interest @ 18% per annum."


2. The brief facts of the case are that the applicant was employed as a Mailman with the respondents Department. While working as such he was placed under suspension vide order dated 10.3.1998 (Annexure A-3). A criminal case No. 999/1998 was pending against him before the Court of Special Railway Magistrate, First Class, Bhopal. The applicant was discharged from the above criminal case vide order dated 8.2.2000 (Annexure A-4). After discharging of the applicant from the said criminal case the suspension of the applicant was revoked vide order dated 24.2.2000 (Annexure A-5). But after expiry of more than 6 months from the revocation of suspension a charge sheet dated 14.10.2000 (Annexure A-6) was issued against him leveling the same charges. Such charge sheet should not have been issued on the very same charges. The enquiry was over and in the enquiry report the enquiry officer made a specific finding that there has been no evidence led by the prosecution with regard to the misconduct as per Rules 3(1)(i) of the CCS (CCA) Rules, 1964. After receiving the aforesaid report of the enquiry officer he submitted his representation but without considering the reply of the applicant the disciplinary authority has imposed the punishment of reduction of pay by three stages for a period of two years (Annexure A-2). He preferred an appeal but the appellate authority rejected the appeal vide order dated 21.9.2004 (Annexure A-1). He was not paid the annual increments and the period under suspension also should have been treated as period spent on duty for all practical purposes and should have been added to his pay. But the respondents have not considered all this. Hence, this Original Application is filed.

3. Heard the learned counsel for both the parties and carefully perused the pleadings and records.



4. It is argued on behalf of the applicant that on 5.3.1998 at about 7 the applicant allegedly tried to steal certain articles from the window of Narmda Express. On the basis of it a criminal case No. 999/1998 was prosecuted against him and the Special Railway Magistrate Class-I vide his judgment dated 8.2.2000 acquitted the applicant from the charge leveled against him. The applicant who was placed under suspension vide order dated 10.3.1998 on the basis of the aforesaid charge, was reinstated and his suspension was revoked after the order of acquittal vide order dated 24.2.2000 (Annexure A-5). But after expiry of more than six months a charge sheet was issued against the applicant on 14.10.2000 on the same charges which were leveled against him in the criminal trial. Such charge sheet could not have been issued by the respondents. The applicant was Honorably acquitted from the criminal case and even then the departmental enquiry proceedings were conducted against him which were not in accordance with the rules. He further argued that the enquiry officer did not find him guilty for the misconduct as per Rule 3(1) (i) of the Conduct Rules vide his report dated 28.9.2002 (Annexure A-7). Even then the disciplinary authority without considering the representation of the applicant punished the applicant by impugned order dated 31.3.2003 (Annexure A-2), thereby imposing the punishment of reduction of pay by three stages for two years. The applicant preferred an appeal against it and it was also dismissed vide order dated 21.9.2004. The appellate authority also had not considered the contentions raised on behalf of the applicant. Hence, this Original Application deserves to be allowed.

5. In reply the learned counsel for the respondents argued that departmental proceedings against an employee is not barred even if criminal trial is pending or decided against him because in the criminal trial clinching evidences are required to convict the accused where there is no such requirement in the departmental enquiry proceedings. The enquiry officer has submitted his report. In paragraph 22 of this report it was mentioned that certain objectionable articles were found from the



possession of the applicant. This charge is proved against him as he has violated the relevant rule 24. He also mentioned that it is correct to say that the charge under Rule 3(1)(i) was not found proved against the applicant. The applicant was given the opportunity of hearing as he has filed representation against the report of the enquiry officer. His representation was duly considered by the disciplinary authority and thereafter the impugned order dated 31st March, 2003 (Annexure A-2) was passed. His appeal was also duly considered by the appellate authority and it was dismissed vide order dated 21.9.2004 (Annexure A-1). The applicant cannot take benefit of his acquittal from the criminal charge vide judgment dated 8.2.2000 because in that criminal trial charge against the applicant was under Section 379/511 of the IPC i.e. attempt to commit theft from the window of Narmada Express. The charge of having possession certain objectionable articles was duly proved against the applicant during the departmental enquiry proceedings and the applicant is rightly punished by the authorities concerned. Hence, this OA deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records we find that a criminal trial was initiated against the applicant in criminal case No. 999/1998 before the learned Special Railway Magistrate First Class, Bhopal under Section 379/511 of the IPC. He was acquitted from the aforesaid criminal trial vide order dated 8.2.2000. After the alleged incident dated 5.3.1998 the applicant was ordered to be placed under suspension vide order dated 10.3.1998 and after the date of his acquittal on 8.2.2000 the suspension of the applicant was revoked by the respondents vide order dated 24.2.2000. There was another allegation against the applicant that he was found having certain objectionable articles in his hand bag. ^{On this} In regard a seizure memo was prepared on that very day. This charge was proved by the enquiry officer in his report in paragraph 22 and thereby it was mentioned that he has violated the relevant rule 24. It was also mentioned that the



charge leveled against him under rule 3(1)(i) was not proved. Hence, it cannot be accepted that the charges leveled against the applicant was not proved as he was found in possession of certain objectionable articles which he could not have kept in his possession. The applicant submitted reply to the report of the enquiry officer to the disciplinary authority and thereafter the impugned order dated 31.3.2003 (Annexure A-2) was passed against the applicant. The applicant also preferred an appeal which was dismissed vide order dated 21.9.2004 (Annexure A-1). We have perused both the aforesaid orders. These orders are speaking, detailed and reasoned. It is not a case of no evidence. We also find that due opportunity of hearing was granted to the applicant. It is a settled legal proposition that the Courts/Tribunals cannot re-appraise the evidence and also cannot go into the quantum of punishment unless it shocks the conscience of the Courts/Tribunals.

7. Considering all the facts and circumstances of the case we are of the considered view that this Original Application deserves to be dismissed as having no merits. Accordingly, the same is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

पृष्ठान्कन सं ओ/व्या.....जबलपुर, दि.....
पत्तिलिपि अर्पित :-

- (1) सचिव, उच्च न्यायालय एवं एडमिनिस्ट्रेशन, जबलपुर
(2) आवेदन के/प्रती/पु.....के कार्डरल
(3) प्रत्यक्षी/प्रती/पु.....के कार्डरल
(4) न्यायालय, को.प.अ., जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

"SA"

उप रजिस्ट्रार

Ramesh Gupta 24/08/04
S.A. Sharma 24/08/04
24/08/04

7/9/04
24/11/04