

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.752 OF 1995
Cuttack this the 19th day of October/2000

D.V.Pratap Sinwha ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 74.
2. Whether it be circulated to all the Benches of the No. Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
19.10.2000

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 752 OF 1995
Cuttack this the 19th day of October/2000

CORAM:

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

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Sri D.V.Pratap Sinwha, aged about 35 years,
Son of D.V.Dandasi Sinwha, At/PO - Aska
District - Ganjam - at present working as
Postal Assistant, Kunchuru Sub-Post Office
At/PO - Kunchuru, District - Ganjam

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By the Advocates

Applicant

M/s.A. Deo
B.S.Tripathy
P.Panda, D.K.
Sahoo, M.P.J.
Ray, K.N.Mishra
R.Rath, P.K.
Mishra - 2

-VERSUS-

1. Union of India represented by its
Secretary, in the Department of Posts,
Dak Bhawan, New Delhi
2. Chief Postmaster General, Orissa Circle,
Bhubaneswar, District - Khurda
3. Director, Postal Services, Berhampur
Region, At/po: Berhampur, District - Ganjam
4. Senior Superintendent of Post Offices,
Aska Division, Aska, At/PO - Aska
District - Ganjam

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By the Advocates

Respondents

Mr.A.K.Bose
Sr.Standing Counsel
(Central)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL) : Applicant, a Postal

Assistant was served with charge sheet dated 26.6.1992

(Annexure-1) on the ground that while appearing as a candidate
in the Examination for promotion to the post of I.P.O./I.R.M.

and while answering Paper No.3 in the said Examination on

25.6.1991, resorted to unfair means by keeping a written paper

containing relevant informations about leave, pension etc. In the proceedings, on the submission of the inquiry report and on the basis of that inquiry report the Senior Superintendent of Post Offices (Res. No.4) exonerated the applicant from the charges vide order dated 23.8.1993 (Annexure-2). Thereafter by order dated 11.11.1993 (Annexure-A/3), the Director of Postal Services (Respondent No.3) set aside the order of exoneration under Annexure-2 by exercising revisional jurisdiction and directed reopening of the case against the applicant from the stage of issue of charge sheet. Against this order under Annexure-3, the applicant submitted representation to the Member (Personnel), Postal Board, New Delhi under Annexure-4. In the meanwhile, Respondent No.4 issued a fresh charge sheet on 19.5.1995 (Annexure-A/5) pursuant to the direction of Respondent No.3. These facts are not in controversy.

2. The case of the applicant is that order of the Director of Postal Services under Annexure-3 is illegal, arbitrary and contrary to the materials on record and his exercising jurisdiction under Rule-29 of CCS(CCA) Rules, 1965 was bad in law. Hence this application for quashing Annexures-3 and 5.

3. Respondents in their counter justify the order under Annexure-3 and since the charge sheet under Annexure-5 has been issued pursuant to that order under Annexure-3 it cannot be found falt with.

4. Applicant has not filed any rejoinder.

5. This Original Application was admitted on 20.11.1995 on which date the operation of orders under Annexures-3 and 5

was stayed till 15.1.1996. On 15.1.1996, this interim stay order was allowed to continue.

6. We have heard Shri B.S.Tripathy, the learned counsel for the applicant and Shri A.K.Bose, the learned Senior Standing Counsel appearing for the Respondents (Department). Also perused the records.

7. Shri Tripathy, the learned counsel for the applicant, at the outset submitted that a similar matter filed by one Suresh Chandra Dakua, Postal Assistant on the very same ground against these four Respondents had been allowed by this Bench on 26.11.1999. Hence we have also perused the record of O.A. No.753/95 filed by Shri Dakua. Respondent No.3, i.e. Director of Postal Services, while exercising the revisional jurisdiction set aside the exoneration order of the disciplinary authority by giving two reasons which are as follows :-

"1. Inherent lacuna in the charge sheet :

It is seen from the records that Sri A.K.Dash, the then A.P.M.G.(Vigilance) O/O Chief P.M.G., Orissa Circle, Bhubaneswar who actually detected the case in the examination hall, was neither cited in the article of charge nor in the list of witnesses by whom the article of charge was proposed to be sustained. Therefore, the article of charge referred to in the Para-I above contained in inherent lacuna.

2. Procedural irregularity :

(i) The Supdt. of Post Offices, Aska Division, while deciding the case vide his Memo cited in Para-II above, has not sent a copy of the IO's report to the charged official Sri Sinsha **before** finalisation of the case, as required under Govt. of India Instruction No.7 below Rule-15 of CCS(CCA) Rules, 1965. Therefore, the disciplinary proceedings contained a procedural irregularity".

The procedural irregularity committed by Respondent No.4 in not sending copy of the inquiry report to the delinquent employee before the final order was passed by him will in no way

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vitiate the proceedings, because it is not the case of the applicant that he was in fact prejudiced by non supply of copy of such enquiry report to him; more so, when the report was in his favour. Simply because there is some lacuna in issuance of charge sheet, the higher authority is not vested with powers to order a de novo proceeding ignoring the findings of the Inquiring Officer in the earlier proceedings, which might not be to his liking. The decision of the Apex Court in K.R. Dev vs. Collector, Central Excise reported in AIR 1971 SC 1447 is an authority on this point. This decision has been dealt in Original Application No.753/95 and on the basis of this decision that Original Application was allowed. We, therefore, see no reason to differ from our earlier view taken in O.A.753/95. In the result, order dated 11.11.1993 under Annexure-3 and the charge sheet dated 19.5.1995 under Annexure-5 are hereby quashed. Penalty, if any, imposed in the meanwhile pursuant to the charge sheet dated 19.5.1995 will be a nullity. Original Application is allowed, but no order as to costs.

(Signature)
(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO//

(Signature) 19.10.2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)