

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 060/01040/2016 Date of order:- 4.5.2018.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs.P.Gopinath, Member (A).

Gurbachan Singh son of Sh. Pritam Singh, resident of Village & Post Office Kaddon, Tehsil Payal, District Ludhiana.

.....Applicant.

(By Advocate :- Mr. H.P.S.Ishar)

Versus

1. Union of India through the Secretary, Department of Posts, Ministry of Communications & Information Technology, New Delhi, having its office at Sanchar Bhavan, 20 Ashoka Road, New Delhi-110 001.
2. The Department of Posts having its office at Dak Bhawan, 20 Ashoka Road, New Delhi -110001 New Delhi, 110001 through its Chairman.
3. The Chief Postmaster General, Punjab Circle, having its office at Sandesh Bhawan, Sector 17E, Chandigarh-160017.
4. The Director (Postal Services) (HQ) having its office at Sandesh Bhawan, Sector 17-E, Chandigarh-160017.
5. The Senior Superintendent RMS `LS' DN, Ludhiana-141 008.

...Respondents

(By Advocate : Shri Ram Lal Gupta).

ORDER

Sanjeev Kaushik, Member (J):

Applicant Gurbachan Singh has filed the present OA for quashing the impugned order dated 11.1.2016 (Annexure A-9) with further direction to pay salary and allowances for the period of

suspension including all consequential benefits including pay fixation and payment of arrears by counting the said period as duty period.

2. Brief facts of the case are that the applicant was appointed as Sorting Assistant in the respondent department in the year 1981 and was working to the overall satisfaction of the department. Superintendent of Post offices, Ludhiana(M) Division, Ludhiana-1, wrote letter dated 13.9.2001 to the Chief Postmaster General, Punjab Circle, Chandigarh, regarding recovery of 63 foreign registered and 42 ordinary letters destined to various districts of circle posted in letter box at Khanna H.O. on 5.9.2001 in open/torn condition. On the basis of letter dated 13.9.2001, an FIR dated 9.4.2002 was also registered against the applicant and one other co-accused namely Bhupinder Singh. A charge-sheet was also issued to the applicant on 24.10.2003 on the ground that he had intercepted/detained one registered packet/bag which contain some parcels. Applicant submitted his detailed representation to the said charge-sheet. In pursuance of the said charge-sheet, an enquiry was conducted by the respondent department, wherein the applicant contested his case and maintained that he was not guilty of the offence. During the enquiry proceedings, the applicant specifically pleaded that he was not responsible for tampering of the parcels and some other officials have tampered the same, but the department has strangely shifted the entire guilt of the incident upon the applicant. On the basis of the enquiry report, the disciplinary

authority vide order dated 31.8.2004 dismissed the applicant from service with immediate effect.

3. Feeling aggrieved against the order dated 31.8.2004, the applicant submitted his appeal, but the same was dismissed vide order dated 24.5.2005. Against the order of the appellate authority, the applicant preferred a revision petition, which too was dismissed vide order dated 27.1.2006. Feeling dis-satisfied with the orders passed by the authorities, the applicant approached the Tribunal by filing O.A.No. 81/PB/2007 which was also dismissed vide order dated 20.8.2009. After the dismissal of the OA filed by the applicant, the applicant and other co-accused namely Bhupinder Singh were acquitted from the charges framed against him in FIR dated 9.4.2002 by giving them the benefit of doubt vide order dated 4.2.2011 by the Sub Divisional Magistrate, Rajpura(Annexure A-6). Applicant again approached the Tribunal by filing O.A.No.40/PB/2013 which was disposed of as withdrawn vide order dated 25.8.2014 with direction that in case the mercy petition is maintainable, the same be decided expeditiously.

4. After the order dated 25.8.2014, applicant filed a review petition dated 6.12.2014 before the Hon'ble President of India under Rule 29-A of the CCS(CCA) Rules, 1965. The President of India vide its order dated 9.9.2015 ordered that the punishment of "dismissal from service" be reduced to "compulsory retirement". On the basis

of the order dated 9.9.2015, respondents passed order dated 11.1.2016 treating the suspension period as non-duty period.

5. Applicant has alleged that before passing the order dated 11.1.2016, it is mandatory for the employer to give notice to the employee before passing any order as has been provided in FR-54-B(5), whereas the applicant was not given an opportunity of hearing before the order. Hence the OA.

6. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement, wherein they submitted that the applicant was caught red handed by the Rajpura police on 9.4.2002 while trying to encash fraudulently a cheque amounting to Rs.30000/- from Punjab & Sind Bank, Rajpura, and a case under Sections 419, 420, 467, 468 & 471 was registered vide FIR No.94 dated 9.4.2002. News of fraudulent encashment of cheques stolen from foreign mail by the official Balbir Singh (informed wrong name) of postal department was also published in the Punjabi newspaper "Rojana Ajit" dated 14.4.2002 and it was confirmed by then ASRM Ludhiana RMS/1 while visiting police station City Rajpura on 20.4.2002 in connection with the enquiry into the case that applicant was arrested by the Rajpura police while trying to encash fraudulently a cheque amounting to Rs.30000/-.

7. Accordingly, the applicant was suspended by SSRM LD Division vide memo dated 22.4.2002 with effect from the date of his

detention i.e. 9.4.2002 and he remained in police custody from 9.4.2002 to 22.7.2002 for 105 days without informing the department and was granted bail on 22.7.2002. His suspension was reviewed on 8.7.2002, 29.10.2002, 4.7.2003, 22.1.2004, 26.4.2004 by the SSRM LD Division, Ludhiana, and on 10.8.2004, the case was reviewed by the Suspension Review Committee under the chairmanship of DPS(HQ) Punjab Circle, Chandigarh who recommended that the suspension of the said official to be continued for another 180 days. Applicant was dismissed from service vide order dated 31.8.2004 as a result of disciplinary proceedings initiated under Rule 14 of the CCS(CCA) Rules, 1965. They have further stated that to implement the orders of reduction of punishment from dismissal to compulsory retirement, the suspension period of the applicant from 9.4.2002 to 31.8.2004 was treated as non-duty period as the applicant has not been reinstated/exonerated, but the punishment awarded to him has only been reduced from dismissal to compulsory retirement, as such, FR-54B is not remotely applicable in his case. They have thus prayed for dismissal of the OA.

8. The applicant has not filed any rejoinder.

9. We have heard the learned counsel for the parties and have perused the material placed on record.

10. Learned counsel for the applicant strenuously argued that the impugned order dated 11.1.2016 is illegal, arbitrary and the

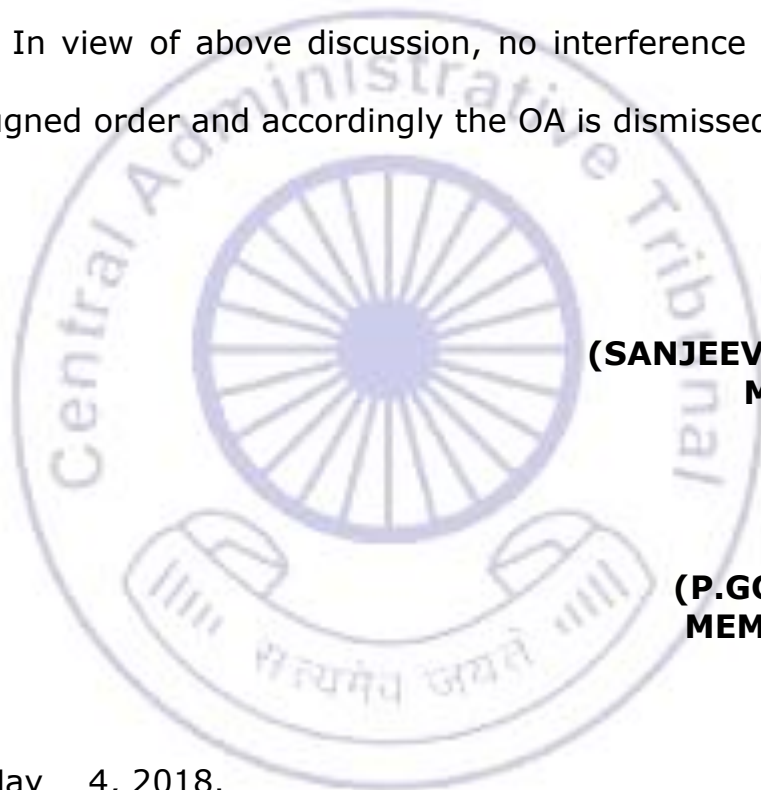
same has been passed without giving effective opportunity of hearing to the applicant in view of FR-54-B(5), therefore, he submitted the impugned order be quashed and set aside.

9. Per contra, the respondents have reiterated what they have stated in the written statement.

10. We have given our thoughtful consideration to the entire matter and are of the view the FR-54(B) clearly stipulates that had the applicant not been suspended, then he is entitled to pay and allowances to which he is entitled. But in the present case, the applicant remained suspended with effect from 9.4.2002 vide order dated 22.4.2002 and remained under suspension till 31.8.2004 and was dismissed from service on 31.8.2004 i.e. the date when he remained under suspension and got subsistence allowance. Even the Tribunal vide its order dated 25.8.2009 had upheld the dismissal of the applicant. It is only on 4.2.2011 when the applicant was acquitted by the Sub Divisional Judicial Magistrate, Rajpura, by giving him the benefit of doubt, the applicant made representations to the department for his reinstatement in service. The applicant again approached the Tribunal by filing O.A.No.40/PB/2013 which too was dismissed as withdrawn vide order dated 25.8.2014, with liberty to file mercy petition. On the basis of the order dated 25.8.2014, the applicant again submitted review/mercy petition dated 6.12.2014 to Hon'ble President of India under Rule 29-A of the CCS (CCA) Rules, 1965. Director (VP) Government of India, Ministry of Communications & IT, Department of Posts, vide its order dated

9.9.2015 had conveyed that the punishment of dismissal from service be reduced to compulsory retirement. In these circumstances, we are of the firm view that FR-B (5) ipso-facto is not applicable in the present case as there is no need to give opportunity of hearing to the applicant as he was never reinstated in service, rather, by taking a lenient view, his punishment of dismissal from service has been reduced to compulsory retirement.

11. In view of above discussion, no interference is called for in the impugned order and accordingly the OA is dismissed. No costs.



(SANJEEV KAUSHIK)
MEMBER (J)

(P.GOPINATH)
MEMBER (A).

Dated:- May 4, 2018.

Kks