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CENTRAL ADMINISTRATIVE TRIBUNAL : CUTTACK BENCH :
C U T T A C K .

ORIGINAL APPLICATION NO.457 OF 1991.

Cuttack this the 12th day of March, 1997.

Banshidhar Jena. Applicant.

Versus.

Union of India and others. ... Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE- CHAIRMAN. 12/3/97

CENTRAL ADMINISTRATIVE TRIBUNAL : CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO. 457 OF 1991.

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CORAM :

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN.

A N D

THE HONOURABLE MRS. LAKSHMI SWAMINATHAN, JUDICIAL MEMBER

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Banshidhar Jena, aged 39 years,
Son of Late Dinabandhu Jena,
Village/P.O. Bartana, via-Bhogarai,
District-Balasore, Pin-756 038.

... Applicant.

Versus.

1. Union of India, represented by its Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, Balasore Division, Balasore-756 001.
3. Director of Postal Services, Office of the P.M.G., Sambalpur, District-Sambalpur. Pin- 768 001.

... Respondents.

ADVOCATES:

For Applicant.

:- M/s. S. Kur. Mohanty and S.P. Mohanty.

For Respondents.

:- Mr. Aswini Kumar Mishra.

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O R D E R.

SOMNATH SOM, VICE-CHAIRMAN : This is a petition under Section 19 of the Administrative Tribunals Act, 1985 filed by Banshidhar Jena, Postal Assistant in Balasore Head Post Office, praying

for quashing the order dated 22.5.1990 passed by respondent No.2 at Annexure-2 imposing on him the punishment of withholding of promotion for a period of one year with effect from the date of the order and also for quashing the order dated 17.1.1991 of respondent No.3 by which his appeal against the order of punishment was considered and rejected by the appellate authority.

2. The facts of this case which fall within a small compass can be briefly stated. At the material time, the petitioner was working as Postal Assistant in Balasore Head Post office. One of his duties was to attend to the postal complaints. He had stated in the petition that according to the office procedure, he used to process the complaints and forward the same to the Complaint Inspector who in his turn used to place the same before the Senior Superintendent of Post Offices and after orders, the files used to come back through the Complaint Inspector to him for carrying out the orders passed by the Senior Superintendent of Post Offices. According to the petitioner, the departmental instructions provide that the Senior Superintendent of Post Offices should personally supervise the work of the Complaint branch. It is further provided that a complaint case could be closed only under the orders of the S.S.P.O.. Departmental proceedings were initiated against the petitioner on charges at Annexures-1 and 1/a and the impugned punishment was imposed on him at the conclusion of the departmental inquiry. The allegation against the petitioner in the departmental proceedings

*Jomann Jm
12/3/97*

was that during the period from 18.6.1987 to 25.10.1989 when he was in charge of the files of the Complaint Branch, he delayed in issuing duplicate money orders in seven cases. In those cases the Senior Superintendent of Post Offices had ordered issuing of duplicate money orders on different dates but there was delay ranging from one month eighteen days to six months and six days in these seven cases in carrying out the orders. As earlier mentioned, the petitioner has prayed for quashing the order of punishment imposed on him and the order rejecting his appeal and confirming the punishment. The petitioner has challenged these two orders on two legal points and also on the ground that the conclusion drawn in the departmental proceedings is not borne out by the records. It would be better to consider the legal points first.

*Govind Jm
12/3/92*

3. The first point submitted by the learned lawyer for the petitioner is that according to the departmental instructions, the complaint files can be closed only under the orders of the Senior Superintendent of Post Offices. As such the Senior Superintendent of Post Offices has a "pecuniary interest" in the seven complaint cases, according to the petitioner's lawyer and therefore, he should not have acted as the disciplinary authority. This contention is wholly misconceived. The concerned departmental instruction which has been referred to by the petitioner in para-4(3) of his petition clearly shows that a complaint case after it has been satisfactorily resolved can be closed only under the orders of the S.S.P.O.. This does not give the S.S.P.O. any pecuniary interest in the

complaint cases. As such, he cannot by any stretch of imagination be considered an interested party in such cases. Therefore, he cannot be held to be suffering from any disability to act as the disciplinary authority in respect of the petitioner. This contention is, therefore, rejected.

4. The second contention of the learned lawyer for the petitioner is that the S.S.P.O. is not the appointing authority of the petitioner. This is contested by the learned Additional Standing Counsel on behalf of the respondents who submitted that the Postal Assistants cadre is a district cadre and the S.S.P.O. is the appointing authority. Be that as it may, the learned lawyer for the petitioner fairly conceded that an authority other than the appointing authority can initiate disciplinary proceedings for imposition of minor penalty. His contention is based on Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as 'CCS(cca) Rules) which provides under sub-rule (1)(b) that subject to provision of sub-rule (3) of Rule 15 no order imposing on a Government servant any minor penalty shall be made except after holding an enquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such an inquiry is necessary. This point has to be mentioned in detail. For imposition of major penalty, the elaborate procedure laid down in Rule 14 has to be followed. For imposition of minor penalty, the procedure has been laid down in Rule 16. This is a summary procedure. But even under Rule 16 there is the provision

*Somnath JMM
12/3/97*

of sub-rule 1(b) that if the disciplinary authority is of the opinion that a detailed inquiry as is required in case of a major penalty proceedings should be undergone, then even in a case of disciplinary proceedings initiated for the purpose of imposing a minor penalty the disciplinary authority can order such detailed inquiry as is laid down under Rule 14. The submission of the learned lawyer for the petitioner is that the disciplinary authority while proceeding against a Government servant under Rule 16 for imposing minor penalty must in every case record a speaking order why he does not consider it necessary to initiate a detailed inquiry in accordance with Rule 14. This contention is not correct. Sub-rule (1)(b) gives authority to the disciplinary authority to follow the detailed procedure of Rule 14 if in a given situation he considers it necessary. There is no support in the rule to the contention of the learned lawyer for the petitioner that in every case there should be an order if a detailed inquiry is not considered necessary. In any case, the applicant did not ask for following the detailed procedure under Rule 14 in course of the departmental proceedings. As such it is not open for him now to challenge the conclusion arrived at in the departmental inquiry on this ground which is not supported by the CCA Rules. As such this contention of the learned lawyer for the petitioner also fails.

5. Coming to the subject matter of the lapses alleged against the petitioner and the inquiry report as also the order of the appellate authority, it has to be remembered that ordinarily Courts of law should not sit as a Court of appeal

*Somnath J M
12/3/97*

against the orders of disciplinary authority and appellate authority and re-assess the evidence in order to find out if any conclusion other than what has been arrived at in the disciplinary proceedings could have been drawn except in case of obvious miscarriage of justice. Even then, in view of the fact that this case has remained before this Bench for more than last five years, we felt it necessary to look into this aspect. It is to be noted that the petitioner has not annexed the copy of the reply sent by him in response to the charges. In course of inquiry, petitioner asked for permission to peruse the record and he was allowed to do so. He also wanted extension of time for submission of his explanation. This was also done. As earlier mentioned, the petitioner has not placed before us the explanation given by him. So it is not possible for us to know that his explanation was except in so far it appears from the record of the

*Somnath JWM
12/3/97*

inquiry. It appears that out of the seven cases of delay in issuing the duplicate money orders where the payees had not received the money order or it had been paid to a wrong person, the petitioner had taken the stand that he had dealt with only three cases - CR.9/127-9/88, CR-9/228/1/89 and CR 9/30-5-89. He stated that these are the cases where the orders were passed for issue of duplicate money orders in March, 1989 and June, 1989. He got back the files from the Complaint Inspector only in September and October, 1989 and on the same day he issued duplicate money orders. It is on record that the date of return of the files from the S.S.P.O. through the Complaint Inspector to the petitioner is not

recorded in the file. As such there is nothing to prove the petitioner's assertion that he got back the files on the same day on which he issued the duplicate money orders. The Inquiring Officer has rightly disbelieved his plea more so because as the dealing Assistant in charge of the files he should have enquired about the delay, if any, at the higher level in disposal of those cases. As regards other four cases, petitioner has claimed in his petition that these four cases were not received by him nor any notes were prepared and put up by him as he was on leave on the relevant dates. He makes a specific allegation in the petition that these cases were dealt with by Sri Umakanta Jena, Complaint Assistant and Sri Umakanta Mallik, Complaint Inspector. In his explanation, however, so far it appears from the inquiry report it seems that he had stated that out of these four files three files were put up by him on different dates but were not returned to him after issue of orders. He also says that in all these seven cases when the orders were finally passed for issuing duplicate money orders, no remark was made about the alleged delay on his part to put up duplicate money orders. In view of his submissions as it appears from the enquiry report that out of four other cases, three cases were put up by him and were delayed at the higher level, his subsequent contention in this petition that he had nothing to do with these four cases is not believable. The Inquiring Officer has rightly held that while submitting his explanation, the petitioner has displayed selective memory. In case of three files he

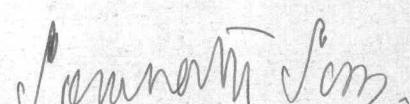
*J. Om Prakash J.M.
12/3/97*

remembers the precise dates on which he got back the files from the Complaint Inspector but in other four cases, he states that he does not remember when these files were put up. In view of this, the disciplinary authority has rightly rejected his explanation. The punishment imposed is minor in nature and compared to the fact that in these cases, the payees have been deprived of money meant for them for long periods, the punishment cannot be held to be excessive. The appellate authority has passed a speaking order on considering his appeal petition and therefore, we do not see any reason for questioning the conclusion of the appellate authority.

6. In the result, therefore, it is held that the petitioner has not been able to make out a case for quashing Annexures- 2 and 3 to his petition. The petition, therefore, fails and is dismissed; but in the circumstances, there shall be no orders as to costs.



(LAKSHMI SWAMINATHAN)
JUDICIAL MEMBER.


(SOMNATH SOM)
VICE- CHAIRMAN. 12/3/97