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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.868 OF 1996
Cuttack this the 18th day of April/2001

Mahura Mahanta ... Applicant(s)

-Versus-

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

(FOR INSTRUCTIONS)

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

Somnath Som
(SONNATH SOM)
VICE-CHAIRMAN
18.4.2001

18.4.01
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.868 OF 1996
Cuttack this the 18th day of April/2001

CORAM:

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

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Mahura Mahanta, Ex-E.D. Packer,
Jhumpura, Dist - Keonjhar

...

Applicant

By the Advocates

Mr. D.P. Dhalasamant

-Versus-

1. Union of India represented through
Chief Post Master General, Orissa Circle,
Bhubaneswar-751001
2. Director of Postal Services, Office of
Postmaster General, Sambalpur Region,
Sambalpur-768001
3. Superintendent of Post Offices, Keonjhar Division
Keonjhar-758001
4. Assistant Superintendent of Post Offices (Headquarters)
Keonjhar Division, Keonjhar-758001
5. Assistant Superintendent of Post Offices I/C
Keonjhar Sub-Division, Keonjhar-758001

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Respondents

By the Advocates

Mr. U.B. Mohapatra
Addl. Standing Counsel
(Central)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant, E.D.Packer of
Jhumpura S.O., while under put off duty was served with charge
memo dated 10.3.1995 (Annexure-1) by the Assistant Superintendent
of Post Offices, Keonjhar North Sub-division, Keonjhar (Res. No.5)
who by order dated 10.4.1995 (Annexures-2 and 3) appointed
Inquiring Officer and Presenting Officer. Since Res. 5 was also
cited as a witness, the Post Master General, Sambalpur Region
by order dated 8.5.1996 vide Annexure-5 appointed Shri N.R.
Chaudhury, A.S.P.O. (Res. No.4) (Headquarters) Keonjhar Division,

as the Disciplinary Authority in this proceeding. After conclusion of the proceedings, Respondent No.4 passed the impugned order dated 28.6.1996, imposing the penalty of removal of the applicant from service under Annexure-6. The applicant then preferred appeal to Respondent No.3 on 28.8.1996. This appeal was rejected by order dated 16.10.1996 under Annexure-7.

In this application praying for quashing the order of punishment under Annexure-6 and the order of the Appellate Authority under Annexure-7, and for consequent reinstatement, the grievance of the applicant is that under Rule-3 of E.D. Agents (Conduct & Service) Rules, 1964 (in short Rules), appointment of Respondent No.4 was to have been made by a special order of the Head of the Circle. Order under Annexure-5 containing the approval of such appointment is contrary to law as the same was not made by the Head of the Circle. Since such appointment was contrary to law, the impugned order of punishment vide Annexure-6 and the order of the Appellate Authority under Annexure-7 basing on Annexure-6 cannot be sustained under law.

2. In the counter the stand of the Department is that after the applicant was served with memo of charges, he did not cooperate in the departmental enquiry, but filed Original Application No.103/95, before this Bench for quashing the order of put off duty and for payment of salary for that period. As the Assistant Superintendent of Post Offices, ^{Sub} Keonjhar (North) Division (Res.5) was a material witness, he could not function as the Disciplinary Authority to finalise the disciplinary proceedings. Therefore, a special

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Disciplinary Authority was nominated by the Director of Postal Services, Sambalpur Region in letter dated 8.5.1996 and the said nomination was approved by the Head of the Circle subsequently, as required under Rule-3(a) of the Rules. The specially appointed Disciplinary Authority (Respondent No.4), after going through the inquiry report and other connected papers finalised the proceedings, removed the applicant from service. The appeal filed by the applicant was ultimately dismissed by the Appellate Authority. Though the applicant was informed about the order dated 8.5.1996 (Annexures-5 and R/1) appointing Respondent No.4 as the special Disciplinary Authority, he did not make any representation against such order. He was supplied with copy of the inquiry report by the special Disciplinary Authority and was instructed to submit representation, if any. The applicant though submitted his representation on 21.5.1996 (Annexure-R/2), did not mention anything questioning the appointment of Respondent 4 as the special Disciplinary Authority. Even in his appeal memo under Annexure-R/3, he did not raise this issue. Under Rule-3(a) of the Rules, power of appointing authority can be exercised by another authority empowered in that behalf. Respondent No.4 is not lower in rank than that of the original appointing authority. On these averments, Respondents pray for dismissal of this Original Application.

3. No rejoinder has been filed by the applicant.
4. At this stage it has to be noted that earlier Original Application No.103/95 filed by the applicant challenging the order of put off duty has since been dismissed on 19.2.2000.

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5. We have heard Shri D.P.Dhalasamant, the learned counsel for the applicant and Shri U.B.Mohapatra, learned Addl. Standing Counsel appearing for the Respondents. Also perused the records. During hearing Shri Mohapatra filed xerox copy of the order dated 9.1.1997 of the Chief Post Master General, Orissa Circle according post facto approval of appointment of Respondent No.4 as the Adhoc Disciplinary Authority to finalise the disciplinary proceedings in exercise of the powers conferred under Rule-3(a) of the Rules.

6. Facts are not in dispute. Charges have been grouped under three heads. Charge No.1 and 3 relate to various instances with reference to dates as to the unauthorised absence of the applicant. Charge No.2 relates to instances of subordination. The charges were framed by Respondent No.5, who is the Appointing Authority of the applicant. It is true that he is a material witness in the proceedings. But on that count charges cannot be found to be illegal and/or defective. There is also no prayer for quashing these charges.

7. The only point for determination is whether the impugned order of removal passed by Respondent No.5 can be legally sustained. In other words, whether Respondent No.5 was legally competent to pass the impugned order on the date he passed that order. In this connection Rule-3(a) of the Rules is relevant, which lays down as follows :-

"3-A. The powers of the appointing authority in the matter of awarding any of the penalties specified in Rule 7 may be exercised by an authority which has been shown in the Scheduled annexed to these rules or by any other authority empowered in this behalf by a special order of the Head of the Circle under circumstances to be recorded in writing :

Provided that in no case, the authority so appointed shall be lower in rank than the authority who originally appointed the ED Agent."

(11)

Under the Rules Appointing Authority of an E.D.Packer is Inspector of Post Offices/Assistant Superintendent of Post Offices as revealed from the Schedule of the Rules. Respondent No.4 is also Asst.Superintendent of Post Offices and is noway inferior to Respondent No.5, who is the actual Appointing Authority of the applicant. It is true that appointment of Respondent No.4 as Special/Adhoc Disciplinary Authority was approved subsequently by the Chief Post Master General, Orissa Circle, in exercise of powers conferred under Rule-3(A). But the fact remains that Respondent No.4 is Asst.Superintendent of Post Offices for the entire Keonjhar Division, which includes Keonjhar Sub-division. Viewed from this angle, we do not see any infirmit legal infirmity in Respondent No.4 ultimately finalising the disciplinary proceedings and awarding the impugned order of penalty of removal from service.

The fact remains that the applicant did not question the jurisdiction of Respondent No.4 when he submitted his representation against the report of the Inquiring Authority. Even he did not raise this point in his appeal memo before the Appellate Authority. If indeed he was prejudiced on Res.4 assuming the role of Disciplinary Authority, he would have, under normal circumstance, questioned his authority to finalise the proceedings. In other words, it is clear that the applicant was in noway prejudiced. In fact the point of prejudice has not even been pleaded in the Original Application. Accordance of ~~post facto~~ approval by the Chief Post Master General, at ^{administrative} best amounts to/irregularity. Unless prejudice is pleaded and/or caused in such sanction of ~~post facto~~ approval of appointment of Respondent No.4 as the Disciplinary Authority, the impugned

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order of punishment is not liable to be set aside.

Thus the only point pleaded and raised by Shri Dhalasamant, the learned counsel for the applicant fails.

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
8.1.2001

18-2-02
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//