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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 23 OF 1996
Cuttack this the 18th day of April/2001

S.P. Dash ... Applicant(s)

-Versus-

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

(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
18.4.2001
(SOMNATH SOM)
VICE-CHAIRMAN

18.4.01.
(G.NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 23 OF 1996
Cuttack this the 18th day of April/2001

CORAM:

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

...

Sri Shankar Prasad Dash, Son of Late Haribandhu Dash, Resident of Ainthapali, PO/PS: Ainthapali, District: Sambalpur

... Applicant

By the Advocates Mr.A.K.Hota
Miss.Mamta Mishra

-Versus-

1. Union of India represented by the Secretary to Govt. of India, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi-110001
2. The DirectorGeneral (Posts), Govt. of India, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi-110001
3. The Chief Post Master General, Orissa Circle, Bhubaneswar-751001, Dist-Khurda (Orissa)
4. The Post Master General, Berhampur Region, Berhampur-760001, Dist-Ganjam (Orissa)

... Respondents

By the Advocates Mr.B. Dash, Addl.Standing Counsel (Central)

O R D E R

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, Sankar Prasad Dash, who, while officiating as Senior Superintendent of Post Offices, Berhampur Division, retired on superannuation on 28.2.1995, files this application on 10.1.1996 for quashing the punishment order dated 5.11.1991, passed by theChief Post Master General (Respondent No.3), as the Disciplinary Authority, by withholding one increment for one year without cumulative effect (Annexure-3) and the order dated 5.4.1995, (Annexure-5) of the Appellate Authority, viz. Respondent No.1, confirming the order of the Disciplinary Authority.

The applicant was proceeded in Memo dated 16.9.1991 (Annexure-1) under Rule-16 of CCS(CCA) Rules, 1965. He submitted show cause dated 7.10.1991 (Annexure-2). Thereafter the Disciplinary Authority under Annexure-3 passed the impugned order, in response to which the applicant preferred appeal under Annexure-4 and the appellate authority passed the order dismissing the appeal under Annexure-5.

The charges relate to the entries pertaining to tours made on 3.3.1989, 6.3.1989 and 7.3.1989 in the departmental jeep. It is stated that the applicant had influenced the driver for making false entries in the log book, in getting a false statement from the driver, mention of wrong entry in tour diary, unauthorised tour to Postal Store Depot, Sambalpur, without prior approval of the Director (PS) and unauthorised use of Govt. vehicle thus causing a loss of Rs.271-50 to the Government. The applicant nodoubt denied these charges. His grievance as mentioned in the Original Application is that infliction of penalty being so haste exposes deliberate intention of the Disciplinary Authority (Res. 3) in blocking the applicant from getting further promotion to the post in which he was officiating. In other words, according to him, the order passed by the Disciplinary Authority is arbitrary and vindictive as well, without taking into account the defence submitted by him under Annexure-2. Even the appeal preferred by him was not disposed of prior to his superannuation, but was disposed of at a belated stage on 5.4.1995, i.e., more than three years after its filing. The Appellate Authority had not taken note of various points raised by him in his defence statement under Annexure-2, as well as the appeal under Annexure-4.

Further principles of natural justice have been violated to his prejudice by the Disciplinary Authority by not conducting any inquiry before imposing of the penalty.

2. In the counter the Department denied that the impugned orders have been passed without taking into account the defence statement of the applicant. They also denied that the orders are tainted with arbitrariness or malice. In terms of Rule-16 of CCS(CCA) Rules, for imposing minor penalty it is not obligatory on the part of the Disciplinary Authority to conduct an enquiry. The statement of the driver recorded on 18.9.1990 under Annexure-R/1, would go to show that the applicant had influenced the driver to make false entries. On these averments the respondents pray for disposal of the Original Application.

3. In the rejoinder, while reiterating the facts as mentioned in the Original Application in an argumentative form, applicant filed new documents under Annexures-6 and 7, which are purported to be the statement of the driver made on 22.11.1989.

4. We have heard Shri A.K.Hota, the learned counsel for the applicant and Shri B.Dash, learned Addl.Standing Counsel for the Respondents. Also perused the records.

5. The first point urged by Shri Hota, in course of argument is that orders under Annexures-3 and 5 stand vitiated as the Disciplinary Authority had not conducted any inquiry. In support of his contention he placed reliance on the judgment of the Madras High Court in the case of P.Dharmalingam vs.Chief of General Staff reported in 1975 AISLJ 247 and judgment of J.& K. High Court in Mansaram vs. G.M. Telecommunications reported in 1980 (3) SLR 520.

Dharmalingam's case decided by the Madras High Court

is not applicable to the facts of the present case. It was a case where the delinquent was dismissed from service without following the elaborate procedure prescribed under Rule-14 of Regular Inquiry under the C.C.A. Rules. Whether in a charge for minor penalty enquiry as required under Rule-14 shall have to be conducted or not was not at all an issue in that case. So this decision will be of no help to the applicant.

In Mansaram's case, the applicant was employed as a Clerk in the Traffic Branch of the P & T Department. A disciplinary proceeding under Rule-16 was initiated and he was ultimately imposed punishment of withholding of two increments without cumulative effect. This was also confirmed by the Appellate Authority. Mr.Mansaram challenged these orders before the J & K High Court, mainly on the ground that without conducting enquiry he could not have been punished. The Single Bench of J & K High Court held that though Rule-16(b) lays down that procedure of holding an enquiry need not be followed unless otherwise desired by the Disciplinary Authority, it would not mean that the enquiry is to be held and that it is entirely subject to the satisfaction of the disciplinary authority. The clause speaks of the opinion that such enquiry is necessary implying that the Disciplinary Authority must apply its mind to the facts and circumstances of the case, as disclosed in the representation of the employee and other available materials and give a reasoned finding whether an enquiry is necessary or not. In the absence of such finding, an order imposing penalty would be invalid, and of no legal consequence, unless, of course, it can show that omission has not resulted in any material prejudice to the employee, because cases are conceivable when the requisite opinion, Clause-(b) has

been substantially complied with.

This decision, in our view, is distinguishable, because, applicant before us neither in his defence statement under Annexure-2 nor in his appeal grounds vide Annexure-4 had raised the point of importance of conducting an enquiry in the absence of which he would be prejudiced and/or had been prejudiced. For the first time before this Tribunal he raised this point. Mansaram case was decided on 23.11.1997. Thereafter in G.I. Department Office Memorandum dated 28.10.1985, instructions have been imparted that in a proceeding under Rule-16 of the Rules in case delinquent Govt. servant has asked for certain documents and crossexamination of witnesses, the Disciplinary Authority should naturally apply its mind closely to this request and should not reject this request solely on the ground that the enquiry is not mandatory and if the disciplinary authority comes to a conclusion that enquiry is not necessary it should say so in writing indicating the reasons. We have carefully gone through the defence statement of the applicant under Annexure-2 in reply to the Charge Memo dated 16.9.1991. Nowhere in the statement he requested for crossexamination of witnesses, inspection of documents or for enquiry, though the statement is very elaborate consisting of three typed sheets.

We are therefore, not inclined to hold that the impugned orders are contrary to law on the basis of decision in Mansaram case, which is distinguishable, as discussed above.

6. On merits it can be said that a Tribunal cannot assume the role of an appellate authority to reappraise the evidence/ materials on record. As earlier stated, in the Original

Application the applicant had taken a plea that impugned order under Annexure-3 is arbitrary, vindictive inasmuch as the grounds mentioned by him in his defence statement were not dealt in the order. In order to appreciate this contention we have carefully gone through the defence statement under Annexure-2 and the impugned order under Annexure-3. The Disciplinary Authority had taken note of six grounds urged by the applicant in his defence statement and dealt all these grounds. Not only this, the order of the Disciplinary Authority is elaborate and well discussed. Even if his reasoning (which of course is not) is not correct, the same cannot be interfered by a Tribunal when the reason is based on some material. Similarly the Appellate Authority under Annexure-5 had dealt 10 points raised by the applicant in his appeal memo under Exhibit 4 and ultimately decided against him. His order is also very elaborate, based on good reasoning to which this Tribunal is not expected to interfere.

7. Shri Hota, in course of argument brought to our notice Annexures-6 and 7 of the rejoinder, which are purported to the statements of the driver, given to him on 22.11.1989 and contended that this statement would prove his innocence. It is not understood why he has not enclosed these annexures in the Original Application. Moreover, the charge memo under Annexure-6 is mainly based on the statement of the driver recorded on 8.9.1990. In his statement of defence, he did not at all make any mention of these two purported statements of the driver under Annexure-2 or in the appeal memo under Annexure-4. ~~He did not also make any reference in respect of these two annexures in the appeal memo.~~ Moreover, as earlier discussed, this Tribunal

is not expected to act like Appellate Authority to compare and contrast evidence on record, even if these two statements were introduced in his defence statement before the Disciplinary Authority.

Shri Hota, the learned counsel forthe applicant contended that delay was caused in disposing of his departmental appeal and thereby he was greatly prejudiced. According to him, the Apex Court(Constitution Bench) in S.S.Rathorse's case reported in AIR 1990 SC 10 in Para-17 of the judgment observed with concern that redressal of grievances in the hands of the departmental authorities takes an unduly long time and this approach has to be deprecated and authorities on whom power is vested to dispose of appeals and revisions under the service Rules must dispose of such matters as expeditiously as possible and that ordinarily the period of three to six months should be the outer limit and this would discipline the system and keep the public servant away from a protracted period of litigation. Nodoubt the Apex Court observed so. But through this observation the Apex Court did not intend that a departmental appeal disposed of after a protracted delay of several years would ip so facto be illegal. On the other hand, under the provisions of Sections 20 and 21 of the A.T.Act read together it would be clear that after preferring a departmental appeal, the aggrieved employee can await for six months and in case the appeal is not disposed of within a period of six months he can as well approach the Tribunal at any time within one year thereafter. In case an application is filed before the Tribunal, during pendency of departmental appeal, in respect of an appeal which is pending more than

six months, the same would stand abated under Section 19(4) of the A.T.Act, 1985, once the Original Application is admitted. Nothing prevented this applicant from approaching this Tribunal after waiting for a period of six months for disposal of the appeal. But for the reasons best known to him he did not choose to approach the Tribunal for which he must thank himself. Inordinate delay in disposal of appeal by itself will not be a ground to declare the order passed under appeal as not according to law.

9. In the result, we do not see any merit in this Original Application which is accordingly dismissed, but without any order as to costs.

(SOMNATH SOM)
VICE-CHAIRMAN
18.4.2001

18.4.01

(G.NARASIMHAM)
MEMBER(JUDICIAL)

B.K.SAHOO//