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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

Original Application No. 1 of 1995
Cuttack this the 09th day of May 2001

Rajendra Kumar Chatterjee Applicant(s)

-Vrs-

Union of India & Others Respondents.

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
9.5.2001

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)
9.5.01

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

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Cuttack this the 09th day of May 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM,
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER (J)

1. Shri Rajaendra Kumar Chatterjee, aged 56 years,
son of late Surendranath Chatterjee,
Postal Assistant, Cuttack, G.P.O.
At-Shaik Bazar, P.S. Lalbag, Cuttack - 753 008.

..... Applicant

By the Advocates

M/s. S.Ku.Mohanty
S.P.Mohanty
P.K.Lenka

-Versus-

1. Union of India, represented by its
Secretary, Department of Posts, Dak Bhawan,
New Delhi.
2. Senior Superintendent of Post Offices,
Cuttack City Division, Cuttack.
3. Chief Post Master General, Orissa Circle,
Bhubaneswar.

.... Respondents

By the Advocates

Mr. B.Das
A.S.C

.....

O R D E R

G.NARASIMHAM, MEMBER (JUDICIAL): In this Original Application filed on 2.1.95, the applicant, who is a Postal Assistant, challenges the order of punishment (Annexure-9 dtd.21.3.94) imposed by the disciplinary authority, Director of Postal Services, Bhubaneswar reducing his pay by two stages from Rs.1680/- to Rs.1600/- in the time scale of pay of Rs.1400/- to Rs.2300/- for a period of 3 years with immediate effect, with a direction that the applicant would not earn increments of pay during the period of reduction and that on expiry of the period the reduction will not have the effect of posting his future increments of pay. He also challenges the appellate authority's order dtd.18.11.94 (Annexure-10) conforming to the order under Annexure-9.

2. In connection with his service as S.P.M. Dagarpara Sub-Office, the applicant was served with Memo of charges dtd.20.5.93 (Annexure-1) issued by Respondent No.2 under two heads. The first one is that on 29.9.92 he accepted 21 letters to be despatched by registered post and out of them 18 letters were not affixed with stamps and on the remaining 3 letters stamps affixed were insufficient. This was detected by the Circle Office Squad under the leadership of A.S.P (Complaints) of Circle Office, Bhubaneswar, who made a surprise visit to that Post Office. The second charge was that though he had received 200 printed packets from 26.9.92 to 29.9.92, he did not despatch the same. Thus he failed to maintain absolute integrity and devotion to duty and contravened relevant provisions of Rule 3 of Conduct Rules, 1964,

having been denied by the applicant, the proceeding was enquired into and ultimately the punishment, as stated above, was imposed.

3. According to the applicant the enquiry was not conducted properly as material irregularities occurred in enquiry which vitiated the proceeding. He pointed out the following irregularities:

- (i) Non-consideration of some of the material statements deposed to by the P.Ws;
- (ii) Denial of opportunity to defend giving rise to violation of principles of natural justice; and
- (iii) Non-consideration of statement of D.W.1 in its true and proper perspective.

4. The Department in their counter filed on 1.7.95, while defending that the proceeding was conducted without any irregularity following the principles of natural justice, took the stand that the disciplinary authority subsequently coming to know the date of retirement of the applicant on superannuation to be 31.5.96, by order dtd.16.3.95 (Annexure R/1) cancelled the previous order of punishment and imposed a fresh punishment reducing the pay of the applicant by two stages from Rs.1680/- to Rs.1600/- for one year with a further direction that the applicant will not earn increment of pay during the period of such reduction and on expiry of the period, the reduction will not have the effect on future increments of pay. Again by order dtd.6.7.95 (Annexure R/2) he modified the order dtd.16.3.95 by stating that the reduction from Rs.1680/- to Rs.1600/- may be read as from Rs.1800 to Rs.1720/- in the time

scale of Rs.1400/- to 2300/- with immediate effect.

5. The applicant filed rejoinder enclosing Annexure R/1, R/2 as Annexure-11 & 12 respectively, by pleading that such subsequent cancellation and modification by the Director of Postal Services are not permissible under law.

6. We have heard Shri S.P.Mohanty the learned counsel for the applicant and Shri B.Das the learned Addl. Standing counsel for the respondents also perused the record.

7. The main grievance of the applicant is that the evidence of the witnesses adduced during enquiry has not been properly appreciated and if evidence of the sole D.W.1 is taken into account, it would be a case of no evidence. Law is well settled that Court or Tribunal cannot assume the role of an appellate authority to reassess the evidence on record. Even then, we have taken note of the relevant evidence of P.Ws and D.W.1 as mentioned in the pleadings. D.W.1 in his evidence has indicated that when the surprise inspection was made, he was at the counter of the applicant. This D.W.1 testified that he had handed over 21 registered letters to the applicant to ascertain the amount of stamps to be affixed. The applicant weighed all these articles and told him that stamp amounting Rs.8/- is to be affixed on each letter. He handed over the cash to the applicant who supplied him the required stamps. As D.W1 had another work at S.B.I near Collectorate he requested the applicant to permit him to go inside his Office to affix the stamps. After the applicant wrote the registration number on the covers and instructed D.W1 to affix stamps, the

officials made surprise inspection. This again is a matter of appreciation of evidence because the applicant as S.P.M could not have assigned registration numbers once letters were not affixed with requisite stamps. In fact, Rule 106 of the P & T Manual, Volume-5 is clear that Officials of the Department are strictly prohibited from affixing postage stamps to the registered letters and this must always be done by senders of the letters. In other words till the stamps are affixed on the letters to be registered by the sender, the concerned Official should not issue registration numbers. The fact that the applicant had issued registration numbers would mean that he had taken the responsibility of affixing stamps to the letters for himself which is contrary to Rule 106. The evidence as appearing from the pleadings is sufficient for establishing the same. Even on reassessment of evidence we do not find any infirmity in the findings of the disciplinary authority and appellate authority. As to the second charge, the inquiry report (Annexure-8) discloses that the applicant admitted in writing (Ex.5-1) that he had retained the packets.

8. Though the applicant challenged the original order of the disciplinary authority, i.e. the Director of Postal Services, Bhubaneswar he has not impleaded him as a respondent in this Original Application. Since his order is under challenge, the Director of Postal Services is a necessary party in the absence of which the legality of the impugned order cannot be questioned. But penalty of reduction & pay in two stages for a period of 3 years with immediate effect from 21.3.94 was defective

because the superannuation retirement was on 31.5.96 and as much as inforceable for the third year.

9. However, the original order of the disciplinary authority (Annexure-9) stood cancelled and modified in orders under Annexure R/1 & R/2, subsequent to the filing of this Original Application which means the original order under Annexure-9 is no longer enforceable.

10. Question then arises as to whether orders order 16.3.95 and 17.6.95 (Annexure R/1 & R/2) can be implemented. It is true that in the rejoinder the applicant pleaded that these two orders under Annexure R/1 & R/2, being contrary to law, cannot be imposed against him, exparte. We have considered the grounds mentioned in the rejoinder. Though it cannot be said this contention has no force, still we cannot consider this aspect since the Original Application has not been amended with prayer to that effect and that too in the absence of Director of Postal Services, Bhubaneswar as a Respondent.

11. The original Application is accordingly disposed of with the observations made above. No costs.

Somnath Som
SOMNATH SOM
VICE-CHAIRMAN
9.5.01

9.5.01.
G. NARASIMHAM
MEMBER (JUDICIAL)