

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00607 of 2012
Cuttack, this the 11th day of May, 2018

CORAM:

THE HON'BLE MR.S.K.PATTNAIK, JUDICIAL MEMBER
THE HON'BLE DR.M.SARANGI, ADMN. MEMBER

....

Jagabandhu Lenka aged about 55 years, S/o. Late Narendra Lenka,
At/Po. Paika Sahi, Via- Jogipura, PS. Rasagobindapur, Dist.
Mayurbhanj.

..... Applicant

By the Applicant :M/s. A.N.Sahu,
H.S.Satapathy,
H.M.Swain,
H.K.Behera
Advocate

-Versus-

1. Union of India represented through the Secretary, Ministry of Communication, New Delhi.
2. Chief Postmaster General, Orissa Circle, At/Po. Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices, Mayurbhanj Division, At/Po. Baripada, Dist. Mayurbhanj.

..... Respondents

By the Respondents : Mr.S.Behera, SSC

....

O R D E R

S.K.PATTNAIK, JM:

The Applicant Shri Jagabandhu Lenka, has filed this Original Application praying to quash the order dated 23/04/2012 in which his representation for his reinstatement was rejected and to direct

the respondents to reinstate him in the post of Extra Departmental Sub Postmaster, Paika Sahi with all consequential service and financial benefits.

2. On the allegation of committing commission and omission during the period from 15/09/1981 to 25/08/1983, while discharging the duties of EDSPM, Paikasahi EDSO in account with Baripada HO, the competent authority, in contemplation of disciplinary proceedings, vide order dated 25/08/1983 placed the Applicant under off duty and simultaneously, on the basis of the FIR, GR Case No. 341/1984, 918/83 and 1070/83 U/s. 409/477 were registered against the applicant before the Learned CJM, Mayurbhanj, Baripada which were ultimately ended in favour of the Applicant by the orders dated 08/09/1995, 18/11/1995 & 12/07/1996 which was upheld by the Hon'ble High Court of Orissa vide order dated 28/04/2011. After acquittal in Criminal Cases, the applicant submitted representation for his reinstatement and thereafter approached this Bench in OA No. 874/2011 which was disposed of on 05/01/2012 with direction to Respondent No.3 to consider and dispose of the pending representation of the applicant within a stipulated period. The Respondents considered the representation but rejected the same vide impugned letter dated 23/04/2012.

3. We find that the Respondents rejected the prayer of the Applicant for reinstatement on the ground that the case records relating to the charges were produced before the Hon'ble High Court of Orissa in

Criminal Case which is yet to be received and in the absence of relevant records departmental proceeding cannot be initiated. Since departmental proceeding is separate than that of criminal proceeding and the applicant has violated the departmental rules his continuance in the department is not desirable pending finalization of the disciplinary proceedings.

4. We are constrained to observe that the manner in which the case of the applicant has been dealt into by the Respondents leave much to be desired. There was no bar on the part of the Department to proceed against the applicant in disciplinary proceedings even during the pendency of criminal case when the applicant was placed under off duty in connection with the misconduct in the year 1983. Even according to the Respondents the applicant was acquitted in the criminal cases by the Sessions Judge vide orders dated 08/09/1995 18/11/1995 & 12/07/1996 and Criminal Appeal preferred by the Respondents as against the said orders were dismissed by the Hon'ble High Court of Orissa on 28/04/2011 yet the disciplinary proceedings did not commence least to reach its finality. The applicant was intimated vide order dated 23/04/2012 that disciplinary proceeding is yet to be initiated due to non receipt of records produced before the Hon'ble High Court of Orissa for which step has been taken to get back the records but even after lapse of six years the Respondents failed to throw any light about the initiation of disciplinary proceedings or the result thereof; more so the reasons for which disciplinary proceedings could not be initiated for such a long

time as assigned in the order of rejection cannot be attributable to the applicant and the applicant should not be made to suffer for the latches of the Respondents in initiating disciplinary proceedings at appropriate time. We are conscious of the provision of law that acquittal in criminal case cannot be a ground not to initiate disciplinary proceedings but in the instant case, the Respondents by their own action, is estopped under law to do so and initiate disciplinary proceedings at this distance of time for an incident, which allegedly took place between 15/09/1981 to 25/08/1983. In this regard the decision of the Hon'ble Apex Court in the cases of ***State of Madhya Pradesh Vs. Bani Singh reported in AIR 1990 SC 1308 & State of Andhra Pradesh vs N. Radhakishan, reported in 1998 SCC (L&S) 1044*** are referred to.

5. Since no disciplinary proceeding was ever initiated at any point of time from 1983 till final acquittal by Hon'ble High Court in 2011, the department is stopped from initiating any departmental proceeding in 2018. Had the conviction by the Trial Court been upheld by the Appellate Court, the matter would have been different.

6. For the discussions made above, we quash the impugned order dated 23/04/2012 (Annexure-A/7) and direct the Respondents to reinstate the applicant forthwith preferably within a period of 30(thirty) days hence, if he has not been reinstated meanwhile and is within the age limit and upon his reinstatement, Respondent No.2 is directed to decide

how the period to be treated, when the applicant was out of job, in accordance with law. This OA is accordingly disposed of. No costs.

(M.SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

RK/CM