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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 272 OF 1992.

Cuttack this the 7th day of April, 1998.

PADMALOCHAN BEHERA.

....

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
7.4.98

S.K. Agarwal
(S.K. AGARWAL)
MEMBER(JUDICIAL)
7.4.98

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO. 272 OF 1992.

Cuttack this the 7th day of April, 1998.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. S.K. AGARWAL, MEMBER(JUDICIAL)

....

IN THE MATTER OF:

Shri Padma Lochan Behera,
aged about 42 years,
Son of late Paban Behera,
At/po. Simulia, via. Soro,
District Balasore.

....

APPLICANT.

By legal Practitioner : M/s. P. V. Ramdas, B.K. Panda,
Advocates.

-Versus-

1. Union of India represented by the
Chief postmaster General,
Orissa Circle, Bhubaneswar-751 001.
2. Director of Postal Services,
Sambalpur Region, Sambalpur-1.
3. Superintendent of Post Offices,
Balasore Division, Balasore-1.

....

RESPONDENTS.

By legal practitioner :- Mr. Aswini Kumar Mishra, learned
Senior Standing Counsel (Central).

....

Aswini
7/4/98

O R D E R

MR. S.K. AGARWAL, MEMBER(JUDICIAL):-

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed to quash the order of removal from service at Annexure-A/3 with a direction to Respondent No.3 to reinstate the applicant to service with all consequential service benefits.

2. In brief, the facts of the case, as stated by the applicant, are that the applicant was a Branch postmaster of Village Simulia in account with soro Sub Post Office in the District of Balasore. He was put off from duty with effect from 24.12.1986 by the Superintendent of Post Offices. This was followed by a Memo of charges issued by the applicant on 20.11.1987 vide Annexure-A/1 series. Briefly the charges of the applicant are that : (1) that the applicant failed to effect delivery of 42 Registered Articles during the period from 9.5.1986 to 17.12.1986 and that he showed in the B.O. journal that these registered articles to have been delivered;

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(2) that the applicant absented himself from duty unauthorisedly during working hours on 23.12.1986.; (3) that the applicant committed irregularity in not entrusting two M.Os of Rs. 80/- each to the E.D.D.A. for delivery to the payees. The applicant denied the charges in his written statement of defence dated 27.11.1987. His case in substance was that it was the EDDA who was mainly responsible for the omission and commission but he has been set scot free. The applicant further pleaded that the charges have been falsely levelled against him. An enquiry was held and the Enquiring Officer, in his report dated 23.10.1989 held that the charges are proved vide Annexure-A/2. On 30.10.1989, the enquiry report was supplied to the applicant and the applicant submitted his show cause on 15.11.1989. But the show cause filed by the applicant, was not taken into account and the Superintendent of Post Offices, in its order dated 16.3.1990 imposed the penalty of removal from service vide Annexure-A/3. Applicant preferred an appeal before the Respondent No.2 and the appeal was rejected on 23.1.1991 vide Annexure-A/4. Being aggrieved by this order of Respondents 2 and 3, the applicant has filed this original application with the aforesaid prayer.

3. Counter has been filed by the Respondents. In

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the counter, it has been stated that the applicant while working as Extra Departmental Branch Postmaster, Simulia Branch post Office in account with Soro Sub Office in the District of Balasore received 42 Regd. letters during 9.5.1986 to 17.5.1986 for delivery at the said B.O. The applicant, neither effected delivery of the articles himself nor entrusted the said articles to the delivery agent of the office for effecting delivery for a pretty long time till 17.12.1986. Non-delivery of these Regd. Letters were detected by the Sub Divisional Inspector of Posts, Soro Sub Division. The Regd. articles were also kept in deposit without any remark in the custody of the applicant. Further applicant absented himself during working hours on 23.12.1986 without any intimation and prior approval from the competent authority for which the Branch Office Mail bag dated 23.12.1986 containing letters for public and other documents were returned back. It is also submitted that the applicant, while working as such, received three money orders on 16.12.1986 for Rs. 310/- for effecting payment to the payees. But the applicant made over only two money orders with cash Rs. 150/- to the delivery agent of the office for effecting payment instead of entrusting all the three MOs with total cash of Rs. 310/- already available with him. The applicant further also detained one MO out of three MOs intentionally with false

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remark 'absent' without entrusting the said MO to the delivery agent of the office. For the above act of irregularities, the applicant was kept under put off duty with effect from 24.12.1986 by the Superintendent of Post Offices, Balasore Division, Respondent No. 3. The whole case was examined thoroughly and it was decided to proceed against the applicant under rule-8 of EDAs Conduct and Service Rules, 1964. Accordingly charge sheet was issued to the applicant vide SPOs Balasore Division Memo No. L-90 (Sub-1), dated 20.11.1987 which is at Annexure-A/1 to the application. The applicant denied the charges levelled against him vide his written application dated 27.11.1987. Thereafter, enquiry under rule-8 was ordered by the Appointing Inquiring Officer and Presenting Officer. The applicant was given all reasonable opportunities to defend his case. He was also allowed to take assistance of another Government official to assist him during the enquiry. After enquiry, the Inquiring Officer, in his report held all the charges levelled against the applicant proved. Thereafter, a copy of the said report was supplied to the applicant to prefer representation, if any on 17.11.1989. The disciplinary authority examined the enquiry report, representation filed by the applicant and all other relevant documents such as depositions of the witnesses etc. and order of removal from

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service was issued by the Superintendent of Post Offices, vide its memo dated 16.3.1990 which has been filed as Annexure-A/3 to the application. The applicant preferred an appeal on 2.5.1990 against the said order of removal from service to the Post Master General Sambalpur, instead of making the same to the Director of Postal Services, Sambalpur, who is the appropriate appellate authority. The said appeal was returned to the applicant for re-submission after addressing to proper appellate authority. Again the said appeal was received on 5.6.1990 and was forwarded to the appellate authority on 27.6.1990. The appellate authority went through the case very carefully with reference to all the relevant records and found that all reasonable opportunities were extended to the petitioner and also the applicant had exhausted all possible avenues to sustain his points. It was observed by the Appellate Authority that the order of removal from service awarded by the Disciplinary Authority to the applicant was proportionate to the charges levelled against him and thus, rejected the appeal vide order dated 23.1.1991 vide Annexure-A/4 to the counter. It is submitted that in view of this, the applicant is not entitled to any relief prayed for. It is further stated that the applicant was supplied with a copy of the report of the Inquiring Officer with instruction to prefer representation, if any, to the Disciplinary Authority, and the applicant submitted his representation on 15.11.1989

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which was received by the Disciplinary Authority on 17.11.1989. The applicant, did not point out any lacuna in the enquiry and also did not point out any thing to differ with the findings of the Inquiring Officer. All the documents including the report of the Inquiring Officer and the representation of the applicant, were duly taken into account before finalising the case of the applicant and thereafter, the applicant was not considered to be fit person for retention in service and was removed from service vide SPO's Balasore Division Memo No.L-80(Sub-1), dated 16.3.1990. It is further stated by the Respondents that it is the duty of the applicant to receive the article and note in office B.O. journal and hand over to the Delivery agent for effecting delivery. After delivery, the signed receipts of the addressee's are to be kept with the custody of the applicant as office record. But it has been established vide Annexure-A/2 1st para of page-17 that the Regd. articles in question were not handed over to SW-4 delivery agent of the Branch Office for effecting delivery. The charges levelled against the applicant have been proved during the enquiry and the Inquiring Officer, has rightly acted upon basing on the facts and record and given full opportunity of hearing to the applicant during the enquiry which would be evident from the records. The Disciplinary Authority has also examined the case of the applicant very

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Carefully taking all records into consideration and passed the order of removal from service which is quite justified as per the rules of the Department. It is therefore, requested by the respondents that the original application has no merit and is liable to be dismissed.

4. We have heard Mr. P.V.Ramdas, learned counsel for the applicant and Mr. Aswini Kumar Mishra, learned Senior Standing Counsel for the Respondents.

5. Learned counsel appearing on behalf of the applicant, submitted that the Disciplinary Authority did not deal with the representation of the applicant filed before passing the impugned order at Annexure-3. In support of his contention he has referred the following citations; (1) A.I.R. 1996 SC 1669 (STATE BANK OF PATIALA VRS. S.K. SHARMA); (2) A.I.R. 1997 SC 3387 (UNION OF INDIA VRS. G. GANAYUTHAM); and (3) AIR 1992 Orissa Page 261 (K.C.PALLIA VRS. UNION OF INDIA AND OTHERS). It has also been submitted by the learned counsel for the applicant that no case of misappropriation is proved as against the applicant on the basis of the evidence produced before the Inquiring Officer.

6. On the other hand, learned Senior Standing Counsel, Sri Aswini Kumar Mishra, on behalf of the Respondents, submitted that the disciplinary authority has considered the representation filed by the applicant on 15.11.1989 and after

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taking into consideration of the said representation, submitted by the applicant, the disciplinary authority agreed with the findings of the Inquiring Officer and passed the impugned order at Annexure-A/3. He has also submitted that in the matters of Disciplinary proceedings, the Tribunal can not act as an Appellate Authority and can not weigh the evidence laid by the parties before the Enquiring Officer and thereby can not substitute his own conclusion. He has further submitted that the Inquiring Officer, while enquiring in the matter, has given full opportunity of hearing to the applicant and at no stage of proceeding, there has been any violation of principles of natural justice.

7. We have given our thoughtful consideration to the contentions of rival parties and perused the whole records.

8. It is not in dispute that copy of the enquiry report was supplied to the applicant and the applicant submitted his representation for consideration by the Disciplinary Authority before passing the impugned order at Annexure-A/3.

9. Annexure-A/3, is the order of the Disciplinary Authority, i.e. Superintendent of Post Offices, Balasore Division. In this order at page-1, it has been mentioned as follows:-

Read the followings:-

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- 1) This Office Memo No.L-80(sub-1) dated 20.11.1987.
- 2) Report of the I.O., Shri B.K.Parida, dated 23.10.1989.
- 3) and the representation of Shri Padmalochan Behera, BPM, Simulia (under put off duty) dated 15.11.1989."

At page-2 of the said report, the following has also been mentioned:-

"On receipt of the report of the IO, a copy of the enquiry report was supplied to Shri Behera vide this office letter No.L-80(sub-1) dated 30.10.1989. Shri Behera was informed to submit his representation if any, within 15 days of receipt of the I.O. report. Shri Behera submitted his representation on 15.11.1989.

I have gone through the report of the I.O. representation of Shri Behera and other connected documents. The I.O. has held the enquiry giving reasonable opportunity to both the parties. No procedural lacuna appears to have been left by the I.O. nor the I.O. appears to have violated any natural justice".

10. It would be evident from Annexure-A/3, that the Disciplinary Authority has considered the explanation of the applicant and after due application of mind, impugned order at Annexure-A/3, was passed. Therefore, the impugned order at Annexure-A/3 can not be held as bad in law and at no stretch of imagination, it can be held that there has been any violation of principles of natural justice in this case.

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11. We have also given our thoughtful consideration to the citations as referred by the learned counsel for the applicant. Looking to the facts and circumstances of this case, and in view of the fact that the disciplinary authority has considered the explanation submitted by the applicant, before passing the impugned order at Annexure-A/3, the citations as referred to above, are not applicable in the instant case.

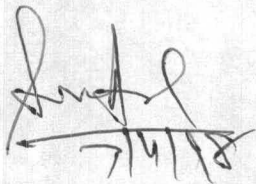
12. As regards the second contention of the learned counsel for the applicant is for determination as to whether the Court or Tribunal can appreciate the evidence and may reach of its own findings in a disciplinary proceeding. Judicial review in the disciplinary or departmental enquiries have been appreciated by the Hon'ble Supreme Court from the very beginning in the year 1972. The Hon'ble Supreme Court in the case of UNION OF INDIA VRS. SARDAR BAHADUR reported in (1972) 4 SCC 618 observed as follows:-

"A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that Nand Kumar was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court can not sit as a court of appeal over a decision based on it. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of evidence can not be canvassed before the High Court".

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13. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A. The same consistent view, as above, was taken by the Hon'ble Apex Court in B.C. Chaturvedi Vrs. Union of India reported in (1995) 6 SCC 749, State of Tamilnadu Vrs. T.V. Venugopalan, reported in (1994) 6 SCC 302, Union of India Vrs. Upendra Singh reported in (1994) (4) SLR 626 (SC), (1994) (1) SLR 831 (SC), Government of Tamil Nadu Vrs. A Rajapandian and (1995) 1 SCC 216) (SCC para 4) B.C. Chaturvedi Vrs. Union of India

14. On the basis of the above propositions of law, if we consider the contentions of the learned counsel for the applicant, in the present case, then we come to the conclusion that mis-conduct alleged against the applicant can not be said to be based on no evidence and this Tribunal can not appreciate the evidence produced before the Enquiring Officer and can not substitute its own conclusion as this Tribunal is not the Appellate Authority for the applicant. Therefore, no interference in the conclusion arrived by the Inquiring Officer is called for in the present case. Therefore, on the basis of the above all,


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we are of the opinion that the contentions advanced by the learned counsel for the applicant has no force. The Disciplinary Authority, after considering the enquiry report and the representation of the applicant, has passed the penalty of removal of the applicant from service. The charge against the applicant is that he failed to effect the delivery of 42 registered articles during the period from 9.5.1986 to 17.5.1986 and that he showed in the BO journal that these registered articles to have been delivered and the applicant absented himself from duty unauthorisedly during the working hours on 23.12.1986. The third charge as against the applicant is that he had committed irregularity in not entrusting two MOS of Rs. 80/- each to the EDDA for delivery to the payees stands proved. Therefore, looking to the gravity of the charge proved, against the applicant, penalty of removal can not be said to be disproportionate. In B.C. Chaturvedi's case (supra), the Hon'ble Supreme Court makes it abundantly clear that where the punishment imposed shocks the conscience of the High Court or Tribunal, it can appropriately mould the relief (as per K. Ramaswamy J, and Shri B.P. Jeevan Reddy J.). The view of the Hon'ble Supreme Court, has been very consistent that the High Court or Tribunal exercising powers of judicial review, can not interfere with the punishment imposed by the Disciplinary Authority and further held that though it comes to the conclusion that the

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punishment is shockingly disproportionate, the proper course open for the Court or Tribunal would be to remand the matter to the Disciplinary or Appellate Authority. Hon'ble Apex Court in the case of Union of India Vrs. Parma Nanda reported in 1989 Lab.IC 1338 and Rangaswami Vrs. State of Tamil Nadu reported in AIR 1989 SC 1137 held that the Supreme Court is empowered to alter or interfere with the penalty while exercising jurisdiction under Article 136 and that the Tribunal had no power to substitute its own discretion for that of the Authority. The Hon'ble Supreme Court in the case of INDIAN OIL CORPORATION VRS. ASHOK KUMAR ARORA reported in AIR 1997 SC 1030 has set this controversy at rest and held that High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate Court/authority. The jurisdiction of the High Court in such cases is very limited, for instance, where it is found that the domestic enquiry is vitiated because of nonobservance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence, and/or the punishment is totally disproportionate to the proved misconduct of an employee.

15. In the instant case, the proved misconduct of the employee does not warrant any leniency in the matter and we therefore, hold that the punishment awarded in the impugned order does not warrant any interference by this Tribunal.

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16. We, therefore, hold that the applicant has failed to make out any case for interference by this Tribunal. Therefore, the Original Application filed by the applicant, is dismissed but in the circumstances, without any order as to cost.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 98

S.K. Agarwal
(S.K. AGARWAL)
MEMBER (JUDICIAL)

KNM/CM.