

14

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 456 OF 1998  
Cuttack, this the 23<sup>rd</sup> day of December, 2003.

Banshihar Ojha.

....

Applicant.

- Versus -

Union of India & Others.

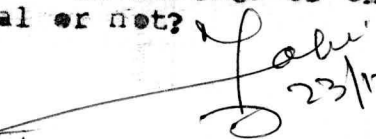
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Respondents.

FOR INSTRUCTIONS

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

  
  
(B.N. SOM)  
VICE-CHAIRMAN

  
23/12/2003  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

15

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 456 QF 1998  
Cuttack, this the ~~23~~<sup>23</sup>~~A~~ day of December, 2003.

CORAM:


THE HONOURABLE MR. B.N.SOM, VICE-CHAIRMAN  
AND

THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDICIAL)

Banshidhar Ojha, S/o. Late Gourhari Ojha,  
E.D.B.P.M., Bodakapatna, via. Randiahat,  
District Balasore. .... Applicant.

By legal practitioner; Mr. D.P. Dhalsamant, Advocate.

-Versus-

- 
1. Union of India represented through  
the Chief Post Master General,  
Orissa Circle, Bhubaneswar-1.
  2. Director,  
Postal Services,  
Sambalpur Region,  
Sambalpur.
  3. Superintendent of Post Offices,  
Bhadrak division,  
At/Post: Bhadrak,  
Dist. Bhadrak.

.... Respondents.

By legal practitioner; Mr. U.B. Mohapatra,  
Addl. Standing Counsel;

...

16

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :-

Applicant, who joined as E.D.B.P.M. of Bodakapatna Branch post Office in account with Randihat Sub post Office under Bhadrak Postal Division of Orissa on 12-10-1961, was placed under 'off duty' (suspension) on 12-09-1983 and was charge-sheeted (under three heads of charges) on 31-07-1984. Ultimately, by order dated 31.12.1986 he was removed from service. The Appellate Authority, on consideration of his appeal, remitted the matter back to the Disciplinary Authority (for a de-novo enquiry, from the stage of examining the questioned documents) on 31-08-1987. However, without conducting any de-novo enquiry on the charge-sheet dated 31-07-1984, a fresh charge-sheet was issued to the Applicant, on 28.09.1988, and, he was, again, awarded with the punishment of removal from service, on 28-05-1990, and, against the said order the Applicant preferred an appeal on 14-06-1990; which was returned to him (Applicant) on 27-06-1990; with a direction to submit the same to the Director of Postal Services stationed at Samealpur. Since no order was passed on his appeal memo (submitted to the Director of Postal Services, Samealpur) the Applicant invoked the jurisdiction of this Tribunal by filing O.A.No.243/1991. On 16-11-1995, after hearing learned counsel for both sides, this Tribunal allowed the grievance of the Applicant made in that O.A. with the following directions :-

"... We hereby quash the impugned order framing fresh charges and direct that the disciplinary authority shall aside by the order made by the appellate authority on 31-8-1987 and complete the inquiry within 120 days from the date of receipt of a copy of this order positively."

Thereafter, on 08-01-1997 (instead of proceeding de novo as per the order passed by the Appellate Authority in its order dated 31-08-1997), the Applicant was supplied with a copy of the enquiry report (drawn on the charges framed on 28.09.1988) by asking him to submit representation and, on 01-02-1997, the Applicant submitted his representation. Since the disciplinary authority of the Applicant was in previous knowledge of the subject matter of the charges, the competent authority (vide order dated 20-03-1997) appointed an Ad-hoc disciplinary authority for taking decision in the matter. In the said premises, this Original Application under section 19 of the Administrative Tribunals Act, 1985 was filed with the following prayers:-

1. the charge-sheet under Annexure-1 (dated 31-07-1984) be quashed;
2. direction be issued to the Respondents to reinstate the applicant into service with consequential benefits;
3. any other order/orders be passed to give complete relief to the Applicant as it deem fit and proper."



2. The Respondents have filed their counter explaining the reasons for the delay in concluding the proceedings.

3. We have heard Mr.D.P.Dhalsamant, learned Counsel for the Applicant and Mr.U.B.Mohapatra, Learned Additional Standing Counsel appearing for the Respondents and perused the materials placed on record.

4. As we find from the records, this case is having a chequered career, and the Respondents have unnecessarily harassed the Applicant by keeping the Democle's Sword hanging on his head for long 20 years. After having heard the learned counsel for the parties and going through the counter and other connected materials placed on record, we also find that no acceptable explanation has been adduced, by the Respondents, in their counter for such long continuance of the disciplinary proceedings as against the Applicant. It is also seen that even after the directions dated 16.11.1995 of this Tribunal, rendered in O.A.No.243 of 1991, the matter has not yet been set at rest. This type of attitude of the Authorities is not only lathergetic (in show of apathy towards subordinate employees) but also is a clear case of violation of the orders of this Tribunal. Law helps the man who comes with clean hand and law helps the man who respects the system. If one has no respect for the system, whoever it may be and in what position/capacity, he must suffer the vice/consequence thereof.

5. Herein, in the instant case, the Applicant has unnecessarily been harassed right from 1983 in the name of pendency of disciplinary proceedings. Even after the orders passed by the Appellate Authority and this Tribunal giving positive time limit to complete the proceedings, till date the same has not been completed. It is unfortunate that the Respondents representing the Union of India, have come forward to state in the counter (filed on 06.01.1999) that they 'having become aware of the wrong/denovo trial as discussed above, have taken utmost care to finalise the case within a period of 3 months; as if they are showing mercy either to the Applicant or to this Tribunal. Although it was clarified by this Tribunal that de novo proceedings shall be initiated from the stage of enquiry only; starting with examination of Government examiner of questioned documents in respect of charges dated 31.7.84; the Respondents (in their counter) have stated that they inadvertently issued the enquiry-report drawn on the charge-sheet dated 28.9.1988 and that, was subsequently ratified in order dated 08.02.1996.

It is also not known as to whether this corrected copy of the order has been served on the Applicant or not. No materials have been placed on record to that effect. While filing show-cause on 11th November, 1998, the Respondents have filed a copy of the order as Annexure-R/1 dated 08.02.1996 and, in the counter to the O.A., <sup>one</sup>another has also been filed as Annexure-R/1

dated 03.02.1996 but it is not known as to why the corrected copy was not filed along with the show-cause; if it was ratified by that time. The Respondents have pointed out, vaguely, in the counter that the Applicant have replied to the Annexure-R/1 but it has not been clearly stated as to which Annexure-R/1 was it to the Annexure-R/1 to the show-cause or Annexure-R/1 to the counter; because the Applicant had specifically challenged the order issued in Annexure-R/1 to the show cause; as Respondents have also not shown any unimpeachable evidence to show that the same had been served on the Applicant.

In the counter, the Respondents have not explained the delay in concluding the disciplinary proceedings satisfactorily. It is also not the case of the Respondents in their counter or during hearing, that the delay occasioned due to the lapses of the Applicant. Rather, it appears that the Applicant has been made to suffer, for all these long years, due to the lapses/callousness of the Respondents. Delay causes prejudice to the charged officer; unless it is shown that he is to be blamed for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. The Hon'ble Apex Court of India, in the case of STATE OF A.P. VRS.N. RADHAKISHAN (reported in 1998 SCC(L&S) 1044), after taking into consideration several other judgments, observed, at paragraph-19, as under:-

\*19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path, he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice\*.

This Tribunal at its Lucknow Bench had also taken care of such a situation and quashed the proceedings that was prolonged against the Applicant therein; in the case of K.B. Bhardwaj Vrs. Union of India and others (reported in AISLJ-II 2003(1) (CAT) 161.

6. In the light of the above discussions, since the proceedings in the present case has been continuing starting from 12-09-1983 (and even with direction to



culminate the proceedings within a stipulated time framed therein) and the Respondents have not complied and culminated the same; we have no hesitation in our mind to quash the same and, accordingly, we quash the charges levelled against the Applicant under Annexure-1 dated 31-07-1984; especially when the Respondents have failed to bring home the charges/proved against the Applicant for such a long lapse of time and direct the Respondents to reinstate the Applicant forthwith.

7. We, however, direct that in view of the peculiar facts and circumstances of this case, the Applicant shall be entitled to get the backwages (after lapse of 120 days of the date of receipt of the order of this Tribunal rendered in OA No. 243/1991) minus the Subsistence Allowance, if any, paid to the Applicant.

8. Before parting with this case, we would like to observe here that the amount of backwages, to which the Applicant will be entitled to, shall be calculated and recovered from the person(s) who is/are responsible for delaying the matter so long in gross violation of the orders of this Tribunal.

9. In the result, this Original Application is allowed with the aforesaid terms. No costs.

(B.N. SOM)  
VICE-CHAIRMAN

(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

23/12/2003