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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 376 OF 1992
Cuttack this the 17th day of December, 1999

B.C.Mohapatra

Applicant(s)

-versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? **Yes**
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? **No**

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
17.12.99

G.Narasimham
(G.NARASIMHAM)
MEMBER (JUDICIAL)
17.12.99



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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.376 OF 1992
Cuttack this the 17th day of December, 1999

CORAM:

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

B.C.Mohapatra, D.O.S.L. II
S/o. Late Lambodar Mohapatra
Office Superintendent, Central Excise
and Customs, Collectorate, Rajaswa Vihar
Bhubaneswar-4, Dist: Puri

...

Applicant

By the Advocates : M/s.P.C.Kar
J.Gupta

-Versus-

1. Union of India represented by the Secretary, Central Board of Excise and Customs, New Delhi
2. Collector, Central Excise and Customs, Rajaswa Vihar, Bhubaneswar
3. Additional Collector (P & V), Central Excise and Customs, Rajaswa Vihar, Bhubaneswar
4. D.N. Patnaik (Inquiring Officer) to Assistant Collector, Central Excise, Rayagada Dist
5. Chief Accounts Officer, Central Excise and Customs, Bhubaneswar, District : Puri

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Respondents

By the Advocates : Mr.U.B.Mohapatra
Addl.Standing Counsel
(Central)

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ORDER

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MR.G.NARASIMHAM, MEMBER(JUDICIAL) In this application for quashing the entire proceedings under Annexure-1 dated 22.8.1982, enquiry report supplied to the applicant under Annexure-3 dated 12.5.1992, punishment order under Annexure-5 dated 29.7.1992 passed by the disciplinary authority and other consequential relief(s), the applicant, while serving as Deputy Office Superintendent(Level-II) under the Collector, Central Excise, Bhubaneswar, was served with memo of charges under Annexure-1. Charges are under two heads; for violation of Rule-3(1)(i) of C.C.S.(Conduct) Rules, 1964 and for failure to maintain absolute integrity by taking the Government money by xxxxx in advance for specific purpose, but not utilised for that purpose and failure to maintain devotion to duty by remaining absence unauthorisedly on flimsy grounds.

2. Under charge No.1, it is averred that the applicant was sanctioned and disbursed the following advances but did not utilise the same for those purposes nor did he refund or deposit the said amount as per rules;

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- a) In response to his letter dated 1.1.1980 for going on L.T.C. with family to New Delhi he was advanced Rs.1980/- which was paid to him on 1.1.1980. As he did not utilise the amount for that purpose and did not refund the amount, this advanced amount was recovered from his pay in five instalments from February, 1980 to June, 1980
- b) On 4.2.1981 he had applied for L.T.C. advance of Rs.3600/- to visit Rameshwaram, Kanyakumari and southern parts with family. He was sanctioned Rs.3200/- towards advance, but he did not utilise the amount for that purpose. Hence an amount of Rs.1844/- had to be recovered in three instalments from his pay from July, 1981 to August, 1981. The balance of Rs.1356/- was still outstanding
- c) He was sanctioned T.A.advance of Rs.350/- to go to Calcutta to undergo training course from

20.7.1981 to 27.7.1981 and was directed to report at Calcutta on 20.7.1981 positively. Neither he did go to Calcutta nor refund the amount. On the other hand in letter dated 28.8.1981 intimated that the recovery of the amount can be mentioned in his L.P.C. in case of transfer for recovery from T.A. bill.

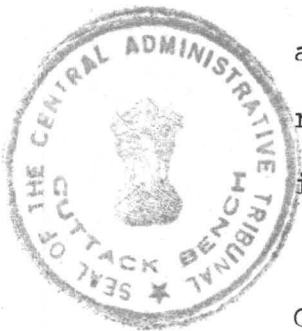
Thus he has violated Rule-235 of G.F. Rules.

The second charge is in relation to his unauthorised absence on flimsy grounds by applying leave in piece-meal. The periods are from 13.2.1981 to 19.3.1981, 9.6.1981 to 26.6.1981, 21.7.1981 to 23.7.1981, 31.8.1981 to 4.10.1981 and 12.10.1981 to 1.12.1981 (details mentioned in the charge).

3. Charges having been denied, enquiry was held. On the basis of enquiry report, the disciplinary authority, in order dated 11.10.1984 reduced the applicant to the stage of Rs.440/- in the time-scale for a period of one year. The appellate authority confirmed this order of the disciplinary authority. As against the order of the appellate authority the applicant preferred revision. The revisionary authority in order dated 24.7.1989 did not interfere with the order of the disciplinary authority.

Thereafter the applicant on 23.7.1990 filed Original Application 381/90 challenging the entire proceeding and the orders thereon. On 23.4.1992, the then Division Bench of this Tribunal, without going through the merits of the case allowed the application on technical ground with the following direction under Annexure-2.

"Therefore, we do hereby quash the order of punishment contained in Annexure-3 and the appellate order confirming the order of punishment and we would remand this case to the disciplinary authority with a direction that as an abandon precautionary measure a copy of the enquiry report be furnished to the applicant within 15 days from



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the date of receipt of a copy of this judgment and within 15 days therefrom the applicant would file a representation and in case he expressed to be heard in person, the same opportunity should be given to him and within 30 days therefrom the disciplinary authority should pass final orders".

Thereafter the applicant was furnished with copy of the enquiry report vide Annexure-3 for representation and so on. The disciplinary authority in order dated 29.7.1992 (Annexure-5) reduced the applicant to the lower post of D.O.S.(Level-I) for a period of one year with effect from 1.8.1992 and on restoration to the post of Office Superintendent future increments would be postponed for a period of one year. Thereafter he preferred this Original Application on 3.2.1992.

4. The main grounds urged in this application are that the impugned order of the disciplinary authority having passed beyond the time limit as prescribed by this Tribunal in O.A.381/90 is illegal and cannot be acted upon. At the time of personal hearing, no opportunity was afforded to him inasmuch as the disciplinary authority only communicated the enquiry report without any proposed punishment and as such the impugned order is bad in law. Some findings of the enquiring authority as not proved have been differed by the disciplinary authority and before the disciplinary authority disagreed with those findings had not intimated the applicant as to his tentative decision in this regard and as such principles of natural justice have been violated. Further, documents applied for by him were not supplied to him. Even on the facts alleged no case of misconduct comes into picture.

5. Respondents in their counter say that there was no delay at all in passing the impugned order inasmuch as it was passed within 30 days from the date of personal



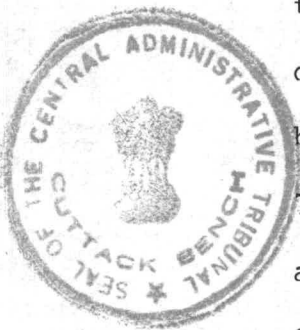
hearing to the applicant. In regard to personal hearing, it is the stand of the Department that the applicant was afforded reasonable opportunity. Under law the disciplinary authority has got discretion to disagree with the findings of the enquiring authority given in favour of the delinquent. The applicant had opportunity to go through all the relevant documents. Principles of natural justice, as submitted by the respondents, were in no way violated.

6. On 11.8.1992, the application was admitted and the order of reversion of the applicant was stayed subject to the condition, i.e., as per the undertaking given by Shri P.C.Kar, learned counsel for the applicant that in case the Original Application would be dismissed on merits, then the order of reversion would be effective from the date of disposal of the application or from a date as to be directed by this Bench.

7. We have heard Shri P.C.Kar, learned counsel for the applicant and Shri U.B.Mohapatra, learned Addl.Standing Counsel appearing for the respondents. Also perused the records.

Charges were framed in the year 1982. Even on 23.7.1990, when the applicant earlier filed O.A.381/90, challenging the departmental proceedings, the same was barred by limitation under Section 21 of the A.T.Act. Even the present Original Application is also barred by limitation under Section 21 of the A.T.Act so far as this prayer is concerned.

Even in the Original Application the applicant has stated that he was given personal hearing on 7.7.1992. The impugned order was passed by the disciplinary



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authority on 29.7.1992, which means that order was passed within 30 days from the date of personal hearing. Hence the disciplinary authority had not at all passed the impugned order beyond the time limit as directed ^{by} this Tribunal in O.A.381/90. Even if the disciplinary authority would have passed the impugned order beyond 30 days from the date of personal hearing that by itself would not ^{make the order} be illegal. The learned counsel for the applicant could not cite any authority in support of his contention that under such contingency the order would be illegal and not binding.

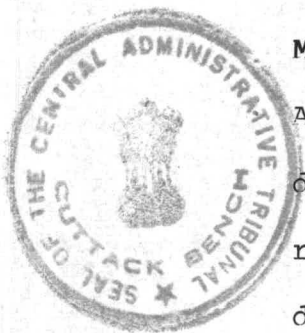
Admittedly on 7.7.1992, personal hearing of the applicant was held. The applicant in his application did not specifically aver as to how he was not afforded reasonable opportunity. In fact as the pleadings reveal that the applicant after being supplied with copy of the enquiry report submitted an elaborate representation and thereafter he was afforded an opportunity of personal hearing. Simply avering that he was not afforded reasonable opportunity will not establish that the personal hearing is nothing but a farce.

In regard to averment as to non supply of documents, the application is also not clear. It is not as though the Department is bound to supply whatever documents a delinquent demands. Copies of documents which are relevant for the purpose of proceeding need to be supplied and in case the documents are voluminous, the delinquent would be provided an opportunity to peruse the same. Hence averment in this regard is vague.

On perusal of the enquiry report and the report of the disciplinary authority, it is seen that the



disciplinary authority held the following imputations as proved though the enquiring authority held the same to be not proved. They are : imputation in regard to L.T.C. advance of Rs.3200/- in connection with the trips to Rameshwaram, Kanyakumari and southern parts; imputation regarding unauthorised absence from duty from 12.2.1981 to 19.3.1981; and unauthorised absence from duty from 21.7.1981 to 23.7.1981. But the disciplinary authority agreed with the enquiring officer that the applicant was not on leave unauthorisedly on 27.6.1981. It is true there is nothing on record that the disciplinary authority while disagreeing with the findings of the enquiring authority had intimated his tentative decision to the applicant. In **Yoginath D.Bagade vs. State of Maharashtra** reported in **Judgment Today 1999(6) SC 62**, the Apex Court following their earlier decisions held that disciplinary authority has to communicate his tentative reasons for disagreement to the delinquent, so that the delinquent may further indicate these reasons are not germane and the finding of the enquiring officer is not liable to be interfered with. In view of this legal position, these findings of the disciplinary authority disagreeing with the findings of the enquiring authority in favour of the applicant cannot be sustained. However, the disciplinary authority held other imputations established. After going through the enquiry report and report of the disciplinary authority along with the representation of the applicant, we find, the disciplinary authority has exhaustively dealt these imputations with reference to materials on record and his reasonings on this score cannot be interfered with, more



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so, when this Tribunal is not an appellate authority over the disciplinary authority.

Findings are that some of the amounts received by the applicant as advance towards L.T.C. and T.A. have not been utilised by him for the purpose for which they were advanced. The applicant had also not refunded those amounts for which the same had to be recovered from his salary on different occasions. In other words, he had misutilised those amounts and this in turn ^{would} tell upon his integrity. Similarly he was held to be absent unauthorisedly on some occasions. Learned counsel for the applicant could not cite any authority in support of his contention that unauthorised absence does not lead to disciplinary proceeding. On the other hand, the Apex Court in *Union of India vs. B.Dev* reported in 1998 AIR SCW 2758 held unauthorised absence or disobedience to join and so on would amount to grave misconduct, which in turn established lack of devotion to duty and doing of which is unbecoming of a Govt. servant.



It is true, the leave applied through applications submitted in piece-meal for different spells of absence have since been sanctioned. But this was long after the finalisation of the proceeding by the disciplinary authority in the year 1985, which ^{order} year of the disciplinary ^{authority} proceeding of course was quashed by this Tribunal on a technical point. Hence simply because the leave applications, may be on account of compassionate view, taking into consideration punishment imposed in the disciplinary proceedings were sanctioned, it would not amount to automatic cancellation of the punishment order imposed in the disciplinary proceeding.

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The punishment imposed is by no means is disproportionate to the gravity of the charges established. We are, therefore, not inclined to interfere with regard to quantum of punishment.

For the reasons discussed above, we see no merit in this application which is accordingly dismissed leaving the parties to bear their own costs.

Interim order dated 11.8.1992 if any continued till date stands vacated. In view of disposing of this Original Application holding that application has no merit and reversion order passed by the disciplinary authority will be effective from to-day.

Registry to send copies of the order to the parties concerned forthwith.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
17.12.99

B.K.SAHOO



17.12.99
(G.NARASIMHAM)
MEMBER (JUDICIAL)