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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 142 OF 1992
Cuttack, this the 15th day of October, 2001

Paramananda Nanda

Applicant

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes,
2. Whether it be circulated to all the benches of the Central Administrative Tribunal or not? No.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
15.10.2001

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Paramananda Nanda, son of P.Nanda, at present working
as Sub-Postmaster, Tikrapara, N.D.T.S.O.,
At/PO/Dist.Bolangir.... Applicant

Advocates for applicant - M/s B.M.Patnaik
R.N.Misra
B.Pujari

Vrs.

1. Union of India, represented through Secretary to Government, Department of Post, Dak Bhawan, New Delhi-1.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Puri.
3. Postmaster General, Berhampur Region, Berhampur, Dist.Ganjam.
4. Superintendent of Post Offices, Balangir Division, Balangir

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Respondents

Advocate for respondents - Mr.Ashok Mohanty
Sr.CGSC

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

S.Som.

In this O.A. the petitioner has prayed for quashing the chargesheets at Annexure 1 and Annexure 2 (wrongly mentioned as Annexure-3), the enquiry report at Annexure-5, and the order of the disciplinary authority at Annexure-6.

2. The case of the applicant is that while he was posted as Sub-Post Master, Tikrapara NDTSO in Balangir Town, minor penalty proceedings were initiated against him in memo dated

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6.5.1991 (Annexure-1). The applicant has stated that on receipt of chargesheet he represented for holding a detailed enquiry into the charge. In memo dated 28.5.1991(not enclosed) he was directed to submit grounds for holding detailed enquiry, as prayed for by him. Again respondent no.4 issued a fresh chargesheet dated 24.6.1991 at Annexure-2 against the applicant on the self-same charge. There is only one article of charge in which it was alleged that the applicant while working as officiating S.D.I.(P), Balangir East) Sub-Division from 3.8.1986 to 31.1.1989, kept under his occupation the post-quarters earmarked for Sub-Post Master, Tikarpara S.O. He did not vacate the quarters for occupation of Makardhwaj Bhoi, the succeeding Sub-Post Master even after his posting as S.D.I.(P), Balangir (East) Division. It was a leased accommodation and was meant for the Sub-Post Master, Tikarapara S.O. to be used as post-quarters. In spite of occupying the said quarters he received House Rent Allowance from 3.8.1986 to 31.7.1987 at the rate of Rs.120/- per month and from 1.8.1987 to 31.1.1989 at the rate of Rs.220/- per month. Besides, he took payment of Rs.40/- per month and Rs.5/- per month for locating the office of Sub-Divisional Inspector (Postal) in his quarters and Rs.5/- per month for electricity charges. The applicant denied the charge in his letter dated 26.6.1991 (Annexure-3) and in Annexure-4 he had asked for supply of 11 documents. He also gave a list of 15 witnesses as his defence witnesses. But the inquiring officer examined 10 prosecution witnesses and four defence witnesses. Before the inquiring officer

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prosecution exhibited 12 documents and the defence exhibited 11 documents. The inquiring officer in his report held that the applicant is ^{not} ~~guilty~~ of the charge of not maintaining absolute integrity but is guilty of action unbecoming of a Government servant. The disciplinary authority in his order at Annexure-6 held that the charged official during the relevant period was living in the post-quarters of S.P.M., Tikarpara and notwithstanding this he had taken house rent allowance and office maintenance allowance and electric charges and has also not paid standard rent for occupation of the post-quarters. In view of this, the disciplinary authority held that the applicant is not required to refund the office maintenance allowance and deduct the amount from the total amount received by him as HRA and the amount recoverable from him as standard rent. The net amount recoverable from the applicant was worked out at Rs.7526.65 and in the order of punishment this amount was ordered to be recovered from the applicant. The applicant has prayed for quashing the Annexures on the grounds mentioned in the O.A. which will be referred to later in this order.

3. The respondents have filed counter opposing the prayers of the applicant. No rejoinder has been filed.

4. We have heard the learned counsel of both sides and have perused the records.

5. Before proceeding further it has to be noted that in disciplinary proceedings the Tribunal does not act as an appellate authority and cannot substitute its findings in place of the findings

10 arrived at by the inquiring officer and the disciplinary authority. The Tribunal can interfere only if reasonable opportunity has not been given or if principles of natural justice have been violated and if the findings are based on no evidence or are patently perverse. The submissions made by the learned counsel for the petitioner have to be examined in the context of the above well settled position of law.

6. It has been urged by the petitioner that the entire proceedings were initiated against him because Shri S.P.Das, the then Superintendent of Post Office, Bolangir Division, was prejudiced against him and at his instance the witnesses gave statements against the applicant. It is not possible to accept this contention because law is well settled that a person against whom allegation of mala fide is made, has to be impleaded as party by name so that he can appear and state his version of the matter. As the applicant has not impleaded Sri S.P.Das, the then S.P.O., Balangir Division, as a party by name, this contention of the applicant cannot be accepted.

7. The second point is that in the memo dated 6.5.1991 the chargesheet was issued to him under Rule 16 of the CCS (CCA) Rules and on the same charge a subsequent memo dated 24.6.1991 (Annexure-2) was issued. From the chargesheet dated 24.6.1991 it is seen that it has been specifically mentioned therein that this has been issued for conducting detailed enquiry after considering the request of the applicant to hold an enquiry under Rule 16(1-A). In any case we note that the charge in both the memoranda is exactly the same

S. Bom.

and the applicant has not shown how by issuing of the second memo he has been prejudiced. In view of this, the contention of the applicant is held to be without any merit and is rejected.

8. The petitioner has stated that he submitted an application to the inquiring officer to supply him 12 documents. From the enquiry report we find that the applicant exhibited 11 documents before the inquiring officer from his side and some of these documents are the ones called for by him. Thus, some of the documents asked for by him from the inquiring officer were exhibited during the enquiry. The applicant has not stated how by non-exhibition of other documents, he has been affected adversely. This contention is, therefore, held to be without any merit.

9. We have gone through the voluminous report of the inquiring officer and we note that the inquiring officer has held that the applicant while working as SDI(P), Balangir (East) Sub-Division, was occupying the quarters of SPM, Tikrapara. He came to the finding that the applicant, while working as SDI(P), was staying in the quarters meant for SPM, Tikrapara with the mutual understanding of the present S.P.M, Tikrapara. Thus, we find that on the question of the applicant occupying the quarters of SPM, Tikrapara, while he was working as SDI(P), Balangir (East) Sub-Division, the finding of the inquiring officer and the disciplinary authority is the same, and on the basis of the evidence discussed by the inquiring officer and the disciplinary authority, it cannot be said that this finding is based on no evidence or is patently perverse.

S. J. Som.

10. The learned counsel for the petitioner has submitted that the disciplinary authority differed from the finding of the inquiring officer, but the reasons for disagreement were not communicated to him and thereby he was prejudiced. We have earlier noted that as regards the finding ~~of the~~ that the applicant was occupying the quarters of SPM, Tikrapara, while working as SDI(P), Balangir(East) Sub-Division, there is no divergence of finding between the inquiring officer and disciplinary authority. The disciplinary authority has held that the inquiring officer has not taken note of certain other facts while holding that the charge of failure to maintain absolute integrity is not proved. The point to be noted in this connection is that the charge against the applicant is that he resided in the quarters meant for SPM, Tikrapara, while working as SDI(P), Balangir (East) Sub-Division and got house rent allowance payable to the SDI(P) for whom no quarters are provided. In view of this, we do not find that with regard to the charge and the finding on the charge, there is any disagreement between the inquiring officer and the disciplinary authority. This contention is also, therefore, held to be without any merit.

11. As regards punishment it is seen that the punishment is only for recovery of the amount got by the applicant by way of house rent allowance and non-deduction of standard rent of the quarters which he was occupying. We also find no illegality in the order of recovery.

S. Jom,

12. The learned counsel for the petitioner has relied on the decision of Y.K.Verma v. Union of India, 1988(1) SLR 15. In that case a Division Bench of the Tribunal at Jabalpur have held that in a disciplinary proceeding finding on a charge other than those included in the chargesheet is not sustainable. In this case the charge against the applicant that he was occupying the quarters meant for SPM, Tikrapara and he had at the same time and for the same period got house rent allowance has been held as proved during enquiry and also in the order of the disciplinary authority. No other charge has been held proved against the applicant. This decision, therefore, does not provide any support to the case of the applicant.

13. In view of our above discussions, we hold that the applicant is not entitled to the relief claimed by him in this O.A. which is accordingly rejected. No costs. Stay of recovery ordered on 2.4.1992 stands vacated.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
15.10.2001
VICE-CHAIRMAN

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