

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 10 of 1998

Jabalpur, this the 10th day of July 2003

Hon'ble Shri D.C. Verma, Vice Chairman (Judicial)
Hon'ble Shri Anand Kumar Bhatt, Administrative Member

T.T. Gawahade, S/o. Shri
Tukaram Gawahade, aged 52
years, A.P.M. (Mail), resident
of Deshbandhupura, Tikari,
Betul (M.P.).

... Applicant

(By Advocate - Shri V. Tripathi)

V e r s u s

1. Union of India,
through the Member (P),
Postal Services Board,
Ministry of Communications,
Department of Posts,
New Delhi - 110001.
2. The Director, Postal
Services, Raipur.
3. Senior Superintendent of
Post Offices, Chhindwara-
480001.

... Respondents

(By Advocate - Shri S.A. Dharmadhikari holding brief of
Shri B.da.Silva).

O R D E R

By D.C. Verma, Vice Chairman (Judicial) -


By this Original Application the applicant has
prayed for quashing of Annexure A/1 dated 20th February
1997, Annexure A/2 20th April 1988 and Annexure A/3 dated
4th December 1992, and has prayed that he be treated at
par with regard to suspension period, as in the case of
Mangaldas.

2. The brief facts of the case is that the
applicant was working as Parcel Clerk, Parsia on
26/05/1979 met with an incident in which two insured



parcels containing University answer books were received by him. The Post Office, Parsia's working hours were from 7.30 AM to 10.30 AM and from 13.30 Hours to 16.00 Hours for parcel branch. At about 09.00 hours two parcels were booked by the applicant and were kept with him instead of putting them in wooden box for which a lock was also provided. At about 11.00 hours the applicant asked his colleague Mangaldas sitting at the next counter to give the parcel to one David. As per the departmental case the parcel went out of the post office. It was taken note of by some persons and a plan was made and thereafter it was taken back, but was found that the parcels had been tampered. A Police report under Section 379/409 of the IPC was registered against the applicant and Mangaldas. The applicant was placed under suspension with effect from 28/05/1979. The criminal case was decided on 30/11/1987 and the applicant was acquitted. On acquittal the suspension was revoked vide Office Memorandum dated 14/12/1987. The applicant was given a show cause on 20th April 1988. The applicant did not file any representation and the order dated 20/23-05-1988 was passed.


3. The facts brought on record show that a charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 has been served and after following the due procedure a penalty order to reduce the pay by four stages without cumulative effect for 3 years was passed. The said order became final and is not under challenge. However with regard to the suspension period when the show cause was given and the applicant failed to give any reply thereto, the respondents passed the order that the period of suspension shall not be treated as period spent on duty except



for the purpose of pension and that the pay and allowances shall be restricted to the amount already paid as subsistence allowance.

4. The submission of the learned counsel of the applicant is that he does not challenge the impugned orders on any other ground except that the respondents should have given the same treatment to the applicant as in the case of Mangaldas. It is submitted that in the case of Mangaldas the respondents passed an order to treat the suspension period as on duty in accordance with law. The submission is that as the applicant has been treated differently the action of the respondents is discriminatory. It is also submitted that the applicant and Mangaldas were both ^{charged} ~~in~~ in the criminal case and were acquitted. Hence the applicant is similarly situated as Mangaldas and a similar order with regard to the period of suspension should also had been passed.

5. The learned counsel for the respondents has, on the other hand, submitted that it is not necessary that similar order be passed in respect of each person as it depends on the facts and circumstances with respect of each persons. Further submission is that on show cause Mangaldas had given a reply which was considered and thereafter the initial order was modified that the period of suspension be treated as on duty for all purposes except for pay and allowances which has been restricted to the amount already paid to him as subsistence allowance vide order dated 15/04/1991. This order was passed in appeal. Whereas when the show cause was given to the applicant he made no representation. Consequently




violation of the provisions of Article 14 of the Constitution of India does not arise.

6. The counsel for the parties have been heard at length. It is not denied that the applicant was acquitted on technical grounds by giving benefit of doubt. It is an established law that acquittal based in such circumstances in a criminal case does not automatically entitle to all benefits with regard to suspension period. The competent authority is empowered to treat the suspension period as not spent on duty after following the principles of natural justice. In the present case the applicant was given a show cause and the applicant failed to reply thereto. Thus the action of the respondents with regard to the passing of the impugned order cannot be assailed on that point.

7. On facts the case of the applicant differ from the facts of Mangaldas. The insured parcels were booked by ^{the} applicant and applicant was the main architect of the whole incident which occurred on that date because applicant instead of keeping the insured parcels in locked boxes asked his colleague ^{Mangaldas} to take that out. Thus the role of Mangaldas with regard to the incident is different and only in the nature of assistance to the mis-conduct committed by the applicant.

8. The learned counsel for the applicant has placed reliance on the decision of the Hon'ble High Court of Madhya Pradesh at Jabalpur in the case of Madhya Pradesh State Warehousing Corporation Versus Govardhanlal Choudaha and another reported in 2000(II) M.P.L.S.R.267.

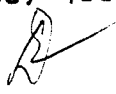


This decision is not on the point as has ^{been} urged before us. In the cited case the employee remained under suspension even on the date of retirement. The suspension was revoked on the date of retirement and the pension was not being calculated as per the pay but on the basis of subsistence allowance. Consequently the order was passed that during the suspension period, increments be added and thereafter pension be calculated, as there was no penalty order of with-holding of increments.

9. The other case cited by the learned counsel for the applicant is a decision of the Hon'ble High Court of Madhya Pradesh at Jabalpur in the case of Shri Jagdish Pd. Mishra Versus Board of Director/Chairman, M.P. Agro Industries Development Corporation and others in writ petition No. 4594 of 1989, decided on 19.11.2001. The facts of this case too is different from the facts of the ~~other~~ case before this Bench. In the cited case an order was passed on 12/08/1987 awarding penalty of with-holding of increments for period of suspension from 05/10/1981 to 10/03/1986. Subsequently another order was passed on 21/02/1989 for making recovery of losses, as other co-employee was no more in the service. The subsequent order of 21/02/1989 and order dated 12/08/1987 disallowing the increments, were quashed.

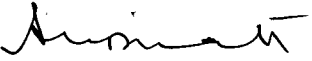
10. None of the two above cited decisions are therefore on the point raised before this Bench.


11. In the case of Chairman and Managing Director, United Commercial Bank and others Versus P.C. Kakkar reported in 2003 SCC (L&S) 468, the apex Court observed



that awarding of a lesser punishment to a co-delinquent is not a good ground for judicial interference with the quantum of punishment, more so when the allegations in the two cases were contextually different. We have already examined the facts and we find that the role and responsibility of the applicant was much more higher than that of the co-delinquent Mangaldas. Consequently different punishment of the applicant cannot be interfered with.

12. In view of the discussions made above, we do not find any ground to interfere with the order passed by the respondents. The Original Application, therefore fails and is dismissed. Costs easy.


(Anand Kumar Bhatt)
Administrative Member

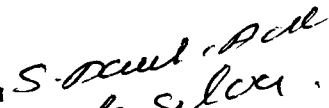
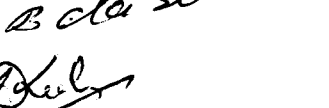

(D.C. Verma)
Vice Chairman (J)

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिलिपि अर्पित:-

- (1) सचिव, न्याय न्याय न्याय न्याय एजेंसिएशन, जबलपुर
- (2) जज (सी/डी/सी/कु).....के कार्डसल
- (3) प्रवर्तक (सी/डी/सी/कु).....के कार्डसल
- (4) जज (सी/डी/सी/कु), जबलपुर न्यायपीठ सूचना एवं आवश्यक कार्यवाही हेतु

न्याय रजिस्ट्रार



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Issued
on 14-7-03
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