

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. NO. 825/1997

Munnalal Namdeo, S/o. Late
Shri Gyasilal, Aged 56 years
(D.O.B. 6.7.1941), Occupation-
Unemployed, R/o. Station Road,
Datia (M.P.).

... Applicant

Versus

1. The Union of India,
Through : The Member of Posts,
New Delhi.
2. The Director of Postal Services,
Office of Post Master General,
Region Indore (M.P.).
3. The Senior Superintendent of
Post Offices, Gwalior Division,
Usha Colony, Gwalior (M.P.).

... Respondents

Counsel :

Shri S.C. Sharma for the applicant.
Shri P.N. Kelkar for the respondents.

Coram :

Hon'ble Shri Justice N.N. Singh - Vice Chairman.
Hon'ble Shri R.K. Upadhyaya - Member (Admnv.).

O R D E R
(Passed on this the 28th day of January 2003)

By Hon'ble Shri Justice N.N. Singh - Vice Chairman :-

The applicant has challenged the departmental enquiry proceeding against him, and the order of penalty of compulsory retirement contained in Annexure A/16, and the order passed in Appeal (Annexure A/18), confirming the order of punishment passed against the applicant and has prayed to quash the proceeding and orders referred to above and has further requested to direct the respondents to reinstate him in service.

(3)

Rs. 5,000/-.

2. The case of the applicant is that he was posted as Sub Post Master in Post Office Datia during the year 1974 to 1975 when he was served a charge sheet vide dated 07/02/1992 memo No. F 12-1/75-76/(Annexure A/1). The allegation against the applicant in that charge sheet was that while acting as Postal Assistant he made payment to some one other than the account holder from saving banks account No. 400003, 400033 and 400034 on different dates. The applicant claimed to have filed his reply denying the charges. According to the applicant, on same charges Criminal Case No. 2234/87, 2235/87 and 2236/87 were registered and the applicant was prosecuted, but in Trial he was acquitted in all the three cases by judgments Annexure A/3, Annexure A/4 and Annexure A/5. The applicant claimed that in the departmental enquiry he pleaded not guilty and that no witnesses appeared in the departmental enquiry except one witness Shri S.J. Rochawani, who also did not support the allegation against the applicant and refused to identify the signature said to be his. It was also alleged that the Enquiry Officer put leading question and inspite of the fact that the prosecution failed to prove the charges against him, he submitted his report dated 18/07/1995 to the disciplinary authority (Annexure A/14). The applicant claimed to have filed his representation against the enquiry report (Annexure A/15), but the disciplinary authority passed order dated 10/11/1995 (Annexure A/16) imposing penalty of compulsory retirement and recovery of Rs. 1,675/- from the applicant, which, according to the applicant, was wholly unjustified, illegal, arbitrary and based on no proof. He claimed to have filed a memo of appeal (Annexure A/17) which was rejected by the

Om. M. B.

(9)

appellate authority by order dated 26/08/1996 (Annexure A/18) and hence this original Application.

3. The respondents contested the claim of the applicant by filing reply asserting therein that the applicant was guilty of misappropriation of money belonging to the depositors and that he was habitual of committing such frauds earlier also and as such he was rightly awarded penalty of compulsory retirement and that he had been paid all claims regarding his retirement. The respondents also resisted the claim of the applicant that inspite of criminal cases filed against him, he could very well be proceeded in departmental enquiry and that the disciplinary authority had imposed the penalty after considering the whole facts and records. It was also asserted that, ^{is} there _{in} nothing wrong in the enquiry report and that the present application is time barred.

4. From perusal of record it appears that a rejoinder was sent by the applicant by post to the Registry which was received here on 03/12/2001. The order sheet dated 07/11/2001 indicated that the applicant was granted 4 weeks time for filing rejoinder on payment of cost of Rs. 200/-. The order sheet dated 19/02/2002 indicated that the learned counsel for the applicant assured that he would be handing over a copy of the rejoinder to the learned counsel for the respondents, but it does not appear from the record, whether a copy of the rejoinder, was served upon the respondents or not nor that the cost of Rs. 200/- imposed, was paid to the respondents by the applicant or not. However it was claimed that the respondents, who had filed copy of order of the Court of Judicial Magistrate First Class, Sabalgarh, in case No. 485/71 (Annexure R/1) did not file the appellate court's

Moral

order in Criminal Appeal No. 32/75 (Annexure A/19) by which conviction of the applicant was set-aside. It was also mentioned that the applicant, after retirement on 13/09/1996, had no money and that he was poor low paid employee and that he collected the documents and consulted the lawyer and had remained ill and filed the case, which was a bit late by about 2 months, is not inordinate delay, which deserves to be condoned under Section 21(3) of Administrative Tribunal Act, 1985. It was also asserted that as per settled law, enquiry could not be initiated for the same charge which had been decided by the Court.

5. We have heard learned advocates of both the sides and have perused the record. This ^{is} admitted case of the parties that the applicant was posted as Sub Post Master Datia in 1974 to 1975 (from 25/05/1974 to 01/02/1975) and that charge sheet dated 07/02/1992 (Annexure A/1) was served upon him alleging 3 articles of charges out of which charge No. 1 was that on 10/12/1974 Rs. 300/-, on 15/01/1975 Rs. 300/- and on 25/01/1975 Rs. 150/- was paid to some one from SB account No. 400034 belonging to Phoolwati Saxena. Charge No. 2 was that during the same period, on 06/07/1974 Rs. 125/- was paid to some one from SB account No. 400003 belonging to Shri Akbar and Charge No. 3 ^{was that} during the same period on 17/11/1974 Rs. 500/- and on 14/08/1974 Rs. 300/- were withdrawn and paid to some one other than the account holder to SB account No. 400033 belonging to Ram Prasad Saxena. Admittedly, the enquiry officer, after enquiry, submitted his report Annexure A/14 dated 18/07/1995 holding the applicant guilty, against which the applicant filed his representation dated 30/08/1995 (Annexure A/15) and the disciplinary authority passed order of compulsory retirement

M. M. N.

on 31-10-1995/10-11-1995 (Annexure A/16). This is also admitted that the applicant preferred appeal against that penalty (Annexure A/17) which was disposed of in refusal by order dated 26/08/1996 (Annexure A/18).

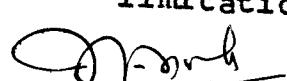
5.1. In the course of argument the learned counsel for the applicant contended that this is case of no evidence and that in course of departmental enquiry, none of the SB account holders, was examined/^{to} _{in} allegation that money was withdrawn from their account by some one else and was mis-appropriated by this applicant. It was further contended that from perusal of Annexure A/7, Annexure A/8, Annexure A/9 and Annexure A/10 the order sheet of the proceeding, it appears that ^{not} witnesses were/ present and Annexure A/11 simply indicates that one PW Shri S.J. Rochawani appeared, who, in his deposition, did not identify the signature on Exhibit P-1 to Exhibit P-6 and Exhibit P-15 to Exhibit P-17. Regarding the statement recorded during the preliminary enquiry/ⁱⁿ Exhibit P-1 to Exhibit P-6, he stated that he could not say as to whether they were written by him and that he could say anything, only when the dispatch diary is shown to him. It was contended on behalf of the respondents that according to the observation made by the Hon'ble Supreme Court in the judgment delivered in the case of Union of India Versus Sardar Bahadur reported at AIR 1972 SC Page 355, a disciplinary proceeding that was not a criminal case and/^{that} the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. _{in} It was alleged that the enquiry officer proceeded contrary to well defined rules and procedure and used the statement of witnesses, said to have been recorded during preliminary enquiry. It was also contended that in absence of examination of those witnesses

M. N. N.

admitting to have deposed the statement made in preliminary enquiry and subjected to cross-examination, such statements should not have been used and relied upon by the enquiry officer. It was submitted that the only witness Shri Rrochawani, examined before the enquiry officer, also did not identify his own hand-writing and as such the statements said to have been recorded during the preliminary enquiry should not have been considered by the enquiry officer.

5.2. The learned counsel for the respondents justified the role of the enquiry officer and submitted that the allegation of putting leading questions by the Enquiry Officer could not help the applicant as in departmental proceeding rules of evidence act did not apply and that Shri Rochawani merely stated that the signature was similar to his signature. Regarding acquittal of the applicant in criminal cases it was rightly submitted that the allegation, though somewhat similar, was not identical in view of the fact that besides allegation of mis-appropriation which was subject matter in the criminal cases, in the departmental proceeding the allegation were also regarding ^{defying} certain provisions of Central Services (Conduct) Rules and against provisions of Post and Telegraph rules. As it was also contended that the acquittals, in criminal cases, were not clean acquittal as they were for want of examination of ^{than} witnesses, rather ^{for want of} further cross-examination of ⁱⁿ witnesses.

5.3. The learned counsel for respondents vehemently argued that this application, being hit by law of limitation, could not be entertained in view of the settled



(15)

principle of law made clear by the Apex Court in the case of Ramesh Chandra Sharma Versus Udhamp Singh and others reported at AIR 1999 SC Page 387. The maintainability of this OA was challenged on the ground that the appellate order was passed on 26/08/1996, but this OA was presented on 07/11/1997, beyond the statutory period of one year, provided under Section 21 of Administrative Tribunal Act. The learned counsel for the applicant submitted that the delay was of 2 months and odd days only which could be condoned in the interest of Justice. Section 21 provides as such :

"21. Limitation

- (1) A Tribunal shall not admit an application,-
 - (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in correction with the grievance unless the application is made, within one year from the date on which such final order has been made;
 - (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.
- (2) Notwithstanding anything contained in sub-section (1), where-
 - (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

Murli

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

Thus according to the provisions of Section 21 sub Section 1(a), an application should have been filed only within one year from the date on which such final order was made. It was rightly pointed out by learned counsel for the respondents that no prayer for condonation of delay had been made by the applicant. In paragraph 3 of the OA, though the applicant claimed that the application was within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985, in the rejoinder it was admitted that the appellate order was received by the applicant on 13/09/1996 and that filing of this OA was late by about 2 months which is not an inordinate delay and that the applicant had to collect the documents and to consult the lawyer and that he also remained ill and hence such non-inordinate delay deserves to be condoned. Admittedly no prayer for condonation of delay, as required under Sub Clause 3 of Section 21 of Administrative Tribunal Act, was filed. Answering the allegation of OA being time barred, in the rejoinder cannot be treated as a prayer for condonation of delay to satisfy the Tribunal that the applicant had sufficient cause for not making the application within that period, as the provisions under Section 21 require that it should have been filed alongwith the OA before it is admitted. The learned counsel for the respondents relied upon the decision of the Hon'ble Supreme Court reported in AIR 1999 SC 387 (supra) that the

D. Murali

petition filed beyond the limitation period, without application for condonation of delay, could not have been entertained by the Tribunal. Needless to say that such general ground of consulting the lawyer or collecting documents would not be considered as sufficient cause for delay. In the case of Secretary to Government of India versus Shiv Ram Madhav Gaikwad reported at (1995)30ATC-635(SC), where the respondent was discharged from service and he filed petition before the Central Administrative Tribunal claiming reinstatement and the Tribunal directed for his reinstatement with full backwages without considering the question of barred by limitation, the Apex Court held that the application before Central Administrative Tribunal was clearly barr-ed by limitation. Apart from the fact that no such prayer for condonation of delay has been filed alongwith the OA, the plea raised in the rejoinder that he had to consult his counsel was hardly any ground to condone the delay. The Apex Court has warned the Tribunals/Courts again and again for exercising appropriate caution while condoning the delay and dealing with the limitation and in the case of P.K. Ramachandran Versus State of Kerala and others, reported at JT 1997 (8) SC 189, the Apex Court ordered that Tribunal or Court has to record in writing that the explanation offered for delay was reasonable and satisfactory and that it was pre-requisite for condonation of delay.

5.4. Thus, it is clear that no prayer for condonation of delay has been made on behalf of the applicant and the explanation mentioned in the rejoinder, in reply to objection on this point, was not merely a valid ground much less convincing one to satisfy that delay was beyond the control of the applicant. Thus the

Amulya

claim of the applicant is clearly time-barred and he cannot be granted any relief in this time barred O.A.

6. In the result, this Original Application is dismissed, as being barred by limitation but without any order as to cost.

(R.K. UPADHYAYA)
MEMBER (A)

(N.N. SINGH)
VICE CHAIRMAN

पृष्ठांकन सं ओ/न्या.....जल्लपुर, दि.....

राजिलेपि लाल (संग्रहीत)

- (1) राजिलेपि लाल (संग्रहीत) जल्लपुर
- (2) राजिलेपि लाल (संग्रहीत) जल्लपुर
- (3) राजिलेपि लाल (संग्रहीत) जल्लपुर
- (4) राजिलेपि लाल (संग्रहीत) जल्लपुर
- (5) राजिलेपि लाल (संग्रहीत) जल्लपुर
- (6) राजिलेपि लाल (संग्रहीत) जल्लपुर

S C Bhawan, Sector 10
Parikhari, Gurgaon

29.1.03

मुद्रालिपि
उप सचिवालय

Received
On 29.1.03