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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 937 OF 1996
Cuttack this the 22nd day of May, 2003

Sirish Chandra Mahanta ... 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 ? Yes


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

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CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 937 OF 1996
Cuttack this the 22nd day of May, 2003

CORAM:

THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M.R. MOHANTY, MEMBER (JUDICIAL)

...

Sirish Chandra Mahanta, aged about 36 years,
S/o. Praharaj Ch. Mahanta, Vill-Bada Brahmanamara
PO-Patharachakuli, PS-Baripada Sadar,
Dist-Mayurbhanj

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Applicant

By the Advocates

Mr. T. Rath

VERSUS

1. Union of India represented through C.P.M.G.,
Orissa Circle, Bhubaneswar, Dist-Khurda-751 001
2. Superintendent of Post Offices, Mayurbhanj Division,
Baripada
3. Sub-Divisional Inspector (Postal), Baripada West
Sub-Division, Baripada
4. Sudhir Kumar Mahanta at present working as E.D.D.A.,
Bankisola Branch Office in account with Deuli Sub-
Post Office under Supdt. of Post Offices, Mayurbhanj
Divn. Baripada

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Respondents

By the Advocates

Mr. U.B. Mohapatra, A.S.C.

O R D E R

MR. M.R. MOHANTY, MEMBER (JUDICIAL) : Applicant, while working
as Extra Departmental Delivery Agent in Bankisole Branch
Post Office under Deoli Sub Post Office, a set of charges
were levelled against him for violation of Conduct Rule
(17 of EDAs Conduct & Service Rules, 1964) for which he was
placed under put off duty w.e.f. 03.05.1994 and departmental
proceedings was initiated against him under Rule-8 of EDAs
(C&S) Rules vide S.D.I.(P) Baripada West's Memo No. B/EDDA/

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Eng/Bankisole dated 24.8.1994. Applicant submitted his written statement of defence and, on consideration of the same, the competent authority appointed the Inquiring Office to enquire into the charges levelled against the Applicant. After giving opportunities to the Applicant to defend his case during enquiry, the Enquiry Officer found the Applicant guilty. The Disciplinary Authority, after receipt of the enquiry report, furnished copies thereof to the Applicant; on receipt of which, the Applicant submitted his representation on 17.03.1995, whereupon the Disciplinary Authority passed the order of punishment (of removal from service) on 24.03.1995. The Applicant, on 09.06.1995, preferred an appeal against the said order of punishment; which was rejected by the Appellate Authority on 20.11.1995. In the said premises, this Original Application has been filed by the Applicant under Section 19 of the Administrative Tribunals Act, 1985, challenging the said order of punishment under Annexure-3 dated 24.3.1995 and the order of rejection of his Appeal under Annexure-5 dated 20.11.1995, by branding the same to be illegal, arbitrary and violative of the principles of natural justice.

2. Respondents have filed their counter explaining exhaustively the details of the charges and the findings of the I.O., D.A. and the Appellate Authority and have stated that since the offence committed by the Applicant was serious in nature, which have been proved beyond reasonable doubt, this Tribunal should not interfere with the order of punishment imposed on the Applicant.

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3. We have heard the learned counsel for both sides and perused the records.

4. In support of the plea of the applicant, it has been argued by the learned counsel for the Applicant that the Applicant was denied principle of natural justice to defend his case inasmuch as the medical certificate produced by the Applicant, during enquiry, was not accepted. He has argued that though the depositions recorded under Annexure-6 and 7 runs contrary, the same was not weighed by the I.O. or the D.A. in a proper manner. It is argued by him that it was none of the responsibility of the EDDA to write the name of the villages he visited, unless the same has been written by the BPM. He has further led his submission that as, during the unauthorised absence, he was being paid his 'salary', it cannot be said that he was on unauthorised leave/absence; which aspect was not at all taken into consideration; neither by the I.O. nor by the D.A./A.A. It has been submitted further that the Disciplinary Authority, while disagreeing with the report of the I.O. ought to have given an opportunity of showing cause to the Applicant and, for not having done so, the order of punishment is not at all sustainable. It has further been alleged that the S.D.I.(P) was an instrumentality in the matter (of initiation of the proceedings as against the Applicant and the order of punishment) and, as such, the order of punishment being based on extraneous consideration, the same is not sustainable. It has been argued by the learned counsel for the Applicant that after the removal of the applicant, Respondent No.3 has appointed

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Respondent No.4 in the consequential vacancy, by taking bribe, and, as such, the action of the Respondents is not free from bias and ~~ulterior~~ ^{that} motive. Lastly it has been argued by the learned counsel for the applicant ~~the~~ ^{that} order of punishment (of removal from service) is highly disproportionate to the gravity of charges/offence, for which it was prayed to quash the order of punishment.

5. The learned Addl. Standing Counsel, Mr. U.B. Mohapatra, appearing for the Respondents ~~has~~ argued that as per the settled position of law the power of interference of the Courts/Tribunals in a disciplinary proceedings is very limited. It has been pointed out by him that the Courts/Tribunal can interfere with the order of punishment in a disciplinary proceedings, if only they are perverse; based on no material; on violation of principles of natural justice and/or if the punishment is disproportionate to the gravity of offence. It has been argued by the learned Addl. Standing Counsel Shri Mohapatra that unauthorised absence in postal service ~~leads~~ to serious consequences for which serious views should always be taken. It has been stated by him that when an EDDA fails to attend his duty the even tempo of communication in the country fails. He stated further that this was not the first occasion for which the Applicant was punished and that during the past, he was, time and again, instructed not to be irregular; still then he did not care and remained absent unauthorisedly for months together and thereby brought immense difficulties to the local public. By his conduct, the villagers had also lost trust

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on the Postal Deptt. and, by doing so, the Applicant tarnished the image of the Postal Department and, therefore, the order of removal was justified. The learned Addl. Standing Counsel has also drawn our attention to the Director General's Instructions with regard to granting of leave to E.D.Agents and appointment of Substitutes. Relevant portion of the said instructions are quoted hereunder:

"(1) Granting of leave to ED Agents and appointment of substitutes - A reference is invited to Rule 5 of the E.D.Agents(Conduct and Service) Rules, 1964, according to which the employees shall be entitled to such leave as may be determined from time to time. In accordance with this provision, Govt. of India have decided that leave for E.D.Agents should be regulated as below : -

(1) x x x

(2) During leave, every ED Agent should arrange for his work being carried on by a substitute who should be a person approved by the authority competent to sanction leave to him. Such approval should be obtained in writing".

As regards the submission made on behalf of the Applicant (that it was not the duty of the Applicant to mention the places he visited) the learned A.S.C. has vehemently urged that under Rules 110 and 136 of Part-III of Vol-VI of P & T Manual, it was the duty of the Applicant to maintain the Postman Book and Visit Book regularly and, therefore, the submission of the learned counsel for the applicant, in this respect, ought to be overruled. As regards the next submission (that before disagreeing with the report of the IO, neither the D.A. nor the Appellate Authority have given any opportunity to the Applicant to have his say in

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say in the matter) it has been argued by Shri Mohapatra the learned Addl. Standing Counsel that disagreement by the D.A. having been recorded by a reasoned order was effectively made available to be challenged in Appeal, and ~~the~~ in the Appeal, the Applicant did not raise the said point; although available to be taken. For the said reason, it is the case of the learned Addl. Standing Counsel, to be the Applicant is estopped to raise such a point. As regards the allegation of extraneous consideration, it is stated that by Shri Mohapatra, such a point cannot be taken into consideration in absence of adequate materials without making the individual as party to the case. In the above view of the matter, he prayed for dismissal of this O.A.

6. We have gone through the records thoroughly and considered the submissions of learned counsel for both sides. In view of the settled law that this Tribunal cannot reassess the evidence and substitute its finding in place of the findings reached by the Competent Authorities, we are not inclined to interfere with the order of punishment (as was confirmed by the Appellate Authority) which is a reasoned and speaking order. Few other points (raised for the first time in this case) which ought to have been raised in Appeal, having not been raised timely; the Applicant cannot take benefit of the same in this case. As a necessary consequence, this O.A. fails and the same is accordingly dismissed. No costs.

(B.N. SOM)
VICE-CHAIRMAN

(M.R. MOHANTY)
MEMBER (JUDICIAL)

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