

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 19th Day of September 2018)

Hon'ble Mr. Gokul Chandra Pati, Member (A.)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No. 1555 of 2010
(U/S 19, Administrative Tribunal Act, 1985)

Tulsi Ram S/o Sri Manju R/o Gram and Post Office Chelra, Thana
Moth, District Jhansi.

..... Applicant

By Advocate: Shri A.I Ansari

Versus

1. Union of India through Secretary Ministry of Communication and Information, Department of Postal Dak Bhawan, Sansad Marg, New Delhi.
2. Director, Postal Services, Office Post Master General, Agra Region, Agra (UP) PIN No. 282001.
3. Senior Superintendent of Post Office, Jhansi Division, Jhansi, 284001.

..... Respondents

By Advocate: Shri Himanshu Singh

ORDER

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (J)

1. In the present Original Application, the applicant seeks following reliefs –

- (i) to issue order or direction in the nature of certiorari to set-aside the impugned order of removal from service dated 15.3.2010 (A-1) and appellate order dated 09.09.2011 (A-2) with all consequential benefits.
- (ii) to issue order or direction in the nature of mandamus commanding the respondents to

reinstate the applicant in his original post with all consequential benefits.

(iii) to award cost of the petition in favour of the humble applicant".

2. The brief facts of the case are that applicant Tulsi Ram while working as G.D.S. B.P.M. Chelra (Moth) during the period from 8.8.2003 to 31.7.2006 accepted receipt of deposit from account holders to be deposited in their Saving Accounts. However, the applicant while making the entries in the Pass Book of the account holders did not make the entries in the Account Book of the Branch Post Office and also did not account for the said money into the Post Office Account on date of deposit but later-on accounted for above amount and thereby misappropriated Government money. The details of the money misappropriated are given in the chargesheet, which was served upon him. By this conduct, the applicant violated the provisions of Rule 13 (3) of B.O. Rules (VI Edition) and thereby infringed the provision of Rule 12 of G.D.S. (Conduct and Employment) Rules 2001.
3. It is further the case of the applicant that on conclusion of enquiry, the Inquiry Officer found charge NO.1 to be proved and second charge to be proved partly. Accordingly, the disciplinary authority (respondent No.3) vide order dated 31.7.2008 imposed punishment of removal from service upon the applicant. The appeal against order dated 31.7.2008 was rejected by the Appellate Court vide order dated 23.1.2009 but the said appellate order was set aside in O.A. No. 419 of 2009 by the Tribunal and vide order dated 14.5.2009 remanded the matter to the Appellate Authority to reconsider the quantum of punishment.

4. The Appellate Authority remitted the matter back to the disciplinary authority vide order dated 6.8.2009, which, as per directions of Appellate Authority started de novo proceedings against the applicant and thereafter submitted enquiry report dated 4.12.2009 to the disciplinary authority which passed the order dated 15.3.2010 imposing the punishment of removal from employment. Applicant's appeal to respondent No.2 against the order of punishment was disposed of as being time barred but the said order was set aside by the Post Master General Agra vide order dated 5/6.5.2011 and directed the appellate authority to decide the appeal afresh on merit.
5. The further facts as pleaded by applicant are that the appellate authority rejected the appeal by order dated 9.9.2011 without application of mind and without considering the grounds mentioned in the memo of appeal and that the entire de novo enquiry in compliance of judgment of the Tribunal dated 14.5.2009 is also against the judgment of Hon'ble Supreme Court in case Chairman-cum Managing Director, Coal India Limited v/s Ananta Shah, (2011) 1 SCC (L&S) 750. In the said judgment it was held that if a de novo enquiry was directed then it was mandatory that a fresh charge sheet should have been served upon the delinquent officer.
6. It has been further averred that in similar Division respondent has awarded lesser punishment to Sri Panna Lal Meena for theft of stamp and Shri Gorelal Verma as well as Fool Singh for fraud in commission and Puranlal Raikwar for embezzlement but all in still service. Therefore in this view as stated above and as per the gravity of charges against the applicant, the awarded punishment

removal from service is very hard deserves to be quashed.

7. Applicant has sought the relief to set aside the impugned order of removal from service as per order dated 15.3.2010 (Annexure A-1) and appellate order dated 9.9.2011 (Annexure A-2) and for reinstatement of applicant in the service.
8. In the counter affidavit, respondents have referred to the details of the case right from the charge sheet to the charge sheet filed against the applicant, inquiry report which proved the guilt of applicant, order of punishment, order of appeal dated 23.1.2009 which was set aside by C.A.T Allahabad, remand of the case by the Appellate Authority to the Disciplinary Authority vide order dated 6.8.2009.
9. Before proceeding further, bird eye view of the facts of the case are as below:
 - 1) *Charge sheet dated 7.9.2007*
 - 2) *First Enquiry report dated 4.7.2008*
 - 3) *D.A order dated 31.7.2008 for removal from employment*
 - 4) *Appeal rejected on 23.1.2009*
 - 5) *Tribunal order dated 14.5.2009 set aside order dated 23.1.2009 and directed AA to pass fresh order.*
 - 6) *AA vide order vide order dated 6.8.2009 directed the enquiry officer to hold the enquiry afresh.*
 - 7) *Fresh enquiry report dated 4.12.2009*
 - 8) *Representation of applicant on 22.1.2010 that his previous representation be considered.*

- 9) *Disciplinary order dated 15.3.2010 removal from employment.*
 - 10) *Appeal dismissed by AA vide order dated 15.6.2010 on ground of limitation, which was set aside vide order dated 5/6.5.2011*
 - 11) *AA order dated 9.9.2011, dismissing the appeal.*
10. We have heard and considered the arguments of the Learned Counsels for the parties and gone through the material on record as well as the written arguments filed by the learned counsels.
 11. It has been argued by the Learned Counsel for applicant that since AA vide order dated 6.8.2009 directed the enquiry officer to hold a fresh enquiry, a fresh charge sheet ought to have been issued against the applicant by the Competent Authority and in absence of a fresh charge sheet, all proceedings initiated in the enquiry stood vitiated and placed reliance on Chairman-cum Managing Director, Coal India Limited v/s Ananta Shah, (2011) 1 SCC (L&S) 750.
 12. On the other hand, learned counsel for respondent argued that the AA vide order dated 6.8.2009 directed a fresh enquiry from the stage of examination of witnesses Khoob Chand and N.L.Sharma and, therefore, there was no necessity of issuing a fresh charge sheet.
 13. In Chairman-cum Managing Director, Coal India Limited (supra), the Hon'ble High Court had given the authority the liberty to start the proceedings de novo. The Hon'ble Apex Court held that "The High Court had given liberty to the appellants to hold de novo enquiry meaning thereby that the entire earlier proceedings including the charge-sheet issued earlier stood quashed. In such a fact

situation, it was not permissible for the appellants to proceed on the basis of the charge-sheet issued earlier. In view, thereof, the question of initiating a fresh enquiry without a fresh charge-sheet could not arise."

14. Notwithstanding the argument of the learned counsel for the applicant regarding the non-issuance of a fresh charge sheet in a de novo enquiry, the question arises whether the Appellate Authority i.e respondent No. 2 had the authority to pass the order of setting aside the order of the Disciplinary Authority and directing a de novo enquiry. The answer to this question would be an emphatic 'No'.

15. We are of the opinion that the Appellate Authority has completely violated the direction given by the Tribunal in order dated 14.05.2009 in O.A. No. 419 of 2009 titled Tulsi Ram v/s Union of India. It would be necessary to take note of the order dated 14.05.2009 of the Tribunal. The operative part of the order of Tribunal reads as :

"4. In view of the aforesaid decision rendered by Hon'ble Supreme Court, without interfering with the order passed by Disciplinary Authority, we feel it just and proper to direct the Appellate Authority to reconsider the matter afresh on the point of proportionality of punishment in accordance with the provisions of law.

5. We accordingly quash and set aside the order dated 23.11.2004 (Annexure 2) to remit the matter to the Appellate Authority to reconsider the matter afresh and pass appropriate reasoned and speaking order, with regard to quantum of punishment, within a period of three months from the date of receipt of the copy of this order. No costs".

16. So, the order of the Tribunal while quashing the quashing and setting aside the order dated 23.1.2009 is unambiguous that the Appellate Authority had a limited mandate to 'reconsider the matter afresh on the point of proportionality of punishment in accordance with law and pass appropriate reasoned and speaking order with regard to quantum of punishment.'
17. However, the Appellate Authority for whatsoever reason seems to have misguided itself on the scope of the order of the Tribunal and passed the order dated 06.08.2009 for a de novo enquiry. Therefore, in light of direction in the order dated 14.05.2009 of the Tribunal, the order dated 06.08.2009 passed by the Appellate Authority and the subsequent proceedings conducted in pursuance of the said order stand vitiated.
18. Consequently, the case is remanded back to the Appellate Authority to obey the directions of the Tribunal in order dated 14.05.2009 in O.A. No. 419 of 2009 titled *Tulsi Ram v/s Union of India and others*. The case has a long chequered history. The Appellate Authority shall decide the appeal within a period of 2 weeks from the receipt of the copy of this Order and give a personal hearing to the applicant. O.A. is accordingly disposed of. No order as to costs.

[Rakesh Sagar Jain]
Member-J

[Gokul Chandra Pati]
Member-A

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