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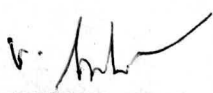
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 572 OF 1995.
Cuttack, this the 28th day of August, 2002.

Artatran Dalai. 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


(V. SRIKANTAN)
MEMBER (ADMINISTRATIVE)


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLI CATION NO.572 OF 1995.
Cuttack, this the 28th day of August, 2002.

C O R A M:-

THE HONOURABLE MR. V. SRIKANTAN, MEMBER (ADMINISTRATIVE)
A N D
THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) .

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Artatran dalai, Ex-EDBPM,
Tilottamadeipur, Kendrapara. Applicant.

By legal practitioner : Mr. D. P. Dhalsamant, Advocate.

- Versus -

1. Union of India represented through
Chief Postmaster General, Orissa Circle,
Bhubaneswar-751 001.
2. Director Postal Services,
C/o. Chief Postmaster General,
Orissa Circle, Bhubaneswar-1.
3. Superintendent of Post Offices,
Cuttack North Division, Cuttack.

.... Respondents.

By legal practitioner : Mr. A. K. Bose,
Senior Standing Counsel (Central) .

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) : -

Applicant, while working as an Extra
Departmental Branch Post Master of Tilottamadeipur,
Branch Post Office in account with Kendrapara Head
Post Office, faced a Departmental Proceedings; for
which he was placed under orders of "put off duty" 7

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(suspension) vide Annexure-1 dated 16-06-1986 and, was charge- sheeted, on 22-04-1988, on the allegations of not handling money of the Post Office properly. Ultimately, he faced with the punishment of "Removal from Service" (vide orders under Annexure-2 dated 31-08-1989) and, as against the said penal order, the Applicant preferred an Appeal to the Departmental higher Authorities on 21- 12-1989. The Appellate Authority, having confirmed the penal order(vide Annexure-3 dated 17-12-1992), the Applicant had preferred this Original Application (under section 19 of the Administrative Tribunals Act, 1985) on 04-08-1995(i.e. after a lapse of two and half years). However, delay in filing of this Original Application was condoned on 27-09-1995; when this case was admitted and notices were asked to be issued to the Respondents. A Counter has also been filed by the Respondents in this case on 09-12- 1996 by giving reply to various averments made in the Original Application.

2.3 At the hearing on 21-08-2002, the Advocate for the Applicant pointed out that the Applicant was suspended (under "put off duty" orders) on 16-06-1986; that almost two years thereafter, on 22- 04-1988 he was chargesheeted; that Inquiry Officer and Presenting Officer were appointed on 26-08-1988 that enquiry report was submitted on 08-08- 1989 and

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that punishment (of Removal from Service) was imposed on 31-08-1989. It is the sole case of the Advocate for the Applicant at the hearing that Enquiry Report dated 08-08-1989 was not supplied to the Applicant before imposition of penalty of Removal from Service and that since no opportunity was given to the Applicant to have his say/comments on the Enquiry Report (before imposition of penalty), the impugned orders (of Removal from Service) passed by the disciplinary Authority and of the Appellate Authority) are not sustainable.

3. No doubt, nonsupply of the Enquiry Report to the delinquent employee or not giving an opportunity to the employee to represent his case on the Enquiry Report or not taking into consideration such a representation, before imposition of a penalty has been held to be violative of the principles of natural justice in the case of UNION OF INDIA AND OTHERS VRS. MOHD. RAMZAN KHAN (reported in AIR 1991 SC 471) but such proposition as pronounced by the Apex Court of India has been held to be prospective one in the case of MANAGING DIRECTOR, ECIL VRS. B. KARUNAK AR AND OTHERS (reported in (1993) 25 ATC 704). The case of Mohd. Ramzan Khan (supra) was decided by the Hon'ble Supreme Court of India on 20-11-1990 and, thus, the present case (in which punishment was imposed on 31-08-1989) is not to be covered by the ratio of Ramzan Khan's case (supra).

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4. Apparently, being conscious of the situation as aforesaid, Mr. Dhalsamant, Learned Counsel appearing for the Applicant, has taken the following grounds in the Original Application:-

"5.8. That enquiry report was not supplied to the Applicant which violates the instruction issued vide G.I. Department of Personnel PER-Trg. O.M. No.11012/13/85-Estt. dated 26-06-1989 for which the order passed by the Disciplinary Authority and the Appellate Authority are liable to be set aside".

Reply to the above grounds (as taken in the Original Application) has been given in paras- 10 & 12 of the counter filed by the Respondents which reads as follows:-

"10. That the facts stated in para 5.5. of this O.A. is disputed. The provision for supplying inquiry report to the delinquent before passing final order was not in force on the date of issue of punishment order i.e. 31-8-1998 because the amendment in this regard of Personnel and Training was circulated vide C.O.No.ST/13-1/65/Vol.IV, dated 14-9-1989 and was received by the Respondent No.3 on 18-9-1989. This communication is enclosed as Annexure-R/1.

11. xxx xxx xxx xxx

12. That the allegation made in para 5.8. is not correct. Correct position is explained in Para-10 of this counter. Moreover in para-4 of the aforesaid OM clearly directs that the past cases need not be reopened for consideration".

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5. Disciplinary Proceedings for the personnel of ED Postal Organisation are basically governed by the E. D. (Conduct and Service) Rules, 1964 which has got no elaborate disciplinary Proceedings procedures. However, for the reason of the Government of India instructions (as given out in DGP&T Letter No. 151/4/77-Disc. II, dated 16th January, 1980) the provisions of CCS (CCA) Rules, 1965 have also been made applicable to the E.D. Staff of the Postal Organisation; relevant portion of which are extracted below:-

"(1) Enquiries against ED Agents following Rule-14 of CCS (CCA) Rules in spirit:- While it may not be necessary to follow the provisions of Rule-14 of CCS (CCA) Rules, 1965, literally in the cases of ED 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(2) of the Constitution were not provided."

6. On 26-06-1989, the Department of Personnel and Training of Government of India issued an Office Memorandum No. 11012/13/85-Estt. (A) dated 26-06-1989 the text of which is extracted below:-

"The undersigned is directed to state that the issue as to whether in cases, where the disciplinary authority itself is not the inquiry officer, a copy of the inquiry report should be furnished to the accused Government servant to enable him to make his submission, if any, before the disciplinary authority in regard to the findings of the report, before such authority passes its final orders, has been examined. The Constitutional requirements laid down in Article 311(2) of the Constitution of India, and the provisions of Rule 15 and 17

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of the CCS(CCA) Rules, 1965 and rulings of the various benches of the Central Administrative Tribunal and of various courts on the matter have been kept in view.

2. The full bench of the Central Administrative Tribunal in the case of Prem Nath Sharma Vrs. Union of India (represented by Ministry of Railways) have held that to fulfil the constitutional requirement of affording a reasonable opportunity, it is necessary that in all cases where the disciplinary authority is itself not the inquiry authority, a copy of the inquiry report shall be furnished to the accused Government servant to enable him to make his submission in regard to the findings of the inquiry, before the disciplinary authority passes its order imposing the penalty. While giving its verdict, the full bench had taken into account rulings of the various courts pronounced earlier on this issue. Although the special leave petition filed by the Ministry of Railways, against the aforesaid judgment has been admitted for hearing and a stay order has been granted by the Supreme Court against its operation, the various benches of the Tribunal continue to follow the ratio laid down by the full bench. The special leave petitions filed by the concerned Ministries and Departments in some of the subsequent cases have not been admitted by the Supreme Court. In another similar case of E. Bashyam Vrs. Department of Atomic Energy in the special leave petition filed by the Department against the judgment of the CAT, the Supreme Court has expressed its view in favour of the principle laid down by the Tribunal, but directed that the matter be referred to a larger bench of the court.

3. In the light of the aforesaid judgment, the matter has been examined in consultation with the Department of Legal Affairs and it has been decided that in all cases where an inquiry has been held in accordance with the provisions of Rule-14 of the CCS(CCA) Rules, the disciplinary authority, if it is different from the inquiry authority shall before making a final order in the case, forward a copy of the inquiry report to the Government servant concerned with the

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following endorsement:-

"The report of the Inquiry Officer is enclosed. The disciplinary authority will take a suitable decision after considering the report. If you wish to make any representation or submission, you may do so in writing to the disciplinary Authority within 15 days of receipt of this letter".

4. The aforesaid instructions will operate prospectively from the date of issue and accordingly will apply only in cases where the disciplinary authority is yet to pass orders. Past cases need not be reopened for consideration. These instructions will be reviewed after the final decision of the Supreme Court in the case of Prem Nath K. Sharma and E. Bhashyam.

5. Ministries of Agriculture, etc. are requested to bring the above instructions to the notice of all Administrative Authorities under their control for compliance in all future cases including those in which the Central Administrative Tribunal has directed that a copy of the inquiry/report be furnished to the accused Government servant before the disciplinary Authority/passes the order. In such cases the directive of the CAT should be complied with and no SLP should be filed. However, in cases where the SLPs on this issue are pending before the Supreme Court, the concerned Ministries/Department may continue to pursue the cases for having an early hearing and an authoritative ruling on the issue".

7. The text of the Government of India circular dated 26-06-1989 goes to show that long before the Ramzan Khan's case (supra), this Central Administrative Tribunal gave verdicts disapproving non-supply of the enquiry reports to the employees, before imposing of penalty. That is why, while awaiting verdict from

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the Hon'ble Apex Court of India, Government of India issued the executive instructions dated 26-06-1989 (supra) requiring supply of enquiry reports before imposition of penalties.

8. It is the case of the Respondents that the above said DOP&T instructions of dated 26-06-1989 was put to circulation by the Directorate General of posts (New Delhi) in their letter dated 08-09-1989 and in C.P.M.G (Orissa) Letter dated 14-09-1989 and reached the Disciplinary Authority on 18-09-1989 i.e. after imposition of the impugned penalty on 31-08-1989.

9. It is well settled position of law that statutory rules (which are notified in official Gazettee) unless specifically stated to be of retrospective operation, are to be implemented prospectively. On the other hand, executive instructions are always to be operated prospectively. In the present case, the executive instructions (supra) was issued on 26-06-1989 and reached the field on 18-09-1989 i.e. after imposition of penalty on 31-08-1989. The instruction itself stated that to be prospective and subject to the outcome of litigations pending at that time in the Apex Court. It should be kept in mind that shortly thereafter, the

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Hon'ble Supreme Court verdict came in Ramzan Khan's case (Supra) on 20-11-1990; which stodd clarified (to be prospective from that date 20-11-1990) in the case of MANAGING DIRECTOR, ECIL (Supra).

10. Since, in the present case, the impugned order dated 31-08-1989 was passed between 20-06-1989 (the date of issuance of the instructions) and 18-09-1989 (the date of receipt of the instruction) we proceeded to examine the matter-in-issue little further and found that the enquiry report dated 08-08-1989 was supplied to the Applicant alongwith the final penal orders issued on 31-08-1989. Thus, opportunity was available to the Applicant to raise points (whatever he would have raised before the Disciplinary Authority, as against the enquiry report) before the Appellate Authority; whose powers are/were also co-extenso with the powers of the Disciplinary Authority. But the Applicant (who has chosen not to place on record, of this case, the copy of the enquiry report dated 08-08-1989 and the copy of his Appeal Memo dated 21-12-1989), apparently, did not take that ground in his appeal; as it appears from the Appellate order under Annexure-3) dated 17-12-1992. As it appears from the said Appellate order dated 17-12-1992, the Applicant did not raise the question (of non-supply of enquiry report, before imposition of penalty to him) in the Appellate stage. The question, which was not raised before the Appellate Authority, though available,


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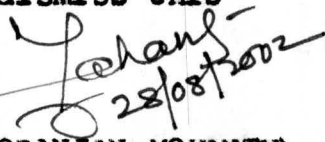
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is estopped to be taken before this Tribunal.
Assuming that to be a point of law available to be canvassed in this Tribunal, we looked to all aspect of the matter. It has also not been pointed out in the Original Application as to how the Applicant stood prejudiced for non-supply of the enquiry report (before imposition of penalty) or as to how the Applicant would have been benefited, had the enquiry report been supplied to him at the relevant stage. On this point, we have been fortified by the Judgment of the Hon'ble Supreme Court of India rendered in the case of STATE BANK OF PATIALA AND OTHERS VRS. S.K. SHARMA (reported in AIR 1996 SC 1669) and in the said premises, we are not inclined to give any benefit to the Applicant (who has attained age of superannuation/65 years since five years back, during the pendency of this case); because he raised no points (which he is raising now, through his Advocate, at the hearing) before his Appellate Authority; although available. In the result, we dismiss this case; without imposing any costs.


(V. SRI KANTAN)
MEMBER (ADMN.)


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

KNM/CM.