

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.02.2017

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.NO.21559/2014 & M.P.No.1/2014

- 1.Union of India,
Rep.by the Chairman,
Postal Services Board,
Sansad Marg, New Delhi-110 001.
 - 2.The Principle Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai.
 - 3.The Director of Postal Services,
Central Region (TN),
O/o.The Postmaster General,
Central Region,
Thiruchirappalli-620 001.
 - 4.The Senior Superintendent of Post Offices,
Thiruchirappalli Division,
Thiruchirappalli-620 001.
- ...Petitioners

Versus

- 1.S.Alagudurai,
S/o.Subramanian,
Annai Illam, Thiruvallur Nagar,
Four Road, Turaimangalam,
Perambalur District 621 220.
 - 2.The Central Administrative Tribunal,
Rep.by its Registrar,
Madras Bench, Chennai-104.
- ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records on the file of the 2nd Respondent in connection with the order passed by him in O.A.No.1041 of 2010 order dated 04.10.2013 and quash the same by dismissing the Original Application filed by the first Respondent herein.

For Petitioners: Mr.V.P.Sengottuvel, SCGC
For R-1 : Mr.Ashok Raj
for Mr.R.Malaichamy
For R-2 : Tribunal

ORDER

[Judgment of the Court was delivered by MR.V.PARTHIBAN, J]

1.The writ petition has been filed by Union of India against the order passed by the Central Administrative Tribunal, Madras Bench, Chennai-104 in O.A.No.1041 of 2010 dated 04.10.2013 disposing of the Original Application filed by the first respondent / employee herein with certain directions.

2.The facts and circumstances which give rise to filing of the present writ petition are stated herein.

3.The 1st respondent was an employee of the Postal Department and in pursuance of the charge memo issued against him for certain misconduct, an inquiry was held and on the basis of the inquiry report, the Disciplinary Authority himself punished the 1st respondent imposing the punishment of "Dismissal from Service" by an order dated 20.05.2004. The said order of dismissal from service was confirmed by the Appellate Authority on 31.03.2005, and thereafter, further confirmed by the revisional authority on 03.03.2006. Against these orders, the first respondent herein had originally approached the Tribunal. Before the Tribunal, the 1st respondent contended that the misconduct alleged against him that he involved in misappropriation of money due to the Government, was not correct and that the amount involved was actually was in his personnel custody and the same was remitted to the Government account immediately. On the whole the first respondent/employee attempted to give some explanation stating that the alleged misconduct against him would not give rise for imposition of harsh penalty of dismissal from service. This was particularly so, when the amount which was in question was in fact, remitted back to the Government by the employee himself.

4.Further it was contended in the appeal filed him before the Appellate Authority, the employee pleaded that lenient punishment may be imposed as he had put in 23 years of service without any blemish and the Appellate Authority had not considered the request of the employee in appropriate perspective with reference to the circumstances of the case. After taking note of the submissions of the parties, the learned Tribunal ordered the original application, vide order dt.26.02.2013 by modifying the order of dismissal from service into one of compulsory retirement. This order came to be passed

by the Tribunal under the impression that the first respondent herein had retired from service at the time of the final disposal of the Original Application.

5.While matters stood thus, the petitioners herein filed a R.A.No.29/2013 bringing to the knowledge of the Tribunal that the employee is to superannuate only on 31.05.2018 as his date of birth is 10.05.1958 as per the Service Register. Because of the wrong declaration of age as 58 in the verification column of Original Application at the time of the filing of Original Application, the learned Tribunal was misled into passing the order as if the employee had retired from service at the time when the final order was passed on 26.02.2013. Since there was an error apparent on the face of the record while passing the order on 26.02.2013 in the Original Application 1041 of 2010, the Tribunal rightly recalled the order and restored the Original Application for fresh hearing by an order dated 29.07.2013. Thereafter, the Original Application was heard, and was disposed of on 04.10.2013 with a direction it has extracted as follow:

"As such, the orders impugned in the OA are all set aside. Accordingly, we remit the matter back to the Disciplinary Authority to conduct the inquiry afresh in accordance with law and complete the disciplinary case initiated against the applicant and pass an appropriate order within a period of three months from the date of receipt of a copy of this order. The applicant is also directed to co-operate with the inquiry proceedings for early completion of the same".

as against the above direction, the present writ petition has been filed.

6.Mr.V.P.Sengottuvel, learned Standing Counsel appearing for the petitioners strenuously contended that the direction issued by the Tribunal is unsustainable in law, in view of the categorical admission of the employee himself about his involvement of alleged misconduct and his representation to the Appellate Authority and the Original Authority has been considered and rejected, and therefore, the direction by the Tribunal will only unnecessarily reopen the case. In any event according to the learned counsel for the petitioner, that the employee is not entitled to reopen the case as has no useful purpose in this to re-conduct the inquiry, since of the legal formalities had been gone through and the same have been concluded after affording opportunity to the first respondent/employee. The punishment also according to the learned counsel

for the petitioner is proportionate to the gravity of the misconduct alleged to the committee by the employee.

7.Per contra, Mr.R.Malaichamy, the learned counsel appearing for the first respondent/employee contended that the punishment imposed was harsh and severe, in view of the fact that the past service of the employee was not taken into consideration.

8.We gave our anxious consideration to the rival submissions of the counsels, and we are of the view that interests of the justice would be met if the punishment of dismissal is modified into one of compulsory retirement, as concluded by the Tribunal in the original order dated 26.02.2013.

9.In the above circumstances, the punishment of dismissal from service imposed on the first respondent/employee dated 20.05.2004 is modified as one of the compulsory retirement and the petitioners are directed to pass consequential orders to that effect. The petitioners are also directed to pass appropriate orders for disbursement of the benefits otherwise admissible to the first respondent/employee on the basis of the modified order of compulsory retirement. The said exercise shall be completed by the petitioners within a period of three months from the date of receipt of a copy of this order. In view of the above direction, the order passed by the Tribunal in O.A.No.1041/2010 dated 04.10.2013 is set aside and writ petition is ordered accordingly. No Costs. Consequently the connected miscellaneous petition closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

KP

TO

1. The Chairman, Union of India,
Postal Services Board,
Sansad Marg, New Delhi-110 001.
2. The Principle Chief Postmaster General,
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Thiruchirappalli Division,
Thiruchirappalli-620 001.

+ 1 cc to M/s. V.P. Sengottuvel, Advocate Sr.8684
+ 1 cc to M/s. R. Malaichamy, Advocate SR.8724

W.P.NO.21559/2014

GMI (CO)
Eu 09.03.17



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