

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 423 of 2003

Bilaspur this the 24th day of November, 2004

Hon'ble Mr. M.P.Singh, Vice Chairman
Hon'ble Mr. A.K.Bhatnagar, Judicial Member

R.K. Burman, Aged about 51 years
(Ex.Mail Man, Katni R.M.S. Katni
M.P.) S/o Jangal Prasad
R/o Behind Mohan Talkies,
Katni M.P.

APPLICANT

(By Advocate - Shri S.Thakur)

VERSUS

1. Union of India,
Department of Posts, and Telegraph
Through its Secretary
New Delhi.
2. Director General
Postal Services,
New Delhi.
3. Post Master General
Raipur Region, Raipur
Raipur - 492001 C.G.
4. Superintendent Railway Mail
Services JB Circle,
Jabalpur.

RESPONDENTS

(By Advocate - Shri Om Namdeo)

ORDER

By A.K.Bhatnagar, Judicial Member -

This OA is filed under Section 19 of the Administrative Tribunals Act 1985, wherein the applicant has challenged the order dated 29.11.91 and the order dated 5.1.93 by which the applicant was dismissed from services. He has also sought the following main reliefs.

"(ii) After perusal of the same set aside and quash the order of removal from the service and the order of the appellate authority.

(iii) Reinstate the applicant in his original post with all consequential benefits.

(iv) Direct the respondents to pay him full back wages and the arrears be paid to the applicant with interest @ 12% p.a."

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2. The brief facts of the case as per the applicant are that he was appointed in the respondents establishment vide order dated 20.10.73 and was posted in the office of Sub Record Clerk, RMS JB Division Katni. He worked till 1986 to the full satisfaction of the department. A FIR was logged against one Om Prakash working as mail Guard with the Railway Mail service Chhatarpur. He was charged for theft of Silver Bricks worth Rs.10000/- from the parcel No.51. The applicant has been charged under Section 411 IPC alleging therein that he has hidden the said silver ^{his} in ^{his} house. The police of Chhatarpur filed a charge ^{sheet} under Section 409 IPC against Om Prakash and 411 IPC against the applicant in the Court of Judicial Magistrate First Class Chhatarpur. In the meanwhile the applicant has been issued a charge sheet by the respondents. The departmental enquiry was held and the applicant was dismissed from the service vide order dated 29.11.91 (Annexure-A.2). The applicant preferred an appeal to the Director Postal Services, Raipur Region, Raipur challenging the order of dismissal on various grounds, but it was also rejected vide order dated 5.1.93 (Annexure-A-4). Ultimately the applicant was acquitted in the criminal case No.173/92 by the Court of Judicial Magistrate First Class, Chhatarpur vide judgment dated 10.4.96 (Annexure-A-5). The applicant after having been acquitted has again sent a registered letter to the respondent no.3 i.e. Post Master General, Raipur Region, Raipur alongwith a copy of the judgment passed in ST No.173/92 and prayed for reinstatement. Thereafter the applicant filed a representation to the respondent no.2 i.e. Director General Postal Services New Delhi requesting therein to consider his case in the interest of justice. He again sent a representation to the Post Master General Chhattisgarh Region, Raipur on 23.12.2001 with the request for reinstating the applicant, ~~following~~ by reminder dated 18.1.2003 filed as Annexure-A-8. When no action was taken by the respondents,

the applicant has filed this OA.

3. The learned counsel for the applicant submitted that the orders dated 29.11.91 and 5.1.93 are bad in law as there cannot be two simultaneous enquiries on the same facts one by the Court and other by the department, the same could not have been conducted as the applicant had to face double jeopardy. Not a single charge has been proved before the departmental enquiry beyond all reasonable doubts. No secure memo was produced before the enquiry officer. The learned counsel further submitted that the order passed by the disciplinary authority as well as the appellate authority are illegal, unjustified, improper and contrary to the provision of law. The learned counsel for the applicant also submitted that the applicant has been acquitted by the criminal court vide judgment dated 10.4.96 passed in ST No.173/92 having the same charges and same set of witnesses which were taken into account in the departmental enquiry proceeding. He has also placed reliance in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, AIR 1999 SC 1416. He submitted that the case of the applicant is fully covered by the law laid down in this. Para B of the judgment is reproduced below :-

"(B) Constitution of India, Art.311-Departmental proceedings and criminal case—Based on identical set of facts—Evidence in both proceedings common—Employee acquitted in criminal case—Said order of acquittal can conclude departmental proceeding Order of dismissal already passed before decision of criminal case liable to be set aside."

The learned counsel also relied^{on}/para 34 and 36 of the same judgment. He has also placed reliance^{on}/one judgment of the Hon'ble High Court of Chhattisgarh in the case of State of Chhattisgarh and others Vs. Iqbal Khan, 2002(II) MPJR - CG 20. In the same, the Hon'ble High Court has held that the charges of criminal case and departmental enquiry

[Signature]

were same including evidence, acquittal in criminal case amount exoneration in DE also.

4. Resisting the claim of the applicant, the learned counsel for the respondents filed counter reply stating that the applicant was charged under Section 411 IPC for hiding silver rods in his house. A criminal charge was also instituted against him.

5. A departmental enquiry was conducted and the applicant was found guilty for the theft of insured parcel number 51. The charges were proved against the applicant and the disciplinary authority after considering the enquiry report and the reply of the applicant, awarded the punishment of dismissal from service vide order dated 29.11.91. The appeal preferred by the applicant was rejected vide order dated 5.1.93. Hence the applicant has no case and the O.A. is liable to be dismissed.

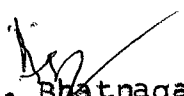
6. We have heard the learned counsel for the parties and perused the record. It is an admitted fact that the appeal of the applicant was rejected by the appellate authority i.e. Post Master General, Raipur Region, Raipur vide order dated 5.1.93. While rejecting the appeal of the applicant, the appellate authority was not aware of the pronouncement of the order dated 10.04.96 passed in the Criminal Case ST No.173-92 by the Court of Judicial Magistrate First Class Chhatarpur, M.P. It is also admitted by the respondents in para-10 of the counter, in reply to para-4.10 of the O.A., that the representation submitted by the applicant dated 28.12.2003 was forwarded to CPMG Raipur on 11.02.2002. In fact we found that the representation is dated 23.12.2001 (annexure 7) and not dated 28.12.2003. Further correspondences on the subject were made vide letters

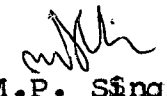


dated 10.06.2002 and 18.12.2002. No order has been passed by the respondents on the representation of the applicant so far. It is also seen that when the appeal was decided by the appellate authority the applicant was not acquitted by the criminal court, so this fact could not be brought in the knowledge of the appellate authority.

7. In view of the aforesaid, we deem it appropriate to remit the case to the department so that the representation so filed by the applicant be decided by the respondent no.3 i.e. Post Master General, Raipur Region, Raipur for re-considering the case of the applicant in the light of the Judgment of the Hon'ble Supreme Court in the case of Capt. M. Paul Antony(supra) and also in the case of Iqbal Khan (supra) within a stipulated period by passing a speaking, reasoned and detailed order.

8. Accordingly, the O.A. is disposed of with a direction to the respondent no.3 to reconsider and decide the representation of the applicant in the light of the Judgment of the Hon'ble Supreme Court in the case of Capt. M. Paul Antony(supra) and also in the case of Iqbal Khan (supra) within a period of three months from the date of receipt of a copy of this order. No costs.


(A.K. Bhatnagar)
Judicial Member


(M.P. Singh)
Vice Chairman

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