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5/7/2011

OA. 456/2009.

Mr. P.N. Jatti Counsel for applicant.

Mr. Gaurav Jain Counsel for respondents.

Heard l.t. counsel for the parties,

The OA stands disposed of by a

separate order.

J. S. Rathore

(Justice K.S. Rathore)

Member (J)

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7/7/11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 5th day of July, 2011

Original Application No.456/2009

CORAM:

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

Prabhu Narain Yadav
s/o Shri Sunder Lal Yadav,
r/o Badwali Dhani,
Near Kanakpura Railway Station,
Jaipur

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

1. Union of India
through the Secretary to the Govt. of India,
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi.
2. Chief Post Master General,
Rajasthan Circle,
Jaipur
3. Senior Superintendent,
Railway Mail Service,
Opp. Radio Station,
M.I.Road,
Jaipur

.. Respondents

(By Advocate: Shri Gaurav Jain)

ORDER (ORAL)

This is second round of litigation. Earlier the applicant preferred OA No.226/2006 seeking suitable writ, order or direction to the respondents to refund the sum of Rs. 6000/- as per letter dated 2.1.2003 with interest. The aforesaid OA was decided vide order dated 18th September, 2008. The main submission of the learned counsel for the applicant was that the issue has been decided in OA No. 466/2004 in the case of P.D.Jajoria vs. UOI and ors. vide order dated 20.12.2005. Relying upon the aforesaid order, the applicant has asked for refund of Rs. 6000/- as the relief has been granted to Shri P.D.Jajoria in the aforesaid OA filed by him.

2. Having considered the submissions and the judgment rendered in the case of P.D.Jajoria, this Tribunal has observed as under:-

"6. From perusal of above order of the OA dated 20.12.2005; it is evident that articles in question had not been mentioned in the record having been dispatched to the applicant. This fact has been recorded in the order in the case of P.D.Jajoria by this Tribunal after seeing the relevant record that no entry is made regarding dispatch of article in the Air Way Bill in question which is alleged to have been received in this case.

7. After appraisal of the facts of the case and perusal of order of the CAT, Senior Superintendent, Railway Mail Service, Jaipur Division, Jaipur is directed to decide representation of the applicant dated 29.12.2005 within a period of two months from the date of receipt of a copy of this order. In case the applicant is aggrieved by the order to be passed by Senior Superintendent, RMS, Jaipur, he is at liberty to approach this Tribunal again by filing substantive OA.

8. With these observations, the OA is disposed of with no order as to costs."

3. The Tribunal vide its order dated 18th September, 2008 given liberty to the applicant to file substantive OA, if any adverse order is

passed. The representation dated 29.12.2005 filed by the applicant has been decided by the respondents vide order dated 27.11.2008, therefore, the present OA has been preferred by the applicant against the impugned order praying for quashing and setting aside the impugned order and also to direct the respondents to refund the sum of Rs. 6000/- as per the letter dated 2.1.2003 with interest.

4. Upon perusal of the order impugned dated 27.11.2008, it appears that the order passed in the case filed by Shri P.D.Jajoria has not been considered in right perspective while deciding the representation filed by the applicant. In the OA filed by Shri P.D.Jajoria the Tribunal vide its order dated 20th December, 2005 observed as under:-

".... Thus, I find that entire base of the case falls to the ground because when the articles in question have not been mentioned in the record to have been dispatched to the applicant, the question of holding the applicant guilty for loss of such articles does not arise at all. Keeping in view the same, I find that the applicant has been held guilty without any evidence and has been punished."

The Tribunal further observed as under:-

"Ordinarily the Tribunal is not required to appreciate the evidence while exercising the powers of judicial review but in such type of cases where the case is based on no evidence at all the Tribunal can certainly go into the question whether the findings have been arrived at correctly or not. Since this is also a case based on no evidence, I find that the applicant could not have been held guilty of the charges leveled against him vide Ann.A/1. Thus, the charge sheet and subsequent proceedings fail and are liable to be quashed. The OA is deserved to be allowed and accordingly I allow the OA and quash the impugned order. Recovery, if any made, may be refunded to the applicant within a period of four months from the date of receipt of a copy of this order."

5. It has not been disputed that same set of allegations are leveled against the applicant. It is also not disputed that the



applicant has retired after attaining the age of superannuation prior to commencing any inquiry and now the pension papers will not be completed until and unless he deposits Rs. 6000/- pursuant to the dues raised by the respondents. It is also not disputed that the applicant has already deposited Rs. 6000/- provisionally till the decision of the case.

6. I am of the view that case of the applicant is also fully covered by the judgment rendered by this Tribunal in OA No.466/2004 filed by Shri P.D.Jajoria and in view of the direction issued by this Tribunal in the aforesaid case on 20th December, 2005 the applicant is entitled to refund of Rs. 6000/- from the respondents. Therefore, I allow the OA and quash the impugned order dated 27.11.2008 (Ann.A/1) and respondents are directed to refund Rs. 6000/- to the applicant within a period of four months from the date of receipt of a copy of this order.

7. With these observations, the OA is disposed of with no order as to costs.


(JUSTICE K.S.RATHORE)
Judl. Member

R/