

Central Administrative Tribunal  
Cuttack Bench, Cuttack

Original Application No.161 of 1991

Date of decision: 17th July, 1992

Bijaysen Jagatdeo .... Applicant

Versus

Union of India and others .... Respondents

For the applicant Mr. D.P.Dhalsamant, Advocate

For the respondents Mr. A.K.Misra, St.Counsel(Central)

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CORAM:

THE HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN

AND

THE HONOURABLE MR. M.Y.PRICKAR, MEMBER (ADMINISTRATIVE)

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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 judgment? Yes.

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JUDGMENT

K.P.ACHARYA, V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays for a declaration that the petitioner is deemed to have been promoted to HSG II from the date on which his promotion was due or with effect from the date on which his juniors had been promoted with all consequential benefits and the fresh chargesheet contained in Annexure-3 be quashed.

2. Shortly stated the case of the Petitioner is that Memo of charges was delivered by Opposite Party No.4 i.e. the Senior Superintendent of Post Offices, Cuttack City Division vide Memo No. F.4-11-87/88 dated 5th September, 1988 to the Petitioner with an allegation that the Petitioner facilitated fraudulent withdrawal of Rs. 16,015.05 and after due enquiry the Senior Superintendent of Post Offices (Opposite Party No.4) passed an order of recovery of Rs. 7,500/- from the pay of the Petitioner in 30 instalments. Being aggrieved by this order, the Petitioner invoked the jurisdiction of this Bench by filing an application under section 19 of the Administrative Tribunals Act, 1985 with a prayer to quash the order of punishment and this formed subject matter of Original Application No. 322 of 1989. Vide order dated 21st May, 1990 passed in OA 322 of 1989, the Bench quashed the order of recovery of Rs 7,500/- and gave liberty to the Department to dispose of the case with afresh after examining the depositor in the presence of the applicant. Due to this punishment imposed on the petitioner, the Departmental authority denied promotion to the petitioner, to HSG Grade II and hence the Petitioner prayed before this Bench in a separate application forming subject matter of Original Application No. 162 of 1990 to direct the Opposite Parties in the said original application not to withhold promotion of the Petitioner on the pretext of currency of punishment.

Opposite Party No.3 i.e. the Chief Postmaster General ordered issuance of a fresh chargesheet ~~which was~~ on 26th February, 1991 calling upon the petitioner to show cause as to why a minor penalty should not be imposed on him vide Memo No. ST/26-16/90 dated 4th April, 1991. Orders of promotion of the petitioner to HSG II was passed and instead of giving effect to the same the said promotion was cancelled by Opposite Party No.3 vide order No. ST/26-16/90 dated 18th April, 1991. Hence this application has been filed with the aforesaid prayer.

3. In their counter the Opposite Parties maintained that the appointing authority has a discretion to withhold the promotion during the currency of disciplinary proceeding and since the chargesheet had been delivered to the petitioner on 5.9.1988 and again on 26th February, 1991, the promotion of the petitioner was rightly withheld. Further it is maintained by the Opposite Parties that in compliance with the orders passed by this Bench a fresh enquiry was held and the depositor Shri Nayak was examined in the presence of the Petitioner who denied withdrawal and therefore, the disciplinary authority had imposed punishment of recovery of Rs. 7,500/- which should not be unsettled.

4. We have heard Mr. D.P. Dhalsamant learned counsel for the petitioner and Mr. Aswini Kumar Misra learned Standing Counsel (Central) on the merits of this case. We propose to first deal with the prayer of the petitioner to quash Annexure-3 i.e. Memorandum dated 26th February, 1991. Mr. Dhalsamant contended that while disposing of Original Application No 322 of 1989, the Bench had directed for examination of the Depositor in the presence of Petitioner and had not authorised the disciplinary authority to prepare and serve a fresh chargesheet and therefore the fresh chargesheet dated 26th February, 1991 should be

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quashed. This argument of Mr. Dhalsamant is unacceptable because in para 8 of the judgment, the Bench observed as follows:

"In the result Annexure 3 and 5 are quashed but the Department would be at liberty to dispose of the case afresh after examining the depositor in the presence of the applicant".

5. In view of the above direction of the Bench having quashed Annexures 3 and 5 the Departmental authority had no option but to prepare a fresh chargesheet and deliver the same to the petitioner because the chargesheet dated 5th September, 1988 which was ~~the~~ <sup>by</sup> subject matter of OA 322 of 1989 was no longer in existence. Therefore, we find no illegality to have been committed by the concerned authority in delivering afresh chargesheet. It may be remembered that there is no allegation against the petitioner that he had misappropriated the amount in question or a part thereof which had caused loss to the Government. In the imputation of the charges, the manner of negligence has been stated in a very cryptic manner which does not come to the notice of the petitioner. In the impugned order of punishment contained in Annexure R 5 it is stated as follows:

"In pursuance to the CAT order confronting enquiry was held. Illegible. It was established that the money has not been withdrawn by Shri Nayak the account holder. So it is proved that money has been withdrawn and the fraudulent withdrawal took place due to negligence on the part of the official. Taking into view totality of the case, I order for recovery of the part of pecuniary loss sustained by the Department. xx xx xx".

6. In the order of punishment nothing has been stated, the manner of negligence committed by the Petitioner. Therefore, we find that there is substantial force in the contention of Mr. Dhalsamant that in the absence of specific data regarding the manner of negligence committed by the Petitioner, decision of the disciplinary authority reflected in the chargesheet

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regarding the manner of negligence amounts to nonapplication of judicial mind and has been based on surmises and so also the order of punishment suffers from the very same informity by passing an order of punishment in a very cryptic manner. Therefore as prayed for, the chargesheet Annexure-3 dated 26th February, 1991 ~~cannot be trusted~~ is hereby quashed as a result of which there is no other option left for the Bench but to quash the order of punishment which is accordingly quashed.

7. Next coming to the prayer of the petitioner for promotion to the Grade of HSG II with retrospective effect. It may be stated that in this connection an application had been filed before this Bench with a prayer to direct the Opposite Parties to promote the petitioner to the higher selection Grade II from the date on which his juniors were promoted. This formed subject matter of Original Application No.162 of 1990 disposed of on 14th January, 1991. Therein at paragraph 6 of the judgment, the Bench observed as follows:

"he (meaning the petitioner Shri B.Jagatdeo) should be promoted with effect from the date he was due for promotion or the date from which his immediate junior began to officiate in HSG II, otherwise the case of the applicant be considered by Review DPC".

From the records of Original Application No.162 of 1990, it is found from Annexure 1 dated 10th August, 1988 that the petitioner was given promotion on adhoc basis to officiate in the grade of HSG II and it is also found from Annexure II dated 23rd September, 1988 issued from the office of the Senior Postmaster General, Orissa Bhubaneswar stating that in view of the pendency of the disciplinary case at present the promotion and posting of Shri Jagatdeo, LSG on adhoc basis issued vide office Memo of even number dated 10th August, 1988 is hereby cancelled with immediate effect. Admittedly the first chargesheet was delivered to

the Petitioner on 5th September, 1988. In the case of Janakiram vs. Union of India and others reported in AIR 1991 SC 2010, Their Lordships have upheld the view taken by a Full Bench of the Central Administrative Tribunal reported in 1987(2) All India Services Law Journal 117 (K.Ch. Venkat ready and others vs. Union of India and others) that the date of delivery of the chargesheet is the deemed date of initiation of the proceeding. In such circumstances, the chargesheet having been delivered on 5.9.1988, There was no proceeding pending against the petitioner on 10th August, 1988. Therefore an incorrect view was taken by the competent authority in cancelling the adhoc promotion of the petitioner on the ground that a disciplinary proceeding was pending against the petitioner before the chargesheet was filed i.e. on 5.9.1988. At the cost of repetition we may say that vide judgment passed in OA 162 of 1990, the Bench observed that in OA 322 of 1989, the Bench had quashed the order of punishment, <sup>necessarily</sup> ~~therby~~ the chargesheet dated 5.9.1988 was not in existence. The Petitioner was due to be promoted much prior to the chargesheet dated 26th February, 1991 and therefore in all fitness of things, the petitioner should have given promotion to the HSG Grade II. Now the circumstances have completely changed in view of the fact that this Bench had quashed the order of punishment and the chargesheet dated 26th February, 1991. Therefore, no dirty linen exists on the surface to be utilised against the Petitioner.

8. Ordinarily the judiciary cannot step on the ~~shoes~~ of the administrative authority to adjudicate the suitability or otherwise of a particular incumbent for promotion. We would have ordinarily directed the Opposite Parties to consider the suitability of the petitioner for promotion to HSG II but from

the records we find that the petitioner had been adjudged suitable but the DPC did not recommend his promotion because of currency of punishment which no more ~~is~~ exists in the field. Since the suitability of the petitioner had been adjudged in his favour, we would direct that the petitioner should be given promotion with effect from the date on which his juniors were promoted with all consequential benefits which should be calculated and paid to the petitioner within 90 days from the date of receipt of a copy of this judgment.

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

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MEMBER (ADMINISTRATIVE)

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VICE CHAIRMAN

Central Adminstrative Tribunal,  
Cuttack Bench/Cuttack/17.7.92/  
K.Mohanty.

