

96

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

12.09.2011

OA No. 291/2007

Mr. Amit Mathur, proxy counsel for
Mr. N.K. Singhal, counsel for applicant.
Mr. B.K. Pareek, proxy counsel for
Mr. T.P. Sharma, counsel for respondents.

At the request of learned proxy counsel for Mr. N.K. Singhal, counsel for applicant, put up the matter for hearing on 19.09.2011.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

19/09/2011 [OA 291/2007]

Mr. Amit Mathur, proxy counsel for
Mr. N.K. Singhal, counsel for applicant.
Mr. B.K. Pareek, proxy counsel for
Mr. T. P. Sharma, counsel for respondents.

Heard.

The O.A. is disposed of by a
separate order on the separate sheets
for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K.S. Rathore
[Justice K.S. Rathore]
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/2007

DATE OF ORDER: 19.09.2011

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Vijay Singh Dharwal S/o Shri Ram Dayal, aged about 63 years,
R/o 9/308, U.I.T. Colony Bhiwadi, District Alwar.

...Applicant

Mr. Amit Mathur, proxy counsel for
Mr. N.K. Singhal, counsel for applicant.

VERSUS

1. Union of India through its Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi-1.
2. Principal, Chief Post Master General Rajasthan, Jaipur-7.
3. Director, Postal Services, Jaipur-7.
4. Superintendent of Post Offices, Swai Madhopur.

...Respondents

Mr. B.K. Pareek, proxy counsel for
Mr. Tej Prakash Sharma, counsel for respondents.

ORDER (ORAL)

The applicant has filed the present Original Application seeking the following reliefs:

- "(i). That the Hon'ble Tribunal be pleased to allow his O.A.
- (ii) That the Hon'ble Tribunal be pleased to pronounce the uncalled for a unmerited suspension as void ab initio having been not issued by Appointing Authority as law laid down by the Apex Court (passed at no suspension stage for discarded reason of 7 months old criminal case in which suspension was not required for the bonafide discharge of duty & entire object were fulfilled without restoring to suspension).
- (iii) That the Hon'ble Tribunal be pleased to pronounce the revoke order issue on 1.1.99 by SSPOs Alwar as quashed and non est order passed without jurisdiction and reason. (The appellate order dt. 1.5.2003 A-13 has quashed revoke order 1.1.1999 declaring SSPOs Alwar as Authority not competent to order



reinstatement by transfer order dt. 22.12.98 and admission of SSPOs Alwar in letter dt. 10.6.2002 A-12 having no administrative jurisdiction w.e.f. 23.12.98 not a disciplinary authority turned the revoke order as non est order).

- (iv) That the Hon'ble Tribunal be pleased to set aside the impugned order dt. 27.5.2004 (A-1) which is passed violating Fundamental Rule 54-B (3), in breach of Government order No. 109/3/80-AVDI dt. 21.7.80 and interpretation of discharge order taken perverse to law.
- (v) That the Hon'ble Tribunal be pleased to direct the Respondents that the criminal case for which suspension was perpetrated ended by order of discharge and no charge was framed whereby as per statutory criteria contained in FR 54-B(3) suspension become wholly unjustified.
- (vi) That the Hon'ble Tribunal be pleased to direct the Respondents to regularize the period of suspension from 29.6.96 to 26.11.03 in accordance with FR 54-B (3) being the suspension wholly unjustified within a period of one month.
- (vii) Any other order / direction of relief may be passed in favour of the applicant which deems just and proper under the facts and circumstances of the case, even the same has not been specifically prayer."

2. The brief facts of the case, as stated by the applicant, are that the applicant was appointed as Postal Clerk on 02.07.1963 and was promoted to Lower Selection Grade on 30.11.1983 and then Higher Selection Grade-II. On account of the criminal case pending against the applicant, vide order dated 28.06.1996 (Annex. A/2) Sr. Superintendent of Post Offices, Alwar Division, Alwar, suspended the applicant with immediate effect, and was transferred from Alwar Division to Swai Madhopur Division vide order dated 22.12.1998 (Annex. A/4) during the period of suspension.



3. The action of the respondents are challenged by the applicant on the ground that an FIR No. 232/1995 was registered under Section 420 and 120-B I.P.C. before S.H.O. Police Station, Bhiwadi, as a complaint against three firms and also against the applicant for getting caused payment of money orders to the payee firms in utter violation of Section 48 Indian Post Office Act, 1898, and the Police filed charge-sheet in the trial court on 20.06.1996. After filing charge-sheet on 20.06.1996, SSPO, Alwar put the applicant under suspension and the suspension order has been challenged by the applicant being in violation of entire rules and the Govt. orders as the matter is based on the fictitious and for ulterior reason. It is not disputed that the departmental enquiry was also initiated against the applicant. The applicant challenged the transfer order under the pretext that without revoking the suspension order, the respondents cannot transfer the applicant from Alwar to Swai Madhopur.

4. The applicant made further challenge on the ground that that Sr. Superintendent of Post Office, Alwar Division not being an appointing authority was forced to issue suspension order on 28.06.1996 in view of the FIR dated 16.12.1995 and such order of suspension is contrary to the provisions of law and also in contravention of the Rule 3, in view of the ratio decided by the Hon'ble Apex Court in the case of **S. Pratap Singh vs. State of Punjab**, reported in AIR 1964 SC 72 wherein it has been held that the authority entitled to appoint a public servant would be entitled to suspend him.



5. Per contra, the respondents have submitted that a case of cheating of public and grabbing Rs. 36,92,050/- by three bogus firms with the connivance of postal officials during the period from 04.08.1995 to 16.12.1995 came to light at Bhiwani in alwar Division in December, 1995. These firms were cheating the public by mail order and snatching the money remitted by public persons through Money orders being paid at Bhiwani I.A. P.O. The SHO Bhiwani on receipt of source information had conducted a raid at the residence of Shri V.S. Dharwal on 16.12.1995, and arrested there four persons relating to the firms with EDDA Bhiwari I.A.P.O., and also recovered from there 234 vouchers of M.O. paid acknowledgements, 241 letters addressed to these three firms, 14 VPLs returned back as undelivered to these firms and postage stamps from the residence of the applicant.

6. The respondents further stated that according to the Police, Shri V.S. Dharwal, the applicant, who was also there had disappeared from the spot taking advantage of darkness. FIR No. 232/95 was registered in the matter at Bhiwari Police Station. The department also initiated disciplinary action under Rule 14 of CCS (CCA) Rule, 1965 against the applicant vide memo dated 11.10.1996 issued by SSPOs Alwar Division, Alwar.

7. So far competency is concerned, it is submitted by the respondents that the Disciplinary Authority, Sr. Superintendent of Post Offices, Alwar Division, Alwar was also empowered to



place the applicant under suspension under the provisions of Rule 10 of CCS (CCA) Rules, 1965, and with regard the prayer of the applicant to treat the suspension period spent on duty is concerned, it is submitted that since the applicant was served a charge-sheet under Rule 14 of CCS (CCA) Rule, 1965, which has been finalized with a major penalty vide order dated 31.03.2003, therefore, keeping in view this order, the suspension period of the applicant was treated as not spent on duty for any purpose restricting pay and allowances of the period to that of the subsistence allowance already paid to him vide order dated 27.05.2004. Thus, the applicant is not entitled for any relief as claimed by him looking to the gravity of charges and conduct of the applicant.

8. We have heard the learned counsels appearing for the respective parties and carefully gone through the pleadings and documents available on record, and also gone through the relevant provisions of law.

9. It is not disputed that this is second round of litigation. Earlier, the applicant had preferred OA No. 590/2000 by challenging the suspension order before this Bench of the Tribunal and the same was dismissed vide order dated 07.04.2002. This fact has been concealed by the applicant while filing the present Original Application and has declared that he had not filed any O.A. or writ petition or suit regarding the matter in respect of this O.A.



10. Upon careful perusal of the relief claimed by the applicant, it is evident that again the suspension order has been challenged by the applicant, and prayed that to pronounce the revoke order issued on 01.01.1999 by SSPOs Alwar as quashed and non est order, declaring as authority not competent to order reinstatement by transfer vide order dated 22.12.1998, and the appellate order dated 01.05.2003 as quashed, and tried to challenge the suspension order also under the pretext that suspension order has been passed without jurisdiction as not being a competent authority. Under the pretext to challenge the reinstatement order and transfer order from Alwar to Swai Madhopur, the applicant has tried to reopen the case, which the applicant has already challenged by filing the O.A. No. 590/2000 and the same has been dismissed vide order dated 17.04.2002 by this Bench of the Tribunal. Thus, this Original Application deserves to be dismissed only on the ground of concealment of fact. On the merit also, as the suspension order, which has been challenged by the applicant by filing OA No. 590/2000 and the same has been dismissed by this Bench of the Tribunal vide order dated 17.04.2002, and the same cannot be challenged further and, thus, the present Original Application so far as claiming the relief against the suspension order having without jurisdiction passed by the respondents, is barred by principle of res judicata. Further, the reinstatement order has been passed and the suspension has been revoked, and that the applicant has been transferred from Alwar to Swai Madhopur, in our considered view the respondents have rightly been passed the reinstatement order



and the transfer order. It cannot be said to be in contravention of the provisions of law. Therefore, we find no merit in the present Original Application; therefore, the same deserves to be dismissed being devoid of merit.

11. Consequently, the Original Application stands dismissed with no order as to costs.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

K.S. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

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