

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 189 OF 1999  
Cuttack this the 23rd day of May, 2000

Bhabagrahi Nayak

...

Applicant(s)

-VERSUS-

Union of India & Ors.

...

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 ? *No*

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN *23.5.2000*

*J.S. Dhaliwal*  
(J.S.DHALIWAL)  
MEMBER (JUDICIAL)

4  
CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 189 OF 1999  
Cuttack this the 23rd day of May, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND

THE HON'BLE SHRI J.S. DHALIWAL MEMBER (JUDICIAL)

...

Sri Bhabagrahi Nayak  
aged about 64 years  
S/o. Late Ekadasi Nayak  
Resides at Village : Binayakpur  
PS: Basudevpur, Dist: Bhadrak

...

Applicant

By the Advocates

Mr. D.N. Nayak

-VERSUS-

1. Union of India represented through  
Chief Post Master General, Orissa  
At/PO/PS: Bhubaneswar, Dist: Khurda
2. Superintendent of Postal Department  
Bhadrak Division, Bhadrak
3. Sub-Division Inspector (Postal)  
Bhadrak East Sub-Division,  
Bhadrak PIN Code-756100

...

Respondents

By the Advocates

Mr. A.K. Bose  
Sr. Standing Counsel  
(Central)

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82

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O R D E R

MR. J. S. DHALIWAL, MEMBER (JUDICIAL): Applicant Bhabagrahi Nayak

is before this Tribunal pleading that he was employed as Extra Departmental Branch Post Master (E.D.B.P.M.) at his local village under the control of S.D.I. (Postal), Bhadrak Sub-division. He claims that he has been performing duties properly. In one case at the stage of delivering money order relating to Hara Bewa and Uma Bewa, due to party fractions in that locality, he was rendered helpless in disbursement of payment. Complaints were lodged with the Tahasildar and local police station. Vide order dated 25.9.1985 the applicant was put off duty (put under suspension) by the respondents for the purpose of departmental proceedings. The applicant submitted reply to the allegations in writing to avoid the liability. There was long drawn <sup>domestic</sup> inquiry for two years regarding which notices were served on the applicant vide Annexures-1 and 2 for his personal appearance. He received Annexure-2 dated 29.7.1987 for his personal appearance on 25.8.1987. He claims that ~~there was silence~~ and at his request <sup>above</sup> regarding further proceeding he received notices dated 2.8.1987 and 29.7.1987 for his personal appearance on 25.8.1987. Thereafter he filed a representation vide Annexure-3 in August, 1987 to complete the inquiry. He claims that the date of inquiry was fixed by Res.3 on 25.8.1987 and final notice was served on the applicant (Annexure-4) in February, 1988 (calling upon the applicant for submission of his defence statement) fixing the date to 25.2.1988. He claims that parallel to this, G.R. Case Nos. 455, 455 A, 455 B of 1985 ~~accom~~ <sup>in</sup> ~~proceeding~~ Trial No. 1493 of 1987 were tried. He claims that the judgments were parallelly delivered in his favour in those cases. He was acquitted of the charges, copy of which is at Annexure-5. For getting restoration of

his service and on account of non payment of total arrears, suspension allowance for which the applicant was ignored, he submitted a Memo dated 16.2.1999 to Respondent No.2. He also claims reinstatement in service through Memo vide Annexure-6 served on Respondent No.1. Claiming that his fundamental rights and rights due to service under the respondents have been violated, he has prayed for setting aside the order of suspension which was without payment of suspension allowance on the ground that he has been acquitted in the criminal trial. He prays for reinstatement in his former post and for taking steps for regularisation of his service with benefits of promotion from the date of suspension. He also claims arrears of salary etc.

2. Respondents contest the case of the applicant through a detailed written reply pleading that he was put off duty through Memo dated 19.5.1985 on account of misappropriation of two old age pension money orders forging the L.T.I. of the payees and the signatures of witness. He was relieved from the post of E.D.B.P.M. on 25.9.1985 and disciplinary proceedings under Rule-8 of E.D.A. (Conduct & Service) Rules, 1964 were initiated against him vide Memo dated 25.3.1986 (Annexure-R/1). Two articles of charge were levelled against him with respect to Uma Bewa and Hara Bewa. They mention that he had also ~~for~~ forged the signatures of Shri Babaji Behera. The applicant had denied the charges and inquiry was ordered by appointment of one Inquiring Officer and a Presenting Officer. The applicant had nominated one Shri N.R. Sikdar as his A.G.S. to defend him. Inquiry was completed after holding several sittings in which reasonable opportunities were afforded to the applicant to defend himself. On completion of the inquiry applicant submitted his written brief dated 8.4.1988 and



after that the I.O. submitted the inquiry report evaluating oral and documentary evidence and holding that both the articles of charge against the applicant were proved (Annexure-R/2). The disciplinary authority agreed with the findings of the I.O. and held that the applicant is not a fit person to be retained in Government service, <sup>and</sup> awarded punishment of removal from service to him vide Memo dated 31.7.1989 (Annexure-R/3). The applicant did not prefer any appeal against this order of punishment. Tahasildar, Basudevpur, the remitter of the M.Os had reported the matter to the local police and the police in a separate investigation had registered three criminal cases which were tried by the S.D.J.M., Bhadrak. Initially ~~through~~ through judgment dated 22.12.1989, the applicant was held guilty and sentenced to three years R.I. with fine of Rs.5000/-. Copy of the judgment dated 22.12.1989 with order sheets are annexed as Annexures-R/8(i) & 8(ii). Applicant filed appeal and the Appellate Court remitted the case back for fresh disposal. After the conclusion of the trial, judgment was pronounced on 11.9.1998 by the Judicial Magistrate acquitting the applicant under benefit of doubt. These criminal trials have no connection with the departmental proceedings. In the departmental inquiry ~~misconduct~~ misconduct of the applicant was proved on the basis of evidence resulting in penalty of removal from service. They deny there was any political influence against the applicant in the proceedings. ~~There a~~

The applicant has filed a rejoinder reiterating his plea taken in the Original Application. He claims that the action against him was taken due to vindictiveness of respondents. Claims that his removal from service through

order dated 23.7.1989 was erroneously and badly done by Res. 2 and 3. He further claims that he was kept in darkness about that order and indicates <sup>that</sup> his removal from service ~~is~~ made retrospectively. Further claims that after acquittal from criminal cases, he is innocent and is entitled to claims made.

4. Heard learned counsel for the parties and examined the materials on the file.

5. First of all we are taking up the plea of the applicant that he did not know about the departmental proceedings and the result thereon and secondly that once he is found innocent in the criminal trial, the order of removal from service is bad. He further claims that after acquittal from the criminal cases, he filed a representation in the year 1999 and thus his case is to be tested on merits.

6. The applicant has himself produced on record Annexure-1 dated 2.7.1987 and Annexure-2 29.7.1987. These show that he was fully informed about the departmental proceedings against him under Rule 8 of E.D.A. (Conduct & Service) Rules, 1964. Annexure-3 is a letter written by him regarding pendency of the inquiry and it was written on 1.8.1987. Annexure-4 is evidence of the fact that he was informed about the date of the inquiries as in Annexures-1 and 2 calling upon him to submit his defence statement. It thus cannot be believed that after having participated in the inquiry proceedings in which he was not only given the opportunities to defend himself through a person nominated by him, that he did not know that the inquiry has been concluded. His allegation that Rule-8 has not been followed in his case at all is found to be factually incorrect. It is beyond one's comprehension that having participated in

the inquiry continuously for about two years, he never inquired about the result of the same for 10 years. We are thus of the firm opinion that the applicant knew about the order passed in July, 1989<sup>but</sup> due to his involvement in criminal cases, he preferred not to challenge the order of removal either in statutory appeal or in any Court of Law. It is only after he was acquitted in the criminal cases that an idea came to his mind for staking his claim for reinstatement.


The sequence of events confirms us, in our opinion mentioned above that the applicant has very cleverly chosen only to challenge the order of his suspension (put of duty) without challenging the departmental proceedings started and carried on against him and deliberately hiding these facts regarding his own participation in the same submitting his reply being defended by a person nominated by him apparently ~~not~~ to take a plea that he was not aware of the result of the inquiry, in our opinion he is barred from challenging the order of penalty after a lapse of 10 years. His filing representation in the year 1999 after his acquittal in the criminal cases can neither renew the ~~release~~ period of limitation nor can start a new period of limitation as such a representation is based on misconception of law. He is suffering under a wrong impression that ~~by his~~ acquittal in the criminal cases ~~the findings in xxx~~ recorded under departmental proceedings under Rule-8 of E.D.A. (Conduct & Service) Rules, 1964 get washed.

Law is settled that criminal trial and departmental proceedings can go on simultaneously against a Government servant. The purpose of these two proceedings is also



different; in the former, it is to find out whether the charges of commission of a criminal offence by him are proved beyond all reasonable doubts or not and as to whether he is to be punished for the offence committed, whereas in the case of later, i.e., departmental proceedings it has to be found whether certain acts or omissions on his part amount to misconduct as understood under the Administrative Law and as to whether the same is proved according to lesser standard of preponderance of evidence. There are judgments to the effect that even after the Government servant is acquitted in a criminal case on certain allegations of commission of offence, a departmental inquiry can be started after his acquittal for action under the relevant rules. Some of the judgments on the subject are Kusheshwar vs. State reported in AIR 1988 SC 2118, Nelson Motis vs. Union of India & Ors. (AIR 1992 SC 1981), Masud Khan vs. State of U.P. (AIR 1974 SC 28), Food Corporation of India vs. George Verghese & Another (1991 (Supp) 2 SC 143). One can go on adding to the judgments of the Supreme Court on this aspect. In ~~the~~ view this settled position under the law, acquittal of the applicant in the criminal trials cannot have the automatic effect of giving him a right of reinstatement as his removal from service was not because of his conviction in the criminal case, but was as a result of independent disciplinary proceedings held under Rule-8 of E.D.A. (Conduct & Service) Rules, 1964.

For the reasons discussed above, we find no merit in this Application. We are also of the opinion that the applicant has deliberately suppressed the material facts which in itself is sufficient to throw out his O.A. without consideration of questions on merits, which however, we have considered.





We also take note of the fact that despite coming to know of the order of removal from service, even from the averments made in the written reply to the O.A., he has till now not challenged the order. The O.A. is dismissed, but without any order as to costs.

(SOMNATH SOM)  
VICE-CHAIRMAN

(J.S.DHALIWAL)  
MEMBER (JUDICIAL)

B.K.SAHOO//