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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 251 of 1988

Date of decision: March, 22, 1989

1. Nityananda Mohanty Applicant
aged about 58 years
son of Late Aparti Charan Mohanty
Deputy Superintendent of Post Offices,
R.M.S. 'N' Division, At, P.O. and
Dist. Cuttack.

-Versus-

1. Union of India represented by
its Secretary, Posts,
Dak Bhavan, New Delhi.

2. Member, Personnel,
Postal Services Board, New Delhi

3. Postmaster General, Orissa Circle,
At/P.O. Bhubaneswar, District. Puri

4. Shri S. Lahiri,
Commission of Departmental Inquiry
Jamnagar House, House Hutsments
Akbar Road, New Delhi. Respondents

For the Applicant M/s. Devananda Misra,
Deepak Misra, R.N. Naik
& A. Deo, Advocates

For the Respondents. Mr. A. B. Misra, Senior Standing
Counsel (Central)
Mr. Tahali Dalai,
Addl. Standing Counsel (Central)

C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN
AND
THE HON'BLE MR. K. P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed
to see the judgment ? Yes

2. To be referred to the Reporters or not ? No

3. Whether Their Lordships wish to see the fair
copy of the Judgement ? Yes

JUDGMENT

K. I. ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for issuance of a direction to quash the initiation of the proceeding against the applicant for having misconducted himself in due discharge of his official duties.

2. Shortly stated, the case of the applicant is that while he was Deputy Superintendent of Post Offices, Railway Mail Service, North Division, Cuttack a disciplinary proceeding was initiated against him on the ground that while he was functioning as Superintendent of Post Offices, Cuttack South Division, Cuttack during the period from 21.11.1980 to 8.2.1983 and subsequently as Assistant Director in the Office of the Postmaster General, Orissa, from 25.2.1983 to 5.7.1985 he submitted an unjustified proposal for opening a Branch Post Office in his village with an ulterior motive to get one Smt. Suryamani Ray appointed as the Extra-Departmental Branch Postmaster and furthermore he was instrumental in getting her appointed and also ultimately in getting her removed from service. On these allegations the applicant was asked to face a departmental proceeding. An explanation has been submitted by the applicant. At this stage the applicant came up before us in connection with O.A.189 of 1987 praying to quash the disciplinary proceeding pending against him. While delivering the judgment in the said case on 4.4.1988 we directed that the Member (Personnel) should dispose of the represen-

tation filed by the applicant for taking a liberal view in his favour. The said representation having been rejected by the Member (Personnel), the present application has been filed to quash the proceeding.

3. In their counter, the respondents maintained that there being a prima facie case against the applicant for having misconducted himself and the alleged nefarious activities having reflected in discharge of his official duties in no circumstance the proceeding should be quashed, on the contrary the departmental authorities should be given liberty to arrive at a just conclusion regarding the guilt or otherwise of the applicant relating to the charges levelled against him. In a nut-shell, it is maintained that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. A. B. Mishra, learned Senior Standing Counsel (Central) at some length. Mr. Deepak Misra strenuously urged before us that the applicant had no role to play in the matter of opening of a Post Office. Final orders having been passed by the Postmaster General, Orissa Circle and according to the orders passed by the Postmaster General, the Post Office is opened and furthermore, it was submitted by Mr. Deepak Misra that appointment of Smt. Suryamoni Roy in the concerned Post Office was done by somebody else and the applicant is not her appointing authority. The third argument advanced by Mr. Deepak Misra is that Smt. Suryamoni Roy did not file the solvency certificate and was not complying

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with the orders to file solvency certificate, there was no other option left to the applicant but to terminate the services of the said Smr. Suryamoni Roy. Had the applicant any soft corner for Smt. Ray in the matter of her appointment and opening a Post Office for accommodating Smt. Ray then he would not have taken such a drastic step in terminating the services of Smt. Ray. Furthermore, it was submitted by Mr. Deepak Misra that action taken by the applicant in terminating the services of Smt. Ray would sufficiently indicate that the applicant was a very strict officer and was discharging his duties without any fear or favour and without taking into consideration any other extraneous circumstances such as relationship of the applicant if any with Smt. Ray. It was further submitted by Mr. Deepak Misra that the cumulative effect of all the facts and circumstances mentioned above, would lead one to the irresistible conclusion that the applicant is not at all guilty of the charges and therefore, the proceeding should be quashed especially because the applicant has since retired on superannuation and it would not be fruitful or useful to beat a dead horse. On the other hand, it was strenuously urged by learned Senior Standing Counsel (Central) that if the Bench quashes the proceeding it would set a bad example and indiscipline in the Department. Learned Senior Standing Counsel (Central) further submitted that these aspects would certainly be taken into consideration by the competent authority while ~~touching~~ adjudicating the guilt or otherwise of the applicant. It was further submitted by learned Senior

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Standing Counsel (Central) that some amount of discretion should be left with the Postmaster General to deal with its employees in a manner which is expected from a higher officer. After giving our anxious consideration to the arguments advanced at the Bar we feel it just and expedient not to express any opinion on the submissions made by Mr. Deepak Misra as any observations made by us consciously or unconsciously may weigh with the enquiring officer or the disciplinary authority or may embarrass them in some manner. Therefore, we refrain ourselves from expressing any opinion on the merits of the case. We find that there is considerable force in the contention of learned Senior Standing Counsel (Central) that the discretion vested with the competent authority should not be fettered. In such circumstances, we leave it to the discretion of the competent authority to consider the case of the applicant and the facts mentioned above including the fact that the applicant has since retired on superannuation and thereafter come to its own conclusion as to whether the proceeding should continue or should be dropped. In case, the competent authority takes a decision that the proceeding should be dropped - nothing more to be said. If the competent authority takes a decision that the proceeding should continue, we direct that the proceeding should be completed within three months from the date of the order to be passed by the competent authority as to whether the proceeding should continue or not. In case, the proceeding is not completed including the final orders

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to be passed by the competent authority within the period stipulated above, i.e. three months, the proceeding would be deemed to have been quashed. Mr. Deepak Misra assures us that the applicant would not ask for any adjournment. The fact that we have said that the proceeding should be completed within three months does not fetter the discretion of the competent authority to pass an order regarding quashing of the proceeding.

5. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

L. G. and S. M. 22.3.89.

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Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.

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Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
March 22, 1989/Sarangi.

