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CENTRAL ADMINISTRATIVE TRIBUAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 228 OF 1994
Cuttack this the 25th day of February, 2000

Jaya Krushna Choudhury

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

25-2-2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.228 OF 1994
Cuttack this the 25th day of February, 2000

CORAM:

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

...

Jaya Krushna Choudhury
aged about 34 years,
S/o. Sri Chapadhari Choudhury,
Vill/PO Mursundi,
Via: Birmaharajpur
Dist: Bolangir

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Applicant

By the Advocates : M/s.P.V.Ramdas
P.V.Balakrishna 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. Senior Superintendent of Post Offices
Sambalpur Division,
Sambalpur-768001

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Respondents

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

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ORDER

MR.G.NARASTHMAM, MEMBER(JUDICIAL): Applicant, a Branch Post Master, Murusundi, prays for quashing the order dated 28.1.1993(Annexure-3) of the disciplinary authority, i.e., Res.³ removing him from service and for his consequent reinstatement and service benefits. There is no dispute that against this order of removal, the applicant preferred departmental appeal and this was also rejected under Annexure-R/⁴. Thereafter he preferred this Original Application.

2. The disciplinary proceeding initiated against him under three charges, i.e., he did not produce Rs.664.95 for verification by the SDI(P) on 13.12.1988; he retained excess cash on various dates contrary to rule 171(2) of the B.O. Rules; and he did not credit an amount of Rs.91.50 under the Head 'Money Order Issued' when the same was collected by him on account of delivery of V.P.P. dated 30.11.1988. Earlier after receipt of the enquiry report, the disciplinary authority passed an order of removal from service on 31.1.1989. The said order was confirmed in departmental appeal on 25.1.1998. Thereafter the applicant approached this Tribunal in O.A.409/90 challenging the order of removal. On 7.7.1992, this Tribunal quashed the order of removal from service and directed that the applicant should be given liberty to represent against the enquiry report, whereafter the disciplinary authority can pass orders according to law. This was complied by the disciplinary authority. However, the impugned order of removal from service under Annexure-3 has been passed. These facts are not in controversy.

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 3. In this application the applicant averred that defence assistant according to his choice was not provided; that out of two witnesses cited in the charge memo only one was examined without explanation as to why the other was not examined; and that the charges did not establish a case of misconduct.

4. In the counter the Department took the stand that reasonable opportunity was provided to the applicant and that no procedural lapse affecting the principles of natural justice had occurred in conducting the disciplinary proceeding. The charges established, according to them, construed grave misconduct and the punishment of removal from service is justified.

5. 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 record of O.A.409/90.

6. Shri Ramdas, learned counsel for the applicant ~~had~~ ^{vs} stress only on the point that during enquiry even though he sought the assistance of one P.K.Chakra, who was then serving as Sub-post Master, Manmunda for his defence, the same was not allowed by the Department and thus he has been seriously prejudiced in properly defending himself. Though he had urged this specific point in earlier O.A.409/90, the then Division Bench disposing of the said O.A. by judgment dated 7.7.1992(Annexure-2) allowed that application on a technical point of non supply of copy of the enquiry report and in Para-7 of the judgment left the matter to be adjudicated in future, if occasion ^{arose}. We have carefully gone through the record of O.A.409/90 and found

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in Para-5(11) of the application the applicant took that very stand. This being so, this point now stressed by the learned counsel for the applicant can be determined in this O.A.

In this connection the counter filed by the Department in earlier O.A.(O.A.409/90) is relevant. No rejoinder was filed to that counter. This counter reveals that on 3.4.1989 the applicant requested the enquiring officer to allow Shri P.K.Chakra SPM, Manamunda to act as his defence assistant. This application was allowed and the enquiry was adjourned to 13.4.1989 to be held at Birmaharajpur. On 13.4.1989 neither the applicant nor Shri Chakra did appear. But a letter Under Certificate of Posting was received from the applicant for adjournment, because of his indisposition. The enquiry was then adjourned to 28.4.1989 to be held at Sambalpur and the applicant was duly intimated through Regd.Post which was received by him on 14.4.1989. In the meanwhile letter dated 12.4.1989 was receivd from Superintendent of Post Offices, Phulbani Division intimating that services of Shri P.K.Chakra, SPM, nominated, cannot be spared. On the third sitting when the Presenting Officer was present, the applicant remained absent, but letter dated 24.3.1989 from him was received indicating that he could not turn up on account of financial stringency. The fourth sitting of the enquiry was fixed to 29.5.1989 and 30.5.1989 at Birmaharajpur and the intimation received from S.P., Phulbani as to the non availability of service of Shri Chakra had been dulyintimated to the applicant in Regd.Letter received by him on 6.5.1989. However, the 4th sitting could be held on 29.5.1989 on which day the

applicant was not present. The enquiry was then adjourned to 25.7.1989 and 26.7.1989 and the same was intimated to the applicant through Regd. letter received, by him on 5.6.1989, on which date one witness was examined and some exhibits were marked and the applicant was directed to submit his proof.

These facts urged in the counter having not been refuted through any rejoinder.

It thus follows that though the services of Shri Chakra, the then SPM, Manamunda could not be spared and though this fact was duly intimated to the applicant, the applicant had not prayed for appointment of any other defence assistant. But Shri Ramdas learned counsel for the applicant placed reliance on Sub-rule 8 of Rule-14 and Departmental circulars dated 23.7.1969, 17.10.1978 and 29.4.1986, which circulars find mentioned at Pages 52 to 54 of the Swamy's Manual on Disciplinary Proceeding (99th Edition).

Rule-14(8)(a) lays down that the concerned Govt. servant may take the assistance of any other Govt. servant posted in any office either at his headquarters or at the place where the enquiry is held to present the case on his behalf. The proviso to this Rule provides that the Government servant may take the assistance of Govt. servant posted at another station, if the enquiring authority having regard to the circumstances of the case and for the reasons to be recorded in writing so permits. Here in this case the enquiring authority allowed the application seeking assistance of Shri Chakra, who was posted at a station outside the headquarters and the place of enquiry. Hence this

Sub-rule has not been violated. But this rule does not lay down that in case the prayer for engagement of defence assistant serving at another place is allowed, the controlling authority of that defence assistant must, under all circumstances spare him for such assistance. On the other hand in circular dated 23.7.1969 it has been provided that under such circumstances the controlling authority may intimate the enquiring officer about it with reasons for being communicated to accused official, in which case the accused official to choose anyother Govt. servant in presentation of his case. Circular dated 17.10.1978 is to the effect that no permission is needed by the accused Govt. servant to secure anyother assistance from Govt. servant, which is not relevant for discussion in this particular case. Circular dated 29.4.1986 provides that in case the enquiring authority rejects the request for permission to take defence assistance from a place other than the headquarters of the charged Govt. servant or the place of enquiry, the charged Govt. servant can make a representation to the disciplinary authority. This circular is ~~also~~ in no way relevant in this application, because the admitted fact is that the enquiring authority allowed such prayer of the applicant.

As earlier stated, the intimation received from the S.P., Phulbanias to non sparing of Shri Chakra was duly intimated to the applicant and the applicant was in due receipt of the same. The object of such intimation is to enable the charged Govt. servant to choose anyother Govt. servant for his defence. Despite receipt of such intimation, there is nothing on record to suggest that

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 the applicant made prayer for engagement of anyother Govt. servant for his defence. Infact as the uncontroverted facts mentioned in the counter revealed that he remained absent and on the last date of enquiry in his presence one witness was examined and some exhibits were marked.

In view of this fact, we are not inclined to agree with Mr.P.V.Ramdas that the applicant had not been given reasonable opportunity to defend himself through engagement of a defence assistant. Thus the only point advanced by Shri Ramdas is without any merit.

7. For the reasons discussed above, we do not see any merit in this application which is accordingly dismissed leaving the parties to bear their own costs.

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN

25.2.2010
 B.K.SAHOO

25.2.2010
 (G.NARASIMHAM)
 MEMBER (JUDICIAL)