

6

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.473 OF 1996
Cuttack this the 15th day of September, 1998

R.Prasad Rao

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 44
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 44

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
15.9.98

(G.NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.473 OF 1996
Cuttack this the 15th day of September, 1998

CORAM:

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

...

Sri R.Prasada Rao, aged 48 years,
S/o. Sri R.Rama Rao,
Vill/Po:Kasinagar,
Dist:Ganjam, Orissa

...

Applicant

By the Advocates:

Mr. G. Rath
Mr. P.K. Padhi

-Versus-

1. Union of India represented through
it's Secretary, Ministry of Communication
Dak Bhawan, New Delhi, PIN: 110001
2. Chief Post Master General(Orissa)
At/Po:Bhubaneswar, Dist:Khurda, 751001
3. Director of Postal Services(Berhampur Region)
Office of the Post Master General(Berhampur)
At/Po:Berhampur, Dist:Ganjam(O)760001
4. Senior Superintendent of Post Offices
Koraput Postal Division,
At/Po:Jeypore(K),
Dist:Koraput, Orissa

...

Respondents

By the Advocates:

Mr. Ashok Mohanty
Sr. Standing
Counsel(Central)

...

ORDER

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant ~~is~~ a Sub-Postmaster of Sunabeda has been ultimately removed from Service on 13.11.1995 (Annexure-15) by Respondent No.4, viz., Superintendent of Post Offices, Koraput Division, through a departmental proceeding. His appal was rejected by Respondent No.3, i.e., Director of Postal Services, Berhampur Region, by order dated 7.2.1996 (Annexure-16). This application has been filed under Section 19 of the Administrative Tribunals Act, 1985, for quashing this removal order under Annexures-15 and 16 and for ~~the~~ reinstatement with consequential service benefits including back wages.

2. Relevant facts not in controversy are as follows :

1. The applicant entered postal service as a Clerk in April, 1968. He was promoted to Lower Selection Grade (in short L.S.G.) on 28.4.1984 by Post Master General, Orissa (now Chief Post Master General, Orissa Circle, Res.2). Because of misconduct he has been placed under suspension with effect from 1.12.1992.
2. On 29.3.1993, Shri Jaganath Majhi, the then Senior Superintendent of Post Offices issued charge sheet (Annexure-3) under three heads. The applicant submitted written statement and participated in the inquiry. The Inquiry Officer submitted in the inquiry report (Annexure-8) on 28.6.1994 holding charge No.3 as not proved, charge No.1 fully proved and charge No.2 partly proved.
3. On 26.8.1994, Shri H.K.Sethi, the then Senior Superintendent of Post Offices, Koraput Division noticed the applicant (Annexure-9) enclosing copy of the inquiry report and intimating that he had

provisionally come to a conclusion that the applicant was not fit to be retained in service and therefore, proposed to impose penalty of dismissal or removal from service and thereupon directed the applicant to submit the representation, if any, against the proposed penalty.

4. After considering the representation, the Senior Superintendent of Post Offices (Shri Sethi) on 15.9.1994 removed the applicant from service with immediate effect by exercising the powers in Rule 19(1) of the C.C.S.(CCA) Rules, 1965(Annexure-10)
5. In appeal, Respondent No.3 by order dated 3.4.1994(Annexure-11) quashed the order of removal observing that the applicant could not have been removed under Rule 19(1) and remitted the proceeding to the Senior Superintendent of Post Offices for de novo action from the stage after submission of the inquiry report dated 28.6.1994. Thereafter the Senior Superintendent of Post Offices(Shri Sethi) passed two orders on 3.7.1995; one is cancelling his earlier order of removal dated 15.9.1994 and the second, removing the applicant from service retrospectively from 15.9.1994(Annexures-12 and 13)
6. The applicant then preferred appeal before Respondent No.3, who in his letter dated 29.9.1995 advised Respondent No.4(Shri Sethi) to pass a speaking order with reference to ~~an~~ retrospective date. Thereafter on 24.10.1995, Respondent No.4(Shri Sethi) noticed the applicant (Annexure-14) enclosing a copy of the inquiry report to represent, if any, against the proposed penalty of removal from service after observing that he had provisionally come to a conclusion that the applicant was not fit to be retained in service. Then on 13.11.1995, this Respondent 4(Shri Sethi) passed the impugned order of removal observing that the applicant is deemed to be under suspension from 15.9.1994 to 12.11.1995(Annexure-15). Appeal preferred by the applicant as earlier stated has been rejected by Res.3 on 7.2.1996(Annexure-16) with an observation that there was fraudulent encashment of 47 NSCs amounting to Rs.2,78,000/-.

3. The applicant raises the following points in his pleadings in support of his prayer for quashing the order of removal and his consequent reinstatement with all consequential service benefits.

- (a) He, having been promoted to Lower Selection Grade in the year 1984 by Post Master General, Orissa, his disciplinary authority under the rules is Director of Postal Services (Res.3) and as such proceeding initiated by Res.4 is and his final order of removal are vitiated without jurisdiction.
- (b) Shri Jaganath Majhi, then then Senior Superintendent of Post Offices, who framed charges (Annexure-3) was himself chargesheeted in connection with this case for the same lapse, on his part. He being an interested party in order to save his skin was naturally biased against the applicant and the charges under Annexure-3 on this score are vitiated and cannot be acted upon.
- (c) The Inquiry Officer, who was dealing with the file containing the relevant papers of the proceedings and he having prior knowledge was not independent in his assessment and the entire inquiry on this score is defective.
- (d) The Inquiry Officer refused to supply some relevant documents, i.e. Items-2, 4, 8 and 9 of Annexure-4(application of the applicant for supply of documents) and thus denied reasonable opportunity to the applicant to defend his case. Even the documents made available as per rules, should have been supplied three days prior to the inquiry even made available on the date of inquiry by the Inquiry Officer and on this count the applicant could not effectively defend his case and thus was denied reasonable opportunity to defend his case.
- (e) Shri Sethi, Senior Superintendent of Post Offices was hopelessly biased against the applicant and consequently all his orders are vitiated on the ground of his bias and interestedness. His bias and attitude is evident from the following circumstances:

- i) After perusing the inquiry report he noticed the applicant on 26.8.1994 (Annexure-9) indicating that he had provisionally come to a conclusion that the applicant was not fit to be retained in service and therefore, asked the applicant to represent against the proposed penalty of dismissal or removal from service. This is contrary to the procedure under Rule-15 of the CCS(CCA)Rules and the principle of law enunciated by the Apex Court in Ramjan Khan's case.
- ii) The removal order dated 15.9.1994(Annexure-10) passed under Rule 19 is not a speaking order.
- iii) The removal order having been quashed by the appellate authority with a direction to proceed from the stage of submission of inquiry report, the Respondent No.4, without following due procedure, in a hurry passed two orders on 3.7.1995 under Annexures-12 and 13, i.e. one cancelling the previous order dated 15.9.1994 for which there was no justification and another ordering removal with retrospective effect from 15.9.1994.
- iv) After the matter was remanded again to Res.4 from the appellate authority, Res.4 issued a similar notice(Annexure-14) as under Annexure-9 prejudging the matter with an intimation that the applicant was not fit to be retained in service. His final order dated 13.11.1995 is not a speaking order.

- 12
7. The applicant's appeal against the order of removal dated 3.7.1995(Annexure-13) not having been disposed of by the appellate authority, under Rule-27 of C.C.A.(CCS)Rules, Res.4(Shri Sethi) could not have under law issued notice under Annexure-14 and passed removal order under Annexure-15, simply on the basis of a letter of advice dated 29.9.1995 received from Res.3.
 8. The appellate authority is also biased in confirming the order of removal under Annexure-15 without a speaking order and the bias is apparent from his conclusion that there was fraudulent encashment of 47 NSCs amounting to Rs.2,78,000 which does not at all find mention in the charge sheet under Annexure-3.
 9. Before passing the order of dismissal without revoking the order of suspension is contrary to law.
 10. For similar charges, another officer Shri B.B.Mohapatra was proceeded under Rule 16 and was let off with censure (Annexure-17) and thus the applicant has been discriminated.
 11. There being no misappropriation or allegation of misappropriation touching integrity or moral turpitude, extreme punishment of dismissal was not warranted.
 3. After closure of the arguments, learned counsel for the applicant while submitting written note of submission filed along with it four more documents describing them as Annexures-19 to 22. In the absence of amendment of the Original Application incorporating those four Annexures and facts contained therein, we cannot take note of these annexures and that too at this stage.
 4. The respondents in their counter justified the disciplinary proceedings in all its aspects and the consequent order of removal. The applicant has not filed any rejoinder to this counter. Instead of indicating the

13
the facts and points averred in the counter at this stage, we feel it convenient to describe and deal with those averments while discussing the points raised by the applicant.

5. Before discussing the main point regarding jurisdiction of Res.4 in passing the impugned order of removal, we may first deal with other points in the matter of removal.

There is no dispute that Shri Jaganath Majhi, the then Senior Superintendent of Post Offices framed the charges under Annexure-3. In para 4.5 of the application it has been clearly averred that this Jaganath Majhi was also chargesheeted for same lapse, on his part. This has not been specifically denied in the counter. It is also not in dispute that this Jaganath Majhi has ultimately been exonerated as there was no pecuniary loss to the Government. The contention of the applicant is that in order to shift the responsibility to be exonerated from the charges levelled against him Shri Majhi chargesheeted the applicant and in this way he has been greatly prejudiced. There is no averment in the pleading that in his written statement filed in the disciplinary proceedings he had taken this specific point. Moreover even if the facts averred in the charge are false, the applicant was given due opportunity to file written statement to answer those facts averred in the charges. No authority has been cited on the side the applicant that in a case of this nature the framing of charges itself would be vitiated; that no prejudice has been

to the applicant is apparent from the fact that he cited Shri Jaganath Majhi as defence witness No.2 during inquiry vide Annexure-8. We are therefore, not prepared to accept the contentions raised by the applicant in this regard.

6. Another contention advanced is that Inquiry Officer was dealing with the relevant file containing the papers involved in this proceeding and he being not an independent should not have been appointed as Inquiry Officer. There is no doubt that he was dealing with the relevant file. This does not however, mean that he would not act in an independent manner. It is not the case of the applicant that Inquiry Officer was also a witness or assumed the role of a Presenting Officer in which case prejudice is implicit. No legal proposition has been cited in support of this contention. We therefore, do not accept this contention of applicant.

7. Before commencement of inquiry, the applicant through Annexure-4 requested the Inquiry Officer cause production and supply of as many as 11 documents mentioned therein. Admittedly Items 2,4,8 and 9 of that Annexure were not made available. Item No.2 relates to charge No.3 which has not been established and as such we may not discuss as to the consequence of its non-availability. Under Annexure-5 the Inquiry Officer described the documents mentioned under Items 4, 8 and 9 as not relevant, though according to applicant they are relevant as stated in Annexure-4. If these three documents which were not made available are relevant for

the purpose of defence, then inquiry stands vitiated, because the Apex Court in Kashinath Dikshita case reported in AIR 1986 SC 2118 observed that failure to supply relevant materials would be tantamount to denial of reasonable opportunity to the delinquent to defend himself. Item No.4 is copy of the inquiry report of Shri B.Purohit, A.S.P.O.(Vig) R.O. The applicant wanted this copy so that he would effectively crossexamine this witness Shri Purohit as mentioned in Annexure-4. The inquiry report (Annexure-8) reveals that this B.Purohit was examined as departmental witness No.4. He being the preliminary Inquiry Officer investigated the case at initial stage and as such he is a material witness in this issue. Due to non-availability of a copy of inquiry report, the applicant lost the opportunity of effectively crossexamine this witness with reference to the facts gathered by him during inquiry. Thus the applicant is greatly prejudiced. Item No.8 under Annexure-4 relates to paper concerning Shri J.Ch.Sethi, examined as departmental witness No.5 during inquiry, who was also chargesheeted in connection with this case. Naturally in the absence of the papers relating to this witness the delinquent has been greatly handicapped in crossexamining him effectively. Papers described under Item No.9 were required by the applicant to crossexamine witness PrakashChandra Brahma, examined as departmental witness No.6. This witness has also been chargesheeted. He also carried some NSC Certificates for which Shri B.B.Mohapatra was chargesheeted. The applicant required the file containing the papers relating to the proceeding

of the witness Shri Brahma and also file containing the proceeding of Shri B.B.Mohapatra to crossexamine these witnesses, but the papers as earlier indicated have not been made available. We, therefore, do not agree with the contention of the respondents that the papers under Items 4, 8 and 9 are not relevant in this proceeding. Since the concerned witnesses were material witnesses and the papers having been not made available, the applicant lost reasonable opportunity to crossexamine these witnesses effectively. We have therefore, no hesitation to hold that the inquiry is vitiated.

It is true that a perusal of the inquiry report (Annexure-8) and inquiring proceedings (Annexures-5 to 7) would reveal that some documents were made available to the applicant on the dates of inquiries and not three days prior to the commencement of the inquiry. Yet the fact remains that instead of producing the applicant participated in the inquiry with the help of those documents. We, therefore, do not agree that the applicant has been greatly prejudiced on this count.

8. It is not in dispute that Shri H.K.Sethi was the Senior Superintendent of Post Offices at the relevant time and issued notices under Annexures-9 and 14 to the applicant and passed orders under Annexures-10, 12, 13 and 15. The main contention of the applicant is that Shri Sethi acted against him with lot of bias and issued notices and passed orders which cannot stand the scrutiny of law.

Proceeding has been initiated in the year 1992

and inquiry report under Annexure-8 was ready on 28.6.1994. In other words the principle of law enunciated by the Apex Court in Ramjan Khan's case is fully applicable to this proceeding. If the disciplinary authority is not the Inquiry Officer, a copy of the inquiry report has to be furnished to the delinquent to enable him to make his submissions, if any, before the disciplinary authority on the findings of the Inquiry Officer, before the disciplinary authority passes final order. In other words at this stage the delinquent has the right to challenge the finding arrived by the Inquiry Officer and the disciplinary authority has to deal with the same before arriving at a conclusion as to whether the findings of the Inquiry Officer are legally tenable or not. This means the disciplinary authority before affording opportunity to the delinquent shall not prejudge the case. In fact, before the pronouncement of Ramjan Khan decision on 20.11.1990, the G.I. Deptt. of P.R & Trg., bearing in mind this principle based on natural justice, in their circular dated 26th June, 1989 as quoted in Page 72 and 73 of Swamy's Compilation of CCS(CCA) Rules, instructed that the disciplinary authority before making a final order should forward a copy of the inquiry report to the concerned Govt. servant with the 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 the receipt of this letter."

18

Respondent No.4(Shri Sethi) completely shut his eyes to this instruction conferring a valuable right as well as protection on the delinquent and issued notices under Annexures-9 and 14 stating therein that he had provisionally come to a conclusion that the applicant was not fit to be retained in service and therefore, directed the applicant to represent as to why he shall not be removed from service. In other words before giving an opportunity to the applicant to hear his version on the findings arrived by the Inquiry Officer, Res.4 decided to impose penalty of dismissal on the applicant. There is no doubt that Res.4 not only acted contrary to law, but also displayed an attitude of bias.

It is true that order of removal passed on 15.9.1994 under Annexure-10 has been quashed by the disciplinary authority (Res.3). But the contention of the applicant is that he is highlighting the orders passed by Res.4 before us to enlighten^{as} to what extent Res.4 was biased towards him. His attitude of bias is also apparent from the fact that on 3.7.1995 he passed two orders, one cancelling his earlier order of removal dated 15.9.1995(Annexure-12) and another (Annexure-13) removing the applicant retrospectively from 15.9.1994. Both these orders are contrary to law. Since order dated 15.9.1994 was no longer in existence because of the order of the appellate authority, there was no necessity for Res.4 to cancel that order under Annexure-12. In fact after passing the final order of penalty, the disciplinary authority has become functus officio. Even prior to passing of order of removal on

3.7.1995 under Annexure-13, Respondent 4 again overlooked to follow the instructions of the department in giving opportunity to the applicant to have his say in the matter, because the appellate authority under Annexure-11 directed Res.4 to start proceeding from the state of submission of inquiry report. This having not been complied, order of removal passed on 3.7.1995 under Annexure-13 and that too with retrospective effect from 15.9.1994 cannot legally stand.

This apart as rightly contended by the learned counsel for the applicant that orders of removal passed on 15.9.1994 under Annexure-10 and on 3.7.1995 under Annexure-13 are not at all speaking orders. There is no mention about the inquiry report or its findings and submissions made in the representation. Further Annexure-10 does not at all refer to any of the submissions made in the representation. Both the orders are very cryptic and by no stretch of imagination can be said speaking orders and in this way they are legally defective.

There is nothing on record that order removal passed on 3.7.1995 under Annexure-13 has been set aside or quashed by the appellate authority in the admitted appeal preferred by the applicant. In fact the averment in the application that this appeal was still pending has not been denied in the counter. Res.3, only in letter dated 29.9.1995 advised Res.4 to pass a speaking order with reference to a retrospective date and not through an order. Rule 27 of CCA(CCS) Rules dealing with provision of appeal lays down that the appellate authority either can confirm or set aside the penalty or

remit the matter to the disciplinary authority with such direction as he may deem fit. There is no order of the appellate authority passed under Rule-27 of CCA(CCS) in this regard. This rule nowhere empowers the appellate authority to address a letter to the disciplinary authority giving some advice. It comes to this that even though order of removal passed on 3.7.1995 under Annexure-13 remained in force and even though Res.4 became functus officio after passing that order, ^{he} again passed an order of removal on 13.11.1995(Annexure-15). Viewed from this angle the order dated 13.11.1995 is without jurisdiction and cannot be enforceable. This apart as earlier stated notice dated 24.10.1995 under Annexure-14 preceding the impugned order dated 13.11.1995(Annexure-15) besides being illegal and defective, spells out the bias of Res.4. From this angle also this impugned order under Annexure-15 cannot but be set aside.

We, therefore, agree with the contention advanced by the learned counsel for the applicant that Res.4(Shri Sethi) not only displayed ^{an} attitude of bias but also issued notice, and orders under Annexures-9, 10, 12, 13, 14 and 15 which are contrary to law.

9. Annexure-16 is the order dated 7.2.1996 of the appellate authority (Res.3) confirming the order of removal passed on 13.11.1995. Since order dated 13.11.1995 under Annexure-15 is contrary to law and without jurisdiction this order of the appellate

authority cannot also legally stand. Even this order, according to applicant is also biased. This order has been passed by Shri S.K.Kamila, who was not the appellate authority under Annexure-11 dated 3.4.1994, which was passed by one Shri B.N.Tripathy. There appears to be some force in this contention raised by the applicant, because this appellate order dated 7.2.1996 discloses that Res.3 confirmed the order of removal mainly on the ground that the case was grave ad serious because of fraudulent encashment of 47 NSCs amounting to Rs.2, 78, 000. At this stage, we may mention the applicant was held guilty under charges 1 and 2. Charge No.1 is that as ^aSub-Postmaster of Sector-7, Sunabeda during the period from 1.6.1989 to 23.11.1992 he allowed encashment of Forty-seven Six Years N.S.C. VII issue denominations of Rs.5,000 and Rs.1000 standing registered at Jeypore H.O. and Koraput H.O. as per the list shown in the Annexures without effecting transfer or prior verification from the offices of registration as contained in Rules 23(1) and 31(1) of POSB Manual. The second charge is that on 19.5.1992, 22.5.1992 and 23.5.1992, he conveyed cash remittance of several lakh of rupees from Sunabeda - 2 office without observing the line limit or asking for police escort as required under the rule-9 of the Postal Manual. There is no charge or allegation that the applicant misappropriated the amounts covered under the 47 NSCs. In fact not a single payee of these NSCs has been examined during inquiry as is apparent from a comparison of the names found in the Annexures under

article of charges of the inquiry. This being so it is not understood what prompted this appellate authority to record a finding to this effect which is not based on any evidence and ^{more} beyond the record. Even this finding that the amount of misappropriation was Rs.2,78,000 in respect of 47 NSCs is beyond record. We have carefully totalled the denominations of 47 NSCs mentioned in annexures enclosed to the chargesheet. The total figure comes to Rs.1,39,000 only. This gives rise to an inference that this appellate authority, somehow or the other was bent upon ~~in~~ removing the applicant from service by introducing a new case of fraudulent encashment of heavy amount of Rs.2,78,000 and as such was biased against the applicant.

10. There is no doubt that Shri B.B.Mohapatra was proceeded under Rule 16 of CCA(CCS)Rules by Res.4(Shri Sethi) in respect of a charge akin to charge No.1 framed against the applicant and was let off with a censure. Annexure-17 is the relevant order. This order reveals that from 7.5.1992 to 8.12.1992 this Mohapatra while working as D.P.M. in Koraput H.O. arranged discharge of two Six Year - VIth Issue Certificates denominations of Rs.5000 and Rs.1000 respectively without getting them transferred from Koraput H.O. under the rules and had he followed the rules, double payment in respect of this certificate could have been avoided. In other words, this implies for this irregularity committed by Shri B.B.Mohapatra there was financial loss due to double payment amounting to Rs.51,000 to the department. Yet he was

proceeded for a minor charge and let off with a censure, but in the case of the applicant though there was no allegation or averment of financial loss to the department, he was proceeded with major charges and ultimately removed from service. This conduct of Res.4 (Shri Sethi) not only displays an attitude of bias, but also discrimination against the applicant.

Admittedly there was no misappropriation on the part of the applicant. Charges 1 and 2 at best would reveal that he committed some irregularities in encashment of NSCs and conveyance of cash. Unlike in the case of Shri B.B.Mohapatra no financial loss incurred to the department due to these irregularities of the applicant. Hence the contention of the applicant is that the order of removal passed against the applicant is not only discriminatory but also disproportionate to the charges established.

We are aware that the Court or Tribunal normally should not interfere with the quantum of punishment imposed by the disciplinary authority, but the Apex Court in B.C.Chaturvedi's case reported in 1996 SCC(L&S) 80 held that where the punishment imposed by the disciplinary authority shocks the judicial conscience a Court or Tribunal can mould the relief. Here in this proceeding as already indicated there is no allegation of misappropriation against the applicant. He has been found guilty for irregularities committed by him for which the department incurred no financial loss. Admittedly he has been in service since April, 1968. In a case of ~~committion~~ of similar irregularities by one of his

24

colleagues, i.e. B.B.Mohapatra, which had even resulted in financial loss of Rs.51,000 to the department, the same disciplinary authority proceeded him for a minor penalty under Rule 16 of CCA(CCS)Rules and let him off with a censure. Thus before us there are two cases of proceedings where one employee whose irregularities did not at all result in any pecuniary loss to the department was removed from service whereas in the other case an employee involved in a similar nature of irregularity resulting in financial loss to the tune of Rs.51,000 has been let off with a censure. Viewed from this angle the order of removal passed against the applicant who in no way was involved in any case of misappropriation involving integrity or moral turpitude cannot but shock our judicial conscience.

11. Learned counsel for the applicant in support of his contentions that without revocation of the order of suspension no order of dismissal can be passed, could not cite any authority. He also could not bring to our notice any provision of law in support of his contention. Hence this contention fails.

12. As earlier stated the main challenge of the applicant against the order of his removal is that Res.4 being not his disciplinary authority could not have held him guilty in this proceeding and passed order of removal. According to him, his disciplinary authority is Res.3, i.e. Director of Postal Services, Berhampur Region, because he was promoted to the Lower Selection Grade by P.M.G.(Res.2) on 28.4.1984. In this connection he places reliance under Annexure-1 and 2, the genuineness of which

have not been disputed by the Respondents. Annexure-1 is Government of India letter dated 23.5.1990 addressed to all Heads of Circles in connection with the divisionalisation of L.S.G. cadre of the Postal and R.M.S. side of the department. The letter reveals that consequent upon divisionalisation of L.S.G. cadres, heads

of the Divisions have been vested with the powers of penalties under CCA rules. Prior to that power to impose major penalties were vested only with Director of Postal Services whereas Heads of the Divisions were competent to impose minor penalties. Question then arose whether L.S.G. officials who were appointed prior to divisionalisation (Sept. 1989) can be awarded major penalties by the Heads of the Division. It has been clarified in this letter that in respect of officials who were appointed by an authority higher than the Heads of Division, their cases for imposition of major penalty will have to be referred to the authorities who actually appointed them. Annexure-2 is letter dated 16.8.1990 issued by the Chief Post Master General, Orissa, enclosing a copy of the letter dated 31.7.1990 of the Directorate of New Delhi dealing with the subject appointing authority in respect of L.S.G. cadre. It has been made clear in this letter that notices of premature retirement in respect of officials appointed as L.S.G. prior to 8.7.1989 should be issued by the Director of Postal Services, who is the appointing authority in such cases. A close reading of these two letters make it clear that Senior Superintendent of Post Offices cannot impose major penalties on L.S.G. officials appointed prior to September, 1989. Learned Sr. Standing Counsel, however, during hearing filed

notification dated 27.8.1990 issued by the Ministry of Communications, Department of Posts and contended that Res.4 has the power to impose major penalties against the applicant as disciplinary authority. This notification has been issued in exercise of powers conferred under CCA(CCS) Rules, 1965 in supercession of notification dated 7.6.1989 and 8.7.1989. The learned counsel for the applicant on the other hand contended that this notification is not in supercession of the letter dated 23.5.1990 under Annexure-1. Even otherwise this notification does not disclose that in respect of L.S.G. officials promoted prior to September, 1989, the Senior Superintendent of Post Offices is the disciplinary authority having power to impose major penalties. The notification relied ^{on} by the respondents introduces certain amendments in the schedule of the rules in respect of description of appointing authority, disciplinary authority, authorities empowered to impose minor penalty and appellate authority. Page-11 of the notification deals with officials working in Post Offices. Under Item No.2, Postmaster in L.S.G./Ministerial staff in L.S.G. have been included. Under the Column appointing authority, DPS/Head of the Division/C.P.M.G. find mention. All these authorities have been empowered to impose all penalties. This description under Item No.2 when read with Annexures-1 and 2 would make it clear that for L.S.G. officials appointed prior to ^{July} September, 1989, Director of Postal Services is the appointing as well as the disciplinary authority. The appellate authority would then be Chief Post Master General.

The learned Senior Standing Counsel, however, filed a xerox copy of the decision dated 22.4.1996 of the Central Administrative Tribunal, Bangalore Bench in support of his contention that Res.4 is the disciplinary authority of the applicant. We have carefully perused this decision. Interpretation of Rule 48(a) of CCS(Pension) Rules was involved in this decision and not the interpretation of C.C.A.(CCS)Rules, 1965. Moreover, this decision is in connection with the validity of acceptance of notification of voluntary retirement and not a case of dismissal passed in a disciplinary proceeding. We are, therefore, of the view that this decision is not of relevance in the case before us.

Moreover, Article, 311 of the Constitution of India is clear that no person can be removed or dismissed from service by an authority subordinate to the appointing authority. The Hon'ble High Court of Orissa in the case of Niladri Chandra Mahanta vs. State of Orissa(56(1983) C.L.T. 349) clearly held that when the order of removal is passed by an authority subordinate to the appointing authority, the unconstitutionality cannot be cured by the fact that the order of dismissal is confirmed on appeal by the proper authority. Such order of removal being in contravention of Article 311 of the Constitution is null and void.

In view of our discussions above, we have no hesitation to hold that Director of Postal Services (Res.3) ^{is} the disciplinary authority of the applicant ^{is} and ^{alone} ^{only} competent to pass the penalty order of

28
dismissal.

It is true that charges under Annexure-3 have been signed by then then Senior Superintendent of Post Offices (Res.4), who is not the disciplinary authority. However, on this count the proceeding is not vitiated . Though Res.4 is not the disciplinary authority in respect of the applicant, yet he being Head of the Division is his controlling authority. The Hon'ble Apex Court in Steel Authority of India vs. Dr.R.K.Diwakar reported in 1998, Lab. I.C. 2122 following their earlier decisions onthe point held, ~~that~~ it is not necessary that the authority competent to impose the penalty must initiate the disciplinary proceedings and that the disciplinary proceedings can be initiated by any superior authority, who can be held to be controlling authority, who may be an officer subordinate to the appointing authority. We are, therefore, of the view that Res.4 being the controlling authority of the applicant has the power to initiate the disciplinary proceeding though he is not empowered to impose major penalty.

13. In view of our discussions and observations made above, we quash the impugned order or removal passed under Annexure-15 and the order of confirmation of the removal order passed by the appellate authority under Annexure-16 and hold the entire proceeding has been vitiated from the stage of inquiry. Since the order of removal has been quashed, the applicant is deemed to be continuing in service as he was on the date of passing of the impugned order of removal under Annexure-15.

The department may pursue the proceeding afresh from the stage of inquiry and in case they so pursue the proceedings shall be completed within a period of four months from the date of receipt of this order.

In the result the application is allowed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

15-9-98
B.K.SAHOO, C.M.

15-9-98
(G.NARASIMHAM)
MEMBER (JUDICIAL)