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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 186 OF 1994

Cuttack this the 29/11 day of November, 1999

Hrudananda Giri

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 yes - Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

29/11/99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.186 OF 1994
Cuttack this the 29th day of November, 1999

CORAM:

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

Hrudananda Giri
aged about 47 years,
S/o. Sri Maguni Giri
Vill/PO: Naksara, Via: Raruan
Dist: Mayurbhanj

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Applicants

By the Advocates : M/s.P.V.Ramdas
P.V.B.Rao

-Versus-

1. Union of India represented by the
Chief Post Master General
Orissa Circle,
Bhubaneswar-751001
2. Director
Postal Services (HQ)
Orissa,
Bhubaneswar-751001
3. Superintendent of Post Offices
Mayurbhaj Division
At/Po: Baripada,
Dist: Mayurbhanj, Pin: 757 001

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Respondents

By the Advocates : Mr.A.K.Bose
Sr.Standing Counsel
(Central)

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ORDER

(7)

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Hrudananda Giri, in this application seeks quashing of orders of the disciplinary authority dated 31.12.1991(Annexure-7) and of the appellate authority confirmation order dated 2.8.1993(Annexure-8)/removing him from the post of Extra Departmental Branch Post Master, Nakasara Branch Office in Mayurbhanj Postal Division in a disciplinary proceeding initiated through Memo dated 26.12.1988(Annexure-1) and for his reinstatement with consequential service benefits.

His case is that he was appointed as Extra Departmental Branch Post Master, Nakasara in the year 1982. By order dated 1.4.187 he was put off duty by the Inspector of Post Offices, subsequently confirmed by the Superintendent of Post Offices, Mayurbhanj Division in his order dated 6.4.1987. The charges framed against him are three in number. Charge No.1 is that he did not account for Rs.20, Rs.30/- and Rs.10/- received by him on 24.9.1985, 30.9.1985 and 3.12.1985 respectively from Shri Chaitanya Giri for deposit in his S.B.Account No.263716. Charge No.2 is that he had accepted Rs.60/- on 24.4.1982, Rs.67/- on 19.11.1982 and Rs.72/- on 25.3.1983 and though he allowed withdrawal of Rs.50/- on 4.7.1983 from the S.B.Account No.262826 as mentioned in the Passbook, he had failed to show these transactions in the S.B.journal and in the B.O. Account Book. The remaining charge is that he received Rs.139/- for deposit in S.B.Account No.263275 on 25.5.1983, but he failed to incorporate the transaction in the S.B.journal and B.O. Account Book and thereby he contravened Rules 131(iii) and 134(ii) of the Postal

manual and thus failed to maintain devotion to duty as required under Rule-17 of the F.D.A.(Conduct & Service) Rules, 1964 (herein after referred to rules).

These charges were at first enquired and the Inquiring Officer in his report dated 18.5.1989 held charge No.1 to have been proved and other two charges have not been proved. The Superintendent of Post Offices, i.e., the disciplinary authority in his order dated 24.5.1989 disagreed with the report of the Inquiring Officer in regard to findings under Charge No.3. Thus he held charge No.1 and 3 to have been proved and charge No.2 not proved and passed order of removal from service. The applicant preferred an appeal to the Director of Postal Services, who confirmed the order of removal from service.

The applicant then preferred Original Application No.498/89 before this Tribunal challenging the order of removal. This Bench by judgment dated 15.11.1990 (Annexure-2) quashed the order of removal from service on two grounds, i.e., no opportunity was given to the applicant to make representation against the finding recorded by the Inquiring Officer on Article I of the charge, and the applicant was also not heard with respect to the finding on which the disciplinary authority differed from the Inquiring Officer, and that the prayer of the applicant before the inquiring authority for appointment of defence assistant was rejected on hyper technical ground when such request was made to him before the examination of witnesses and other steps in the matter of enquiry had not commenced and thereby the applicant was denied natural justice.

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Pursuant to the aforesaid order of the Tribunal the disciplinary authority by order dated 21.1.1991 (Annexure-3) set aside the order of removal from service with immediate effect, but directed that in view of the pendency of the disciplinary proceeding the applicant would continue to be under put off duty. This order was challenged by the applicant before the appellate authority, who by order dated 3.5.1991 (Annexure-4) confirmed the order of the disciplinary authority by observing that C.A.T. had quashed the order of removal only on technical ground and it had not debarred the disciplinary/appointing authority from further proceeding. Thereafter, by order dated 23.5.1991 (Annexure-5) the disciplinary authority appointed one Shri G.C.Kar, A.S.P.O. as the inquiring authority to hold inquiry under Rule-8 of the Rules from the stage of nomination of A.P.S. by the applicant. This inquiring authority held all the three charges proved (Annexure-6). A copy of the enquiry report was supplied to the applicant for his representation, if any. The disciplinary authority thereafter considered the enquiry report, representation of the applicant and by order dated 31.13.1991 (Annexure-7) confirmed the report of the Inquiring Officer and imposed penalty of removal from service. The appellate authority by order dated 2.8.1993 (Annexure-A/8) confirmed this order of the disciplinary authority.

Hence this Original Application. The aforesaid facts are not in controversy. It has been urged in the Original Application that since this Bench under Annexure-2 quashed the previous order of penalty

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of removal from ~~the~~ service, the Department had no further jurisdiction to proceed with fresh enquiry on the same allegations. Further since the order of put off duty passed on 1.4.1987 lapsed with the earlier order of removal passed on 24.5.1989, no ~~any~~ order of put off duty off duty ~~did~~ subsists and as such the disciplinary authority was clearly wrong in holding that the applicant would continue to be under put off duty. It was further urged that the findings recorded by the Inquiring Officer, disciplinary authority and the appellate authority are based on no legal evidence and perverse and that no reasonable opportunity was afforded to the applicant during enquiry.

2. Respondents (Department) in their counter though did not challenge the factual aspect, justified the order for enquiry from the stage of nomination of defence assistant, because, this Tribunal quashed the earlier order of removal only on technical ground. Further, the findings of the enquiring authority, disciplinary authority and the appellate authority are based on evidence and principles of natural justice have not been violated.

3. We have heard Shri P.V.Ramdas, learned counsel for the applicant and Shri A.K.Bose, learned Sr. Standing Counsel appearing for the respondents. Also perused the records ^{and} so also the record of Original Application No. 499/89.

4. Shri Ramdas, learned counsel for the applicant raised the following contentions :

- a) Since the order of put off duty lapsed with the earlier order of removal and since the order of removal was quashed by this

Tribunal, the disciplinary authority could not have ordered the applicant to continue under put off duty, but should have reinstated him forthwith;

- b) since the order of removal was quashed, the disciplinary proceeding could not have been revived and at any rate fresh enquiry could not have been ordered; and
- c) in the enquiry held afresh, new witnesses and some documents not examined or relied in the previous enquiry were relied to the prejudice of the applicant.

Shri A.K.Bose, the learned Sr.Standing Counsel appearing for the respondents on the other hand submitted that these contentions do not hold water.

5 We may at first take up the first contention of Shri Ramdas that once the order of removal was quashed by this Tribunal, the applicant could not have continued under put off duty. Contention of Shri Ramdas, learned counsel for the applicant is that the disciplinary proceeding under E.D.Aagents(Conduct & Service) Rules, 1964 are not necessarily guided under the provisions of CCS(CCA) Rules, 1965, but under Rule-8 of the E.D.Aagents Rules. Rule 8 in substance lays down that penalty of dismissal/removal from service shall not be imposed except after an enquiry in which the employee has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges. In other words, the enquiry has to be made without overlooking the principles of natural justice. However, D.G.(P&T) in letter dated 16.1.1980 gave the following instructions :

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 "While it would be necessary to follow the provisions of Rule-14 of CCS(CCA) Rules, 1965, literally in the case of F.D. Agents it would be desirable to follow the provisions of that rule in spirit so that there may be no occasion to challenge that the opportunities under Article 311 (ii) of the Constitution were not provided."

Article 311(ii) of the Constitution in substance says that no employee shall be dismissed/removed/reduced in rank except after an enquiry in which he has been informed of the charges and given a reasonable opportunity of being heard in respect of these charges. In other words, this provision lays down that in a disciplinary proceeding the concerned employee has to be given reasonable opportunity to defend himself, i.e., principles of natural justice to the prejudice of the concerned employee cannot be violated in a disciplinary proceeding. Thus it comes to this, only those provisions of CCS(CCA) Rules which are based on principles of natural justice are to be followed in a disciplinary proceeding under Rule-8 of the Rules.

We are aware that under Rule-10(4) of the CCA Rules, 1965, where a penalty of dismissal/removal/compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by decision of a Court of Law and the disciplinary authority on consideration of the circumstances of the case decides to hold a further enquiry against him on the same allegation, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of original order of

dismissal/removal/compulsory retirement and shall continue to remain under such suspension until further orders, provided that no such further enquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical ground without going into the merits of the case. This particular provision under CCA Rules vests discretion on the disciplinary authority to allow the concerned Govt. servant to continue to remain under suspension once the order of removal/termination is quashed by a Court of Law, but this ~~similar~~ provision does not find place in the E.D.A. Rules, 1964. Hence it has been contended by the learned counsel for the applicant Shri Ramdas that the disciplinary authority could not have ordered the applicant to continue under put off duty after the earlier order of removal was set aside by this Tribunal. In this connection he placed reliance on the decision of the Constitution Bench of the Supreme Court in the case of **Om Prakash Gupta vs. State of U.P.** reported in AIR 1955 SC 600. The Supreme Court had to answer this particular point while dealing with the provisions of CCA Rules of 1930 published in the United Province Gazette dated 28.6.1930 wherein there was no provision akin to Rule-10(4) of the CCA Rules, 1965. In the absence of any such provision the Apex Court in Para-12 of the judgment held that by order of dismissal, by way of penalty, the order of suspension lapsed, because the order of dismissal replaced the order of suspension and the subsequent decision by a Civil Court that the order of dismissal was illegal could not revive the order of suspension which did not

exist. This was reiterated by the Apex Court in **H.L.Mehera vs. Union of India & Ors.** reported in **ATR 1974 SC 1281** with reference to Rule-10 of the CCA Rules, 1965. In that case appellants H.L.Mehera was placed under suspension on 11.4.1963 because of pendency of a criminal offence against him and this suspension order ultimately led to dismissal on conviction by the Criminal Court. The order of dismissal was ultimately set aside by the competent Court of Law. Relying on **Om Prakash Gupta case (Supra)** the Apex Court held that once the suspension has come to an end by an order of dismissal, which was effective when made it can not be revived by mere subsequent setting aside the order of dismissal in the absence of a statutory provision or rule to that effect. And that is precisely the reason why Sub-rules 3 and 4 had to be introduced in Rule-10 of CCA Rules providing for retrospective revival and continuance of suspension in cases falling within those Sub-rules.

As earlier stated **E.D.A. (Conduct & Service) Rules, 1964** do not provide any provision akin to Rule-10 of CCA Rules. Hence, we have no hesitation to accept the contention of the learned counsel for the applicant **Shri P.V.Ramdas** that by quashing of the earlier order of removal by this Tribunal, the put off duty order no more subsisted and the applicant was supposed to be on duty since the order of removal was quashed.

However, we feel legal difficulty to quash the order dated 21.1.1991 passed by the disciplinary authority in so far as continuation of put

off duty of the applicant is concerned. This order was passed on 21.1.1991. An appeal was preferred against this order. This appeal was disposed of on 2.5.1991 (Annexure-4). Hence in this Original Application filed on 30.3.1994, this portion of the order would not have been challenged, because it is barred by limitation under Section 21 of the Administrative Tribunals Act.

Coming to the contention of Shri F.V.Ramdas that the proceeding could not have been revived after this Bench quashed the order of removal, we would like to point out that this Bench in order dated 15.11.1990(Annexure-2) only quashed the order of removal of the applicant from service. There is no specific order quashing the proceedings altogether. Even the order of removal was quashed, not on merit, but on the following technical grounds :

- a) no opportunity was given to the applicant to make representation against the findings as recorded by the Inquiring Officer with regard to Article-I of the Charge held to have been proved;
- b) the applicant was also not given the opportunity of hearing in respect of the findings of the disciplinary authority in regard to Article-III of the charge before the disciplinary authority held the charge to have been proved differing from the finding of the enquiring authority; and
- c) the prayer for engagement of a defence assistant made by the applicant was rejected by the enquiring officer on a hyper technical ground.

Thus it is evident that this Tribunal, through its order dated 15.11.1990 did not intend that the proceedings as such cannot be revived. At the same time it cannot be said that there is no force in the contention of the learned counsel for the applicant

that the enquiry could not have been ordered afresh by the disciplinary authority, and that the 2nd enquiry was conducted afresh as is evident from the order dated 23.5.1991 passed by the disciplinary authority vide Annexure-A/5. The disciplinary authority appointed a fresh enquiring authority to enquire into the matter from the stage of nomination of A.P.S. by Shri Giri. The report of the first enquiring officer marked as Annexure-1 to the Original Application No.498/89 will reveal that after rejection of the prayer of the applicant in regard to engagement of defence assistant, witnessess were examined and documentary evidence exhibited. In other words prior to the stage of nomination of defence assistant, no enquiry as such in the matter of examination of witnesses and exhibition of documents had taken place. Hence by this order dated 23.5.1991 of the disciplinary authority, it is clear that fresh enquiry was ordered. This is also clear from the observation of the appellate authority in his order dated 2.8.1993 (Annexure-8) to the effect that in obedience to the judgment of the Tribunal it was decided to hold enquiry afresh.

Question arises whether fresh enquiry can be ordered once the punishment order is quashed by a competent Court of Law or set aside by a higher authority on some procedural lapse and not on merit. Before dealing with this aspect of the matter it should not be forgotten that earlier the applicant approached the Tribunal in O.A.498/89 challenging the order of removal passed by the disciplinary authority on the ground that Articles 1 and 3 of the charge memo were

proved. Article-2 of the charge memo could not be proved as per the ~~the~~ earlier observations of the disciplinary authority. Hence once the order of removal was quashed by this Tribunal on the ground of procedural lapse affecting the principles of natural justice in holding Articles-1 and 3 of the charge memo to have been proved by the disciplinary authority, Article-2 of the charge memo was no more open for fresh/further enquiry, because the judgment of this Tribunal nowhere indicated that the finding of the disciplinary authority on Article-2 of the chargememo as not proved has been set aside. This being the position the report of the second enquiring authority, orders of the disciplinary authority as well as the appellate authority under Annexures-6, 7 and 8 respectively pertaining to Article-2 of the Chargememo as proved have necessarily to be quashed, even if the procedure in ordering enquiry afresh is held to be in accordance with law.

But as per the legal position enunciated by the Constitution Bench of the Supreme Court in the case of **K.R.Dev vs. Collector, Central Excise** reported in AIR 1971 SC 1447 wherein with reference to Rule-15 of the CCS(CCA) Rules, 1957, it was held that if there is some difficulty in the enquiry conducted by the enquiring officer, the disciplinary authority can direct the enquiry officer to conduct further enquiry in respect of that matter, but it cannot direct a fresh enquiry to be conducted by some other officer. In other words, the Apex Court ^{for} deprecitated the practice of holding de novo enquiry. In

Para-13 of the judgment it has been observed as follows

"It seems to us that Rule-15, on the face of it, really provides for one enquiry, but it may be possible if in a particular case there has been no proper enquiry, because some serious defect has crept into the enquiry or some important witnesses were not available at the time of enquiry or were not examined for some other reason, the disciplinary authority may ask the enquiring officer to record further evidences. But there is no provision in Rule-15 for completely setting aside the previous enquiry ~~on~~ the ground that the report of the enquiring officer or other officer does not appeal to the disciplinary authority."

~~Rule-8 of the Rules dealing with the~~

~~procedure for disciplinary proceeding against~~

~~E.D. Agents nowhere lays down about~~

~~fresh enquiry. Even the existing present Rule-15 of CCS(CCA)Rules, 1965~~

~~nowhere provides for ordering fresh enquiry. On the other hand Sub-rule-1 of this Rule-15 specifically~~

~~provides that disciplinary authority for reasons to be~~

~~recorded by it in writing remit the case to the~~

~~enquiring authority for further enquiry only. Even~~

~~Sub-rule-4 of Rule-10 of the existing present CCA~~

~~Rules, 1965 makes the provision only for further~~

~~enquiry once the penalty of termination is set aside or~~

~~declared or rendered void on technical grounds without~~

~~going into the merits of the case. Thus the legal~~

~~position is clear that enquiry afresh cannot be ordered~~

~~once the penalty order imposed is set aside by a Court~~

~~of Law or a higher authority purely on technical~~

~~grounds and not on merits, but under such circumstance~~

~~further enquiry can be ordered. Further enquiry does~~

~~not mean inquiry afresh, but means additional enquiry~~

supplementing earlier enquiry by complying procedures held to have been not complied.

In the instant case, the disciplinary authority had not passed any order setting aside the previous enquiry as such. Of course, as discussed above, he could not have passed any such order. Hence, earlier enquiry report still subsists. This Tribunal observed that the applicant was not afforded adequate opportunity to defend himself through engagement of a defence assistant. Hence, after giving him that opportunity for engaging defence assistant, the enquiry should have been further proceeded by not recording the evidence in chief afresh of the witnesses already examined, but allowing the applicant to further crossexamine these witnesses and that too with reference to imputations under Articles-I and III of the chargememo. In fact the Apex Court in the case of **Board of Trustees, Port of Bombay vs. Dilip Kumar** reported in AIR 1983 SC 109 in the last paragraph of the judgment indicated such procedure when a decision reached by a Domestic Tribunal is held to be vitiated on the ground that the enquiry was held in violation of principles of natural justice, on the ground that the first respondent was not afforded reasonable opportunity to defend himself, the Apex Court, therefore, directed that continuation of the enquiry and to treat the examination of chief of witnesses already recorded during enquiry as proper, but all witnesses examined at the enquiry will have to be offered ~~to~~ first respondent for crossexamination and the earlier crossexamination may also be retained as part

of the record and both sides should be entitled to adduce fresh evidence both documentary and oral, if considered necessary. This has not been done, but a fresh enquiry was ordered and the evidence recorded during earlier enquiry was altogether ignored and on the other hand charge No.2 was held to proved on the basis of oral evidence of Bhagaban Samal, who was not examined in the earlier enquiry. In view of the legal position discussed above, this is contrary to law. Hence the report of the enquiring officer, orders of the disciplinary authority and the appellate authority vide Annexures-6, 7 and 8 respectively are vitiated under law and penalty imposed thereon has to be quashed.

6. Shri A.K. Bose, the learned Sr. Standing Counsel contended that these points raised by Shri Ramdas have not been urged before the appellate authority and have also not been pin-pointly urged in the Original Application and as such this Tribunal is not entitled to consider the same. We do not see any force in this contention. When points of law which do not necessitate further investigation on facts and are based on admitted facts, even if raised at the time of hearing, the same cannot be ignored once these points substantially affect the course of justice.

7. As we already held that the report of the 2nd enquiring officer and the orders of the disciplinary authority and the appellate authority(Annexures-6, 7 and 8) are vitiated under law, it is not necessary or us to deal with further contentions advanced by Shri Ramdas, the learned counsel for the applicant.

8. In the result, we quash the report of the enquiring officer (Annexure-6), the order of the disciplinary authority dated 31.12.1991(Annexure-7) and the confirmation order of the appellate authority dated 2.8.1993(Annexure-8) as vitiated under law and consequently we quash the penalty of dismissal of the applicant from service. In view of the law enunciated by the Supreme Court in Om PrakashGupta and H.L.Mehera cases (both supra) the order of put off duty of the applicant lapsed with the order of dismissal passed by the disciplinary authority vide Annexure-7 dated 31.12.1991 and since this order has been quashed by us, the applicant would no longer be under put off duty from 31.12.1991, but deemed to be on duty with effect from that date with all consequential service benefits.

The application, in the result, is allowed, but no order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
29.11.99

29.11.99
(G.NARASIMHAM)
MEMBER(JUDICIAL)

B.K.SAHOO