

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 450 OF 1995.

CUTTACK, the 20th day of NOVEMBER, 1998.

DEBAKANTA TRIPATHY.

APPLICANT.

- VERSUS -

UNION OF INDIA & OTHERS.

RESPONDENTS.

(FOR INSTRUCTIONS)

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

Narayana
(SOMNATH SOM
VICE-CHAIRMAN).98

20.11.98
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 450 OF 1995.

Cuttack, this the 20th day of NOVEMBER, 1995.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

....

Debakanta Tripathy, aged about 35 years,
S/O. Rasananda Tripathy, At: Kutilo,
P.O-Baghuni, Via. ~~Asureswar~~, Dist. Cuttack. ... APPLICANT.

By legal Practitioner :- M/s. R. N. Nayak, A. Deo, B. S. Tripathy,
P. Panda, D. K. Sahoo, M. P. J. Ray,
R. Rath, Advocates.

-VERSUS-

1. Union of India represented by its Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Postmaster General, Orissa Circle, At/Po. Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices, Cuttack North Division, Cuttack.
4. Sub-Divisional Inspector of Posts, Jajpur Road, Sub Division, Dist. Jajpur.
5. Assistant Superintendent of Post Offices, Cuttack North Division, Cuttack.

... RESPONDENTS.

By legal practitioner:- Mr. Ashok Mishra, Senior Counsel (Central).

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O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :

In this Original Application under section 19 of the Administrative Tribunals Act, 1935 filed on 15-12-1995, the applicant Shri Debakanta Tripathy, EDPM Baghuni Branch Post Office under the Cuttack North Postal Division, was put off duty on 12-2-1986 by the Sub Divisional Inspector (posts), Salepur (Respondent No. 4) in his Memo No. A/Baghuni dated 12-2-1986 (Annexure-R/1). This has been ratified by the Superintendent of Post Offices, Cuttack North Division (Respondent No. 3) vide order dated 14-2-1986 (Annexure-R/2). The applicant has been put off duty, pending enquiry into the case of Savings Bank mis-appropriation. As no proceeding was initiated, on 22-3-1987, the applicant represented to the Superintendent of Post Offices under Annexure-2 which fact has not been denied in the counter. It is only thereafter in Memo dated 23-5-1989 (Annexure-1), charges have been issued, under two counts. Charge No.1 relates to collection of Rs. 3000/- from the depositor of SB A/c. No. 39917 alongwith required forms duly filled in on 17-12-1985 to open a TD account but the TD account was not opened on the same day and the amount was credited into the Post Office Account. The TD account was opened on 17-1-1986. The second

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one is that on 27-1-1986, he received an amount of Rs.200/- from the Depositor Shri Jatadhari Palai along with the pass book A/c.No. 40454 for depositing in that account. Though he entered the amount of deposit in the pass book on that day, he did not reflect the transaction in any Post office record nor credited the amount into the post office account on that date. Thus, according to the Department, he did not maintain integrity and due devotion of duty required under Rule-17 of the ED Agents (Conduct and Service) Rules, 1964.

Through Memo dated 30.5.1989 (Annexures-R/3 and R/4) Respondent No. 3 appointed Shri Bhagaban Sethy, SDIP Pattamundai Sub Division as the Inquiring Officer and Shri K.C. Majhi, SDIP, Kendrapara Sub Division as the Presenting Officer. Subsequently, through Memo dated 11-7-1995 Annexures-R/5 and R/6), Respondent No. 3 cancelled the appointment of Shri Sethy and Shri Majhi as I.O. and P.O. and appointed Shri Jeeban Sahoo, ASPO(Hqrs.) Cuttack North Division, Cuttack as Inquiring Officer and Shri K.S. Behera, SDIP, Jajpur Road Sub Division as the Presenting Officer.

These facts are borne out from the pleadings and are not in controversy.

Applicant prays for quashing of the proceeding on the ground of abnormal delay at ^{every} ~~early~~ stage.

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2. The stand of the Respondents is that after proper enquiry by the SDIP, Salepur Sub Division as well as by the Circle Office, charges were framed through Memo dated 23-5-89 under Annexure-1. Since Shri Sethy and Shri Majhi who were appointed as I.O. and P.O. respectively through Memos dated 30-5-89 were ~~transferred~~ ^{transferred} ~~cancelled~~ to other Sub-Divisions, Respondent No. 3 had to appoint again Shri Jeeban Sahoo and Shri K.S. Behera as the Inquiring Officer and the Presenting Officer respectively, after cancelling the previous appointments. This is the main reason for delay in finalising the proceeding as against the Petitioner. On 8.8.1995, this Tribunal stayed operation of Annexure-4 i.e. Memo dated 12.7.1995 issued by Shri Jeeban Sahoo, I.O., intimating the applicant that he would hold the preliminary hearing of the proceeding on 9.8.1995. This stay is still continuing.

3. Facts being ~~are~~ not in controversy, the only point needs to be determined on the basis of these uncontested facts as to whether, there has been undue and abnormal delay in finalising the proceeding and if so, under the circumstances, whether the proceeding needs to be quashed.

4. We have heard Shri A. Deo, learned Counsel for the Applicant and Shri Ashok Mishra, learned senior Counsel (Central) appearing for the Respondents and taken note of their submissions.

S- The legal position whether the delay is a ground for quashing the disciplinary proceeding has been dealt by the Honourable Supreme Court in the case of STATE OF ANDHRA PRADESH -VRS.-N. RADHAKISHAN reported in 1998 (II) SLJ VOL.69 162 . Referring to their earlier decisions in the case of A.R. ANTULAY VRS. R.S.NAYAK 1992 (1) SCC 225 and STATE OF PUNJAB AND OTHERS VRS. CHAMAN LAL GOYAL 1995 (2) SCC 570, Their Lordships, at para 19 observed as follows:-

"19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when those are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative

justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the Rules. If he deviates from this path, he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant Rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations".

¶. In this Supreme Court Case a disciplinary proceeding which has been initiated in the year 1987 was quashed as it was not finalised even in the year 1996 when the Original Application was filed before the Andhra Pradesh Tribunal, Hyderabad. As per the guideline laid down by the Hon'ble Apex Court, it is in the interest of clean and honest administration that the disciplinary proceeding should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. Further it has been held that in considering this Court has to consider the nature of charge, its complexity and under what account the delay has occurred. If the delay is un-explained prejudice to the delinquent employee is writ large on the face of it. It has also to be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. Delay causes prejudice to the charged employee unless it can be shown that he is to blame for the delay or ^{whether} ~~when~~ there is proper explanation for the delay in conducting the disciplinary proceedings.

6. On the basis of the aforesaid legal position, it is to be seen whether there has been unexplained delay to be prejudiced to the applicant in finalising the disciplinary proceeding. The applicant is an Extra Departmental Agent. Under Rule-9(3) of the ED Agents (Conduct and Service) Rules, 1964, he was not entitled to any allowances for the period of put off duty, during the relevant time. This rule has since been amended recently i.e. in the year 1997. In other words, the applicant from 12-2-1986 i.e. the date of putt of duty, was without any remuneration or allowances even till the date he approached before this Tribunal i.e. on 15.12.1995 which comes to about a continuous period of ten years. It is not clear from the pleadings when exactly the preliminary enquiry was started and when it ended and after how many days thereafter, chargesheet was issued. The fact remains that when no action was taken for initiating disciplinary proceeding, the applicant made representation on 22.8.1987 (Annexure-A/2) requesting to initiate disciplinary proceeding, if any. This has not been denied in the counter. At least this would show that from 12-2-1986 to 22-8-1987 i.e. for one year and six months, the Respondents had not taken any action in the matter though all these days, the applicant had been starving without any remuneration or otherwise. Delay on this account has not been clearly explained in the counter. It is true that in May,

1989, Shri B. Sethy, SDIP, Pattamundai Sub Division was appointed as I.O. and Shri K.C. Majhi, SDIP, Kendrapara Sub Division was appointed as the Presenting Officer. Then what has been progress in the enquiry by these two officers, has not been explained in the counter. The counter is also conspicuously silent as to whether this I.O. had taken any step in holding the enquiry. All that, has been explained in the counter that these two officers have been transferred to other Sub Divisions. It is not the case in the counter that they have been transferred to other Divisions not under the control of Respondent No. 3 and this transfer necessitated appointment of new Inquiring Officer and the Presenting Officer in July, 1995. In other words, the counter is completely silent as to the progress of the enquiry from May, 1989 to July, 1995. The delay is undoubtedly abnormal in the sense that the applicant without getting any remuneration or allowances from February, 1986 onwards, has been starving. This delay having been unexplained, prejudice is writ large to the delinquent on the face of it. Counter is also completely silent as to what steps Respondent No. 3, the Disciplinary Authority had taken to expedite the enquiry from May, 1989 when he appointed the enquiry officer and the Presenting Officer. The Hon'ble Supreme Court in the case cited above,

had clearly observed that it is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the Rules. It is not the case of the Respondents that this delay is due to the conduct of the applicant. It is also not a case where the matter was under investigation by police or other agencies. The entire matter has been within the territorial ^{limit} limitation of the Department under the control of Respondent No. 3.

Constitution Bench of the Hon'ble Supreme Court in the case of S.S. RATHORE VRS. STATE OF MADHYA PRADESH reported in AIR 1990 SC 10 in para-17 of the Judgment strongly deprecated the delay in redressal of the grievances in the hands of the Departmental Authorities. The Hon'ble Supreme Court observed that this is so on account ^{of} the fact that no attention is ordinarily bestowed over these matters and they are not considered to be governmental business of substance. According to the Hon'ble Apex Court, ordinarily, a period of three to six months should be the outer limit in disposal of such grievances, and this would discipline the system and keep the public servant away from a protracted period of litigation. In GIRIDHARI RAI VRS. UNION OF INDIA AND OTHERS reported in AIR 1989 (1)CAT 531 this Bench of the Tribunal in the case of an EDDA observed

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that as per the direction given by the Director General of Posts and Telegraphs, every proceeding must be culminated within 120 days from the date of its institution. In view of the unexplained delay of more than six years in the disposal of the disciplinary proceeding against an ED Agent who has been starving for about ten years without any remuneration or any allowances and in view of the observations of the Hon'ble Supreme Court in Rathore's case (supra) that at best outer limit for finalising of the disciplinary proceeding is six months and the instruction of the DG P & T referred in Giridhari's case (supra) that the proceeding has to be disposed of within 120 days from the date of institution, we are of the view that it is not desirable to continue the proceeding any further.

We are aware that the Hon'ble Supreme Court in ~~Rudhakishan's~~ Rathore's case (supra) observed that the nature of charge and its complexity has to be taken into consideration. There was no misappropriation of the amount of Rs.3000/- under charge No.1 because the same was credited to the account of the Post Office on the same day which was received though it was meant for opening of a TD account of a depositor. So far as the other charge is concerned, the amount involved is Rs.200/- only, which was not accounted for in the Postal register. We do not think these two charges are that grave, serious to be still allowed to be in a proceeding in which a delay of six and half years has not been

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properly explained.

7. For the reasons stated above, we quash the Departmental proceeding initiated ^{under} ~~in~~ Annexure-1 and direct the Respondents to revoke the order of put off duty passed on 12.2.1986 under Annexure -R/1.

8. Thus, the Original Application is allowed but in the circumstances there would be no order as to costs.

S. Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

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20.11.98
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.