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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 305 OF 1998

Cuttack, this the 20th day of February, 2001

Mr. Subhash Chandra Agrawal..... Applicant

Vrs.

Union of India and another ... Respondents

FOR INSTRUCTIONS

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

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

Somnath Sow  
(SOMNATH SOW)  
VICE-CHAIRMAN  
20.2.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 305 OF 1998  
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**CORAM:**

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

.....

Mr. Subhash Chandra Agarwal, aged about 46 years, son of late Nanak Chandra Agarwal, Assistant Engineer, now working as Assistant Surveyor of Works, Telecom Civil Circle, At-Bhubaneswar, District-Khurda... Applicant

Advocates for applicant - M/s K.C.Kanungo  
S.Behera

Vrs.

1. Union of India, represented through Member, Telecom Commission, Door Sanchar Bhawan, New Delhi-110 001.
2. Chief General Manager, Telecom, Orissa Circle, Bhubaneswar, District-Khurda.

..... Respondents

Advocate for respondents - Mr.U.B.Mohapatra

ACGSC

ORDER

(ORAL)

SOMNATH SOM, VICE-CHAIRMAN

In this application, the petitioner had originally prayed for quashing the order dated 22.10.1997 (Annexure-8) of the disciplinary authority imposing on him the punishment of stoppage of three increments with cumulative effect. The petitioner approached the Tribunal on 22.6.1998 in this O.A. and in the order passed on that day the appellate authority was directed to dispose of the appeal which had been filed by the petitioner within sixty days. Accordingly, the appellate authority in his order dated 21.10.1998 (Annexure-10) modified the punishment to one of stoppage of future annual increment for a period of two years without cumulative effect. The applicant has also prayed for quashing the order of the appellate authority at Annexure-10 after amending the O.A. He has also prayed for a

declaration that the proceeding under Rule 16 of CCS (CCA) Rules initiated against the applicant is illegal and void.

2. Respondents have filed counter opposing the prayers of the applicant and after the original application was allowed to be amended, have also filed additional counter. Before going into the facts of the case as also the submissions made by the learned counsel of both sides, it has to be noted that as the order of the disciplinary authority has been modified by the order of the appellate authority, the order of the disciplinary authority is no longer in existence, the same having been merged, as it were, in the order of the appellate authority. In view of this, even though the learned counsel for the petitioner prays for quashing the order of the disciplinary authority at Annexure-8, it is not necessary to pass any order on this prayer as in the eye of law this order dated 22.10.1997 of the disciplinary authority is no longer in existence. Before proceeding further, brief facts of the case which are mostly admitted have to be noted.

3. At the relevant time the applicant was working as Assistant Engineer in Telecom Department and was also in charge of Telecom Civil Sub-Division No.2, Bhubaneswar. In that capacity he was in charge of the Telecom Civil Store. It is the admitted position that on 31.7.1991 a surprise check of Telecom Civil Store at Satyanagar, Bhubaneswar, was conducted and a shortage of 495 bags of cement was detected. The respondents have stated that there were also lot of discrepancies in the issue of cement to the Contractor as per the Ledger Book and the Stock Statement Register. As a result of stock verification,

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disciplinary proceeding was initiated against the applicant in memo dated 22.1.1993 under Rule 16 of CCS(CCA) Rules. In the statement of imputation it has been mentioned that under overall supervision of the applicant the Telecom Civil Store was running. It is further stated that according to the explanation of Shri P.K.Sahoo, Junior Engineer, 495 bags of cement were issued to Contractors, but corresponding entries in the Ledger Book were not made showing issue of the said cement. Junior Engineer, Shri Sahoo also maintains a fortnightly stock statement register. This stock statement register was sent by the Junior Engineer to the applicant, but the applicant had not been able to detect this shortage in the accounts and therefore, it was alleged that he had not supervised the entries in the ledger card properly. The second imputation in the charge against the applicant is that the stock statement register for the period from 16.7.1991 to 2.8.1991 was put up before the applicant by the Junior Engineer, Shri Sahoo, on 2.8.1991. The applicant signed the statement but without affixing the date. While signing this statement, the discrepancy of entries regarding the issue of cement to the contractors as per the ledger book and the stock statement register was not pointed out by the applicant which, according to the imputation, shows that he had not applied his mind. After receipt of the explanation of the petitioner, the disciplinary authority in his impugned order at Annexure-8 imposed the punishment referred to by us earlier. On appeal, the punishment was reduced by the appellate authority. The learned counsel for the petitioner has challenged the order at Annexure-10 on various grounds which are discussed below.

4. It has been submitted by Shri K.C.Kanungo, the learned counsel for the petitioner that even though a minor penalty chargesheet was issued against the applicant, the punishment imposed by the disciplinary authority in effect was a major penalty. He has submitted that stoppage of three increments with cumulative effect ordered by the disciplinary authority is in effect a major penalty and could not have been imposed through a minor penalty proceeding where no detailed enquiry is conducted. In support of his contention, the learned counsel for the petitioner has relied on two decisions of the Hon'ble Supreme Court and the Hon'ble High Court. But as the order of the disciplinary authority has been modified by the appellate authority, it is fairly conceded by the learned counsel for the petitioner that he does not press this point any further and therefore, we do not think it necessary to refer to the two decisions cited by him.

5. The second ground urged by the learned counsel for the petitioner is that the finding of the disciplinary authority basing on which the appellate authority has passed the impugned order at Annexure-10 is based on no evidence and no reasonable person would have come to the conclusion arrived at by the disciplinary authority and the appellate authority. Law is well settled that in the matter of disciplinary proceedings the scope of interference by the Tribunal is somewhat limited. It is not open for the Tribunal to reassess the evidence and come to a finding different from the finding arrived at by the disciplinary authority. The Tribunal can interfere only if the finding is based on no evidence or is patently perverse. The submissions made by the learned counsel for the

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above  
petitioner are being considered in the context of the well settled position of law. It is submitted by the learned counsel for the petitioner that while passing the impugned order at Annexure-10 the appellate authority has taken note of an admission by the applicant that he has not properly checked the stores and corresponding registers of the Telecom Civil Store. Apparently, this statement was allegedly made by the applicant before the C.B.I. It has been submitted by the learned counsel for the petitioner and as has been pointed out in paragraph 5.10 of the O.A. that no such statement had ever been given by the applicant before the C.B.I. or before anybody else. It has been pointed out that the petitioner demanded to see a copy of the confessional statement and the Executive Engineer in his letter dated 9.9.1994 addressed to the applicant (Annexure-4) directed the applicant to meet the C.B.I. Inspector on 12.9.1994 at 10.00 A.M. to get the required information sought for. The Executive Engineer also stated that he had discussed the matter with the concerned C.B.I. Inspector. At Annexure-5 is a letter from the applicant to the Executive Engineer. In this letter dated 15.9.1994 the applicant has stated that he visited the concerned C.B.I. Inspector on 12.9.1994 as scheduled and after seeing the record the C.B.I. Inspector, Mr.Rana told him that there is no such statement in the record. The applicant has specifically mentioned in paragraph 5.10 of the application that there is no such confessional statement. In reply to this, the respondents in paragraph 10 of their counter have made a general denial stating that all the grounds urged by the applicant in paragraphs 5.1 to 5.20 of the O.A. are denied. We are not prepared to accept the above stand of the

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respondents specifically with regard to the so called confessional statement of the applicant. In support of his stand that there is no such confessional statement, the applicant has brought on record Annexures 4 and 5. Had there been such a confessional statement the respondents would have brought it on record and could have made a specific averment that such a confessional statement was made by the applicant on a certain date and before a certain authority. In the absence of any such confessional statement, on the basis of a bland denial of the stand of the applicant with regard to the confessional statement, the facts urged by the applicant cannot be disregarded. In the order of the appellate authority it has been mentioned that on verifying the record of the disciplinary proceedings he had come across the so called confessional statement of the applicant and it is dated 3.12.1991. The appellate authority has noted that this confessional statement was not shown to the applicant and therefore, reliance on the so called confessional statement has been in violation of the principles of natural justice. As we have already held that on the basis of the averments made by the respondents in paragraph 10 of their counter, it cannot be held that such a confessionall statement is there, even if we go by the observation of the appellate authority that such a statement dated 3.12.1991 is there, that could not have been relied upon as existence of this confessional statement was not made known to the applicant. The contention of the applicant in this regard is, therefore, upheld.

J. J. M.

6. The second aspect of the matter is that it is the admitted position between the parties that the Junior Engineer, Shri P.K.Sahoo was in charge of the day to day maintenance of the stock issuing and maintenance of stock account. The applicant's responsibility was only with regard to exercising supervision on the work of the Junior Engineer as regards running of the Store as well as maintenance of stock account. In the imputation it has been alleged that the applicant has not exercised proper vision with regard to maintenance of stock account of the Store by Shri P.K.Sahoo, Junior Engineer. It has been submitted by the learned counsel for the petitioner and it has also been mentioned in paragraph 5.7 of the O.A. that a major penalty proceeding was initiated against the Junior Engineer, Shri P.K.Sahoo and in the major penalty proceeding Shri Sahoo was exonerated. This specific averment has been sought to be displaced by the respondents by making a bland averment in paragraph 10 of their counter that the averments made by the applicant in paragraphs 5.1 to 5.20 of the O.A. are denied. We are not prepared to accept such a bland assertion. In case Shri Sahoo was not exonerated and in case punishment was imposed on him, it was open for the respondents to specifically indicate the fact that Shri Sahoo has been found guilty and some punishment has been imposed on him. In view of this, we have to accept the contention of the applicant that the Junior Engineer, Shri P.K.Sahoo, who was primarily responsible for maintenance of the Store as also keeping of the Store Accounts, had been exonerated after initiation and finalisation of a major penalty proceeding.

7. The charge against the applicant, as we have already noted, is lack of supervision on the work of the Junior Engineer, Shri P.K.Sahoo. When no fault has been found in the work of Shri Sahoo for the aforesaid period, as is evidenced by the fact that he has been exonerated of the charge, we find it difficult to accept the conclusion of the appellate authority that the applicant has been found guilty of lack of supervision. If the work of Shri Sahoo has been found to be satisfactory without blemish during the concerned period, it is difficult to sustain the conclusion that the supervision of the applicant over the work of Shri Sahoo has been lacking. In this view of the matter, we have no hesitation in holding that the finding of the appellate authority that the applicant has been guilty of lack of supervision on the work of the Junior Engineer, Shri P.K.Sahoo, is based on no evidence. We also hold that in view of the fact that Shri Sahoo has been exonerated of the charge, no reasonable person could have come to the conclusion that the applicant is guilty of lack of supervision over the work of Shri Sahoo. In view of our above conclusion, we hold that the order of punishment passed by the appellate authority at Annexure-10 is not sustainable. It is accordingly quashed. As Annexure-8 is no longer in existence, it is not necessary to pass any separate order quashing Annexure-8.

8. In the result, therefore, the Original Application is allowed but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

SOMNATH SOM

VICE-CHAIRMAN

20.2.2001.

February 20, 2001/AN/PS