

HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
HONOURABLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.34935 of 2016

ORDER:

(Per HON'BLE SRI JUSTICE N. BALAYOGI)

1. The petitioners-Department of Posts aggrieved by the order dated 10.06.2016 in O.A.No.1469 of 2015 on the file of Central Administrative Tribunal, Hyderabad Bench, at Hyderabad, preferred this Writ Petition for issuance of an order or direction or Writ in the nature of Certiorari for quashing the aforesaid order.

2. The contention of the petitioners-Department of Posts is that though the first respondent has been acquitted from the criminal charges in the Criminal Revision Case No.1730 of 2005 dated 09.12.2013 on benefit of doubt, but it has no bearing on the departmental enquiry as it does not fall under the category of 'honourable acquittal'. It is further contended that the records pertaining to the case of first respondent are weeded out after three years and in the place of first respondent, another employee was appointed. It is further contended that the representation submitted by the first respondent is belated.

3. On the other hand, the first respondent contended that there is no enquiry as contemplated was conducted and the petitioners-Department of Posts having knowledge that Criminal Revision Case is pending, they are saying that the records relating to this case were weeded out. He contended that termination

order was not served on him. He further contended that the Tribunal having considered the facts of the case and law, came to the right conclusion and directed the petitioner authorities to reinstate him to the post of Gramin Dak Sevak Mail Carrier/Packer (GDS MC/Packer) at Mahabubnagar head Office within six weeks from the date of receipt of the order. He further contended that the findings and reasons given by the Central Administrative Tribunal in O.A.No.1469 of 2015 are legal, valid and do not suffer from any legal infirmities.

4. The undisputed facts spell out from the pleadings in the writ petition, counter filed thereto by the first respondent and material available on record are that: the first respondent was working as Extra Department Mail Carrier (EDMC/Packer) in the petitioners organization-Department of posts. While so, on 22.09.1999, a FIR was registered against him(first respondent) by the Station House Officer, II Town Police Station, Mahabubnagar, which was subsequently numbered as CC No. 424 of 1999 alleging that the first respondent committed theft of foreign parcel on 22.09.1999 and the same was recovered from him subsequently. As per the observations of this Court in the order dated 09.12.2013 in Criminal Revision Case No. 1730 of 2005, there was discrepancy with regard to arrest and recovery of the foreign parcel. A learned single Judge of this Court observed in the said judgment that P.Ws.1 and 4 are the main witnesses who stated that the accused was brought to the police station and the lost article was recovered. P.Ws.6 and 7 are the mediators for the

recovery of lost article under Ex. P.5-recovery panchanama. P.Ws.1 and 4 in their evidence deposed that on 22.09.1999, the first respondent/accused was brought to the police station and said article was recovered. During the cross examination, P.W.1 stated that after lodging the complaint, he and one constable went to the house of the first respondent/accused and brought the parcel and handed over the same in the police station. According to Ex.P.5, the Investigating Officer arrested the accused on 24.09.1999 at 06.00 PM at House No.1-9-139, Sanjaynagar Street, Mahaboobnagar and recovered the foreign parcel (MO.1) in the presence of P.Ws.6 and 7. This fact is contrary to evidence P.Ws.1 and 4, which was considered by the High Court in Crl.R.C.No.1730 of 2005 and found that the Courts below though noticed this discrepancy failed to extend the benefit of it to the accused; on the other hand, the Courts below observed that it is only a minor discrepancy. But, in the view of the High Court, the observations made by the Courts below that it is a minor discrepancy is not correct. When there is quite contradicting version with regard to the arrest of the first respondent/accused and recovery of the stolen property between the material prosecution witnesses and the contents in Ex.P.5, the benefit of doubt must go in favour of the first respondent/accused.

5. The trial Court in C.C.No.424 of 1999 found the first respondent guilty and accordingly convicted and sentenced him to suffer six months rigorous imprisonment and imposed fine of Rs.500/- for the offence punishable under Section 380 IPC and

also sentenced him to suffer six months rigorous imprisonment with a fine of Rs.500/- for the offence punishable under Section 52 of the Indian Post Office Act. Aggrieved by the said conviction and sentence, the first respondent preferred Crl.A.No.180 of 2000 which was dismissed by the lower appellate Court through its Judgment dated 26.09.2005 upholding the conviction and sentence imposed by the trial Court.

6. Aggrieved by the judgment in Crl.A.No.180 of 2000, the first respondent preferred Crl.R.C.No.1730 of 2005, which was allowed by this Court through judgment dated 09.12.2013 setting aside the conviction and sentence imposed against him (first respondent) and acquitting from the charges levelled against him. The first respondent subsequently clarified the reasons for delay stating that he could not contact his counsel on account of ill-health. Soon after came to know of the judgment in Crl.R.C.No.1730 of 2005, dated 09.12.2013, he submitted a representation on 18.03.2015 to the second petitioner requesting to reinstate him in duty as EDMC and pay all consequential benefits. The second petitioner however did not consider the representation of the first respondent.

7. It is also the contention of the petitioners that the first respondent was placed under 'put off duty' with effect from 22.09.1999 and he was also granted ex-gratia amount for put off duty period which is equivalent to 25% of his allowances with

effect from 22.09.1999 vide letter dated 20.01.2000 of the Post Master, Mahabubnagar, Head Office-- the second petitioner.

8. Admittedly there is delay in making representation, for which, the explanation of the first respondent is that due to the death of his counsel in CrI.R.C.No.1730 of 2005 and further that though judgment was pronounced on 09.12.2013, he received the copy of same in the month of January, 2015 and thereafter he immediately approached the petitioner authorities and submitted a representation on 18.03.2015 requesting to reinstate him in duty and pay all consequential benefits. It is to be seen that no proof of service of 'put off duty' order and also termination order were produced by the petitioner authorities. There is no response from the petitioner authorities on the representation dated 18.03.2015 submitted by the first respondent either considering his request or reinstating into service or rejecting his request. Therefore the first respondent obtained a copy of the order of 'put off duty' stated to have been issued on 22.09.1999 under the Right to Information Act and approached the Tribunal by filing O.A.No.1469 of 2015.

9. Rule 201 of the Posts and Telegraphs Manual (Volume-III) goes to suggest that the period of preservation in respect of Personal Files and Confidential Reports is three years after the month in which the officials concerned ceased to belong to the Department. The contention of the writ petitioners- Department of Posts in the additional affidavit is that they have caused sufficient efforts to trace out the Personal File and other

connected records relating to the case of first respondent. The second petitioner-Postmaster, Mahabubnagar Head Post Office, also made vigorous efforts to trace out the records including old records of Mahabubnagar Head Post Office, but the same were not traced out. Admittedly no termination order was produced before the Court. The second writ petitioner has not submitted any relevant document with respect to the contention that the first respondent was terminated from service and, in regard thereto no order is placed before this Court. The specific case of the first respondent is that he has not received any notice on termination. The writ petitioners furnished a copy of the punishment register from August, 1989 to 30.09.2015, in which it has been mentioned that the first respondent was put off duty with effect from 22.09.1999 for committing theft of foreign parcel received for delivery while stamping the article on 22.09.1999. It is further mentioned that a case was filed in II Town Police Station, Mahabubnagar vide FIR No.140 of 1999, dated 22.09.1999 for the offences punishable under Section 380 IPC and Section 52 of the Indian Post Office Act and that a report was sent to the Superintendent of Post Offices, Mahabubnagar vide letters dated 22.09.1999 and 30.09.1999. The writ petitioners also produced before the Tribunal the Personal File of one Mohd. Naseeruddin, GDS, who stated to have been appointed in the vacancy caused due to finalization of Rule 8 proceedings against the first respondent. It is pertinent to note that there is no endorsement in the Punishment Register that the first respondent was terminated

under Rule 8 of the P & T EDA (Conduct & Service) Rules, 1964 in the month of September, 2002. There is no explanation forthcoming from the petitioner authorities as to why there is no mention of the punishment awarded to the first respondent in the Punishment Register which has been preserved by them.

10. The Personal File of Mohd. Naseeruddin produced by the writ petitioners before the Tribunal also shows that the Post Master, Mahabubnagar Head Office in his letter addressed to the Superintendent of Post Offices dated 05.03.2003 has mentioned that the first respondent's appeal is pending in the Court and sought for a clarification whether the appointment of Mohd. Naseeruddin should be on conditional basis. From this, it is very clear that the writ petitioners were aware of the appeal filed by the first respondent and therefore there can be no justification for the writ petitioners to say that the records were weeded out when the matter is pending in a Court of law.

11. It is further observed by the Tribunal that the Personal File of Mohd. Naseeruddin also shows that a declaration has been obtained from him stating that he would not claim any right of appointment as GDS in case the appeal of the first respondent is disposed of in his favour in future. Hence, the writ petitioners having knowledge of the proceedings pending in a Court of law cannot say that as per Rule 201 of the Post and Telegraphs Manual, the records were weeded out.

12. In the facts and circumstances discussed hereinabove and findings recorded therein, we are of the view that there is no enquiry initiated as contemplated under Rule 8 of the P & T EDA (Conduct & Service) Rules, 1964 and even if there are any such inquiry proceedings, the writ petitioners should have served on the first respondent, but there is no such proof of service. The first respondent was stated to be put off duty with effect from 22.09.1999. The appointment of Mohd. Naseeruddin, who has reported to have been appointed in the vacancy caused due to finalization of Rule 8 proceedings against the first respondent was conditional and subject to result of Crl.R.C.No.1730 of 2005. The writ petitioners-Department of Posts having knowledge of the pendency of the proceedings are not justified in saying that the records were weeded out three years after the month in which the official concerned ceased to belong to the department. Absolutely there is no enquiry or communication of the termination orders. The Tribunal while considering all these facts in proper perspective passed the reasoned order in OA.No.1469 of 2015, dated 10.06.2016 directing the writ petitioners-Department of Posts to reinstate the first respondent into service within a period of six weeks from the date of receipt of the said order. The Tribunal further observed that it is open to the first respondent to make a comprehensive representation to the writ petitioners for payment of consequential benefits and in case any such representation is received, the writ petitioners were directed to consider the same strictly in accordance with rules and

pass a reasoned and speaking order within a period of two months from the date of receipt of the representation. Thus, the impugned order of the Tribunal is legal, valid and does not suffer from any legal infirmities.

13. For the foregoing discussion and in the result, the Writ Petition is dismissed with costs while upholding the order of the Tribunal in O.A.NO.1469 of 2015, dated 10.06.2016 and directing the writ petitioners-Department of Posts to implement the aforesaid order of the Tribunal within a period of six weeks from the date of receipt of a copy of this order, if not already implemented.

14. Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence.

JUSTICE SANJAY KUMAR

JUSTICE N. BALAYOGI

DATED 9th JUNE, 2017.
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