

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 28 OF 1999
Cuttack, this the 3rd day of June, 1999

Sri Bikram Kishore Gochhayat ... Applicant

Vrs.

Union of India and others 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 Som
(SOMNATH SOM)
VICE-CHAIRMAN
5.6.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

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

.....

Sri Bikram Kishore Gochhayat,
son of late Prana Krushna Gochhayat,
Vill/PO-Nowgang, Via-Debidol, District-Jagatsinghpur
.....
Applicant

Advocates for applicant - M/s P.K.Padhi
U.R.Bastia

Vrs.

1. Union of India, represented by its Chief Post Master General (Orissa Circle), At/PO-Bhubaneswar, District-Khurda-751 001.
2. Superintendent of Post Offices, Cuttack South Division, At-P.K.Parija Marg, PO-Cuttack G.P.O., District-Cuttack-753001.
3. Assistant Superintendent of Post Offices, Jagatsinghpur Sub-Division, At/PO/Dist. Jagatsinghpur-754 103.
4. Extra Departmental Branch Post Master, At/PO-Nowgong, Via-Debidol, Dist-Jagatsinghpur ...Respondents
..... Respondents

Advocate for respondents - Mr.S.Bhehera
A.S.C.
&
Mr.P.Patnaik
(for Intervenor)

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S.Som.

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the entire disciplinary proceedings against him started vide Annexure-1. He has also prayed for reinstatement in service with all consequential financial benefits.

2. Case of the applicant is that while he was working as Extra-Departmental Delivery Agent (EDDA) of Nowgong Branch Post Office in account with Debidol Sub-Post Office, he was disallowed to perform any work on 1.8.1978 by E.D.B.P.M, Nowgong (respondent no.4) on oral direction of Assistant Superintendent of Post Offices, Jagatsinghpur (respondent no.3). Respondent no.4 did not allow the applicant to work as EDDA with effect from 1.8.1978 and within a week, allowed one Brundaban Chandra Mohanty to perform the work of the applicant on daily wage basis. Ultimately, one Suresh Chandra Gochhayat was appointed in place of the applicant on 6.11.1978 and has been continuing in that post till today. The applicant states that after being disallowed to work by respondent no.4, the applicant met respondent no.3 hundreds of times and false assurances were given to the applicant that his case would be looked into. Ultimately, the applicant was not reinstated to his job and charges were issued on the ground of unauthorised absence on 1.2.1993 after a period of fourteen years and six months. The applicant further states that he was put off duty ^{but no} order to that effect was issued to him. He was also not paid any ex gratia compensation payable during the put-off duty period after 13.1.1997. The applicant has further stated that disciplinary cases against ED employees are to be completed within a period of 120 days, later on reduced to 45 days, ^{but} after passage of 20 years case against him has not been finalised. Initially one Srikanta Kar was appointed as Presenting Officer and Loknath Sahani as Inquiring Officer. The first sitting was conducted on 10.8.1994. The applicant nominated his AGS in his letter dated 10.8.1994 (Annexure-2). The disciplinary proceeding did not progress after 20.9.1994 and ultimately respondent no.3 changed both the inquiring

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officer and presenting officer. One B.Sethy was appointed as inquiring officer and R.C.Jena as presenting officer. After the above change, the third sitting was held on 24.10.1996 and before that the inquiring officer had sent letter to the applicant again to nominate his AGS. Accordingly, the applicant submitted his nomination letter regarding appointment of AGS. In the seventh sitting of the enquiry held on 15.4.1997 one prosecution witness K.B.Rath was examined and he falsely deposed that the applicant had rendered his resignation from the post of EDDA through EDBPM, Nowgong. The resignation was accepted and the post was regularly filled up. The applicant has stated that the evidence given by K.B.Kar was false. The post was actually filled up within three months of respondent no.4 disallowing the applicant to work though normally it takes five to six months to make a regular appointment to an ED post. In another sitting of the enquiry on 3.7.1997 the EDBPM (respondent no.4) deposed that the applicant was not at all absent but he was disallowed to work on the verbal orders of the then Inspector of Post Offices. On the same day, i.e., on 3.7.1997 it was ordered that the applicant would submit his brief after seven days of receipt of the written brief from the presenting officer. But no written brief of the presenting officer was served on the applicant. The applicant has stated that the disciplinary proceedings have been initiated after 14 years after he was disallowed to work and even after passage of more than 20 years, it has not been finalised. The case of the applicant has not been reviewed periodically as required under the rules. On the above grounds, the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that the applicant was appointed as EDDA, Nowgong with effect from 7.8.1967. EDBPM, Nowgong (respondent no.4) reported in

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his letter dated 3.8.1978 that the applicant is absent from duty since 1.8.1978. This report of EDBPM is at Annexure-R/1. This letter was received by Inspector of Post Offices, Jagatsinghpur, on 8.8.1978 on which day in letter at Annexure-R/2 the Post Master, Jagatsinghpur H.O. was directed to withhold the pay and allowances of the applicant with effect from 1.8.1978. In the memo to the letter addressed to EDBPM, Nowgong (respondent no.4) it was directed that a substitute may be kept in place of the applicant till joining of the applicant and the joining charge report of the substitute may be sent to the office of Inspector of Post Offices. The respondents have pointed out that in the memo addressed to EDBPM of Annexure-2, the EDBPM was directed to keep the substitute in place of the applicant till the applicant turns up for work. But the applicant neither turned up for his work nor submitted any leave application on 1.8.1978 or subsequently thereafter. No representation regarding the applicant's unauthorised absence was also received and his whereabouts were also not known. Ultimately, in letter dated 1.2.1993 proceedings were initiated against the applicant under Rule 8 of ED Agents (Conduct & Service) Rules, 1964. The applicant received the memo on 2.2.1993 ut did not submit any written defence statement admitting or denying the charges. In order to give all reasonable opportunity it was decided to hold oral enquiry. Inquiring officer and presenting officer were appointed in letter dated 20.2.1993. After sometime both the inquiring officer and presenting officer were transferred and fresh nominations had to be made for inquiring officer and presenting officer. The applicant was given all reasonable opportunity to defend his case. Ultimately, the enquiry report was received on 24.1.1998. The inquiring officer held that the charge framed against the applicant is not proved. The disciplinary authority, i.e., Assistant Superintendent of Post Offices

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disagreed with the finding of the inquiring officer and issued showcause notice to the applicant communicating the points of disagreement. The applicant instead of submitting any written statement, asked to provide him a fresh copy of Annexure-R/3 which is the order of the disciplinary authority regarding the note of disagreement on the ground that the showcause notice has been eaten away by white ants. This ground was not found satisfactory and ultimately the disciplinary authority taking into all facts removed the applicant from service in his order dated 1.3.1999. The respondents have also denied that the applicant has approached respondent no.3 on many occasions to get his job. They have also stated that one S.C.Gochhayat has been appointed as EDDA, Nowgong, with effect from 6.11.1978 and has been working as such. The respondents have further stated that as the applicant remained unauthorisedly absent from duty, he is not eligible to ex gratia compensation. On the above grounds, the respondents have opposed the prayers of the applicant.

4. S.C.Gochhayat, who was appointed as EDDA, Nowgong, on 6.11.1978 in place of the applicant, was allowed to be impleaded as intervenor and he has also filed a counter in which he has stated that he was appointed as regular EDDA on 6.11.1978 and has worked for more than twenty years. In case any order is passed by the Tribunal affecting his job, he will be highly prejudiced. On the above grounds, the intervenor has opposed the prayers of the applicant.

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5. The applicant has filed a rejoinder to the counter filed by the respondents in which he has reiterated the points made earlier in his O.A. He has also stated that he was not supplied with the listed documents and he was not allowed reasonable opportunity to engage the Assisting Government Servant and thus the principles of natural justice have been violated during the enquiry.

6. We have heard Shri P.K.Padhi, the learned counsel for the petitioner, Shri S.Behera, the learned Additional Standing Counsel for the respondents, and Shri P.Patnaik, the learned counsel for the intervenor, and have perused the records. The learned counsel for the petitioner has filed written note of arguments which has also been taken note of.

7. The case of the applicant is that on 1.8.1978 suddenly and without any cause respondent no.4 disallowed the applicant to work as EDDA on instruction from respondent no.3. From the papers filed by the respondents along with their counter this stand has been disproved. The EDBPM (respondent no.4) has reported in his letter dated 3.8.1978 that the applicant is absent from 1.8.1978. He has also ^{asked} for making arrangement for delivery of M.Os. and letters. Thus the basic contention of the applicant that without any fault of his he was not allowed to work from 1.8.1978 is disproved.

8. The second contention of the applicant is that even though he was present, the EDBPM did not allow him to work on days subsequent to 1.8.1978 because of the oral instruction of respondent no.3. This contention is also wrong because the respondents have stated that the report of EDBPM at Annexure-R/1 was received by respondent no.3 on 8.8.1978 and on that day respondent no.3 directed Post Master, Jagatsinghpur H.P.O. to withhold salary and allowances of the applicant from 1.8.1978. This letter is at Annexre-R/2. In the memo to this letter, EDBPM, Nowgong (respondent no.4) has been directed to engage a substitute at the responsibility of the applicant till the joining of the applicant. In other words, the substitute was ordered to be appointed till the applicant turns up for work. There was no instruction that even if the applicant turns up for work, he should not be

allowed to join. On the contrary the instruction to EDBPM was that after joining of the applicant, the substitute should be disengaged and the applicant should be allowed to work as EDDA. From this it is clear that the applicant did not turn up after 3.8.1978. The applicant has stated that he has approached respondent no.3 hundreds of times for getting back his job but without any result. He has not filed one scrap of paper in support of his contention. If he was illegally kept away from performing his duties of the post of EDDA to which he was regularly appointed more than 10 years ago he should have approached the appropriate court of law at that time. He has not even filed any written representation which he might have submitted to respondent no.3 or the departmental higher authorities. In the absence of any such paper it is difficult to believe the contention of the applicant that he approached respondent no.3 hundreds of times to get back his job. When respondent no.3 did not show any favourable consideration to his prayer, the applicant has not approached the departmental higher authorities. Ultimately, draft charge was issued to him on 1.2.1993. He did not submit any explanation to the charge. When he was asked to engage an Assistant Government Servant in the enquiry, in his letter dated 10.8.1994 (Annexure-2) he had himself indicated that Ganeshwar padhi, Postmaster of Chandinichowk H.O. consented to be his AGS. But he has three cases in his hand and therefore the enquiry should be deferred till 15.9.1994. On the first sitting of the enquiry the applicant was present. The enquiry was adjourned to 20.9.1994 and the applicant was directed to be present on the next date with his AGS. On the next date i.e., 20.9.1994 the applicant did not turn up. His AGS also did not attend the enquiry. The third sitting of the enquiry was taken up on 24.10.1996 after change of the inquiring officer and

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presenting officer. The applicant attended the enquiry but failed to produce the willingness from any Government servant to assist him in the enquiry, and the enquiry was adjourned to 3.11.1996. On 24.10.1996 the applicant wrote a letter to the inquiring officer, which is at Annexure-6, to obtain the consent of the Assisting Government Servant. Thereafter the enquiry was concluded and the enquiry report was submitted. The applicant has challenged the enquiry on the ground that no reasonable opportunity was given to him in the matter of engaging an AGS and listed documents were not supplied to him. From the above recital of facts it is seen that the applicant was given sufficient opportunity to engage an AGS and therefore this contention is held to be without any merit. The applicant has not filed any document to show that he had asked for certain documents which were not supplied to him. This contention is also held to be without any merit and is rejected. In any case, the applicant's contention that in course of enquiry the inquiring officer denied him reasonable opportunity and rules of natural justice were violated is not very relevant in view of the fact that the inquiring officer has held the charge as not proved. Thus the finding of the inquiring officer has gone in favour of the applicant and therefore, the contention of denial of reasonable opportunity and violation of natural justice by the inquiring officer is not relevant.

9. The disciplinary authority has disagreed with the finding of the inquiring officer and has held the charge as proved. Reasons for disagreement have been communicated to the applicant in letter dated 2.2.1999 at Annexure-R/3 and the applicant was asked to submit his representation against the points of disagreement within fifteen days. Instead of doing that the applicant has asked for an extra copy of this letter on the ground that the letter has been eaten away by whiteants. This appears from

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the applicant's letter dated 20.2.1999 at Annexure-13. From this it also appears that the applicant received the letter dated 2.2.1999 on 5.2.1999 and kept the letter in a wooden box. In one night the letter was eaten up by whiteants and on the next morning he found that it is not possible to give reply to the letter. Therefore, on 7.2.1999 he went to the office of Assistant Superintendent of Post Offices to get another copy of the letter. It is not possible to believe that a letter consisting of several pages with which the enquiry report is enclosed could be eaten up in one night by whiteants. Obviously the applicant has taken the plea only to delay the matter. As no representation from the applicant was received, the disciplinary authority in his order dated 1.3.1999 removed the applicant from service. At this stage it is necessary to note that at the time of filing of the OA the applicant had prayed for interim order and in order dated 9.3.1999 by way of interim relief it was directed that the respondents may proceed with the departmental enquiry, but they should pass final order only with the leave of the Court. This order has been passed on 9.3.1999 and it must have taken some more time to reach the respondents. The respondents have passed the order of removal from service on 1.3.1999. The applicant has stated that this order dated 1.3.1999 is back dated because it has been received by him only on 10.3.1999 and the order of the Tribunal regarding passing of the final order in the disciplinary proceedings with the leave of the Court has been passed only on 9.3.1999. We have noted the points raised by the applicant in this regard in his written submission. New points of facts mentioned for the first time in the written note of submission cannot be taken note of because the respondents did not have a chance to rebut the same. If the applicant has received this order on 10.3.1999 and if he had reasonable ground of believing that the order dated 1.3.1999 has been passed actually on 9.3.1999 or 10.3.1999, then he could have

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brought this fact to the notice of the Tribunal during the pendency of the OA by filing a memo so that the respondents would have an opportunity to rebut this allegation. In consideration of this, it is not possible to accept this allegation.

10. The next contention of the learned counsel for the petitioner is that for the unauthorised absence of the applicant from 1.8.1978 the departmental proceedings were initiated against him only on 1.2.1993, i.e., more than fourteen years after the lapse alleged against the applicant. The learned counsel for the petitioner has referred to several decisions which lay down that long delay in initiation of departmental proceedings will render the proceedings liable to be quashed. The learned counsel for the petitioner has referred to the case of Chandeshwar Thakur v. Union of India and others, (1992) 19 ATC 795. In that case the applicant was initially appointed as EDDA in 1972. He was put off duty in 1977 after which he tendered his resignation which was accepted. In 1980 he was appointed to the post of ED Chowkidar. In the new post he was again put off duty in June 1980 and disciplinary proceedings were initiated against him relating to the period when he was working as EDDA from which post he had resigned in June 1977. The applicant submitted his written statement of defence but no further action was taken in the disciplinary proceedings. In the context of the above facts, the Tribunal came to the conclusion that in the facts and circumstances of the case, the unexplained delay in finalising the departmental proceedings would liable the disciplinary proceedings quashed and it was accordingly so ordered. In the case of Giridhari Ram v. Union of India and others, ATR 1989(1) CAT 531, the enquiry was closed on 30.3.1982 and the applicant was asked to submit written statement of defence, but no further order was passed on the ground that the proceedings file is not

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traceable. In view of this delay, the disciplinary proceeding was quashed in the above case. In this case, the respondents in their counter have not indicated as to why the proceedings were started only in February 1993 except stating that the applicant had remained on unauthorised absence and his whereabouts were not known. Thus, in this case delay of fourteen years remains unexplained. On the other hand, the applicant has also not explained as to why after he was disallowed to work from 1.8.1978 he did not approach the appropriate court of law or the higher authorities in the Department at any time before starting of the departmental proceedings. Delay in this case is therefore on both sides.

We have also held that the applicant has failed to prove that he has approached the departmental authorities at any time for getting his job back. In view of this, we hold that the proceedings are not liable to be quashed merely on the ground of delay because the applicant himself was unauthorisedly absent for long and indeterminate period which is also borne out by the fact that he never came and joined his post when it was held by a substitute. We are, therefore, not inclined to quash the proceedings on the ground of delay.

11. The last contention of the learned counsel for the petitioner is that mere unauthorised absence does not amount to misconduct. In support of his contention, the learned counsel for the petitioner has relied on the case of A. Prasad Rao v. The General Manager, South Central Railway, Secunderabad and others, 220.Swamy's CL Digest 1994/2 (page 333). In that case, the facts were that the absence of the applicant was on account of illness which prevented him from reporting for duty and not on account of any wilful intention on his part to refrain from reporting for duty. During the period of absence even if the applicant wished to report for duty he could not have done so for reasons beyond his control, namely, serious ailment with which

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he was bed-ridden. Facts of the present case before us are quite different. The applicant's stand is not that he was absent. On the contrary, he has taken the stand that he was all along present but respondent no. 4 illegally did not allow him to work because of oral instruction from respondent no.3 which, we have already held, has not been proved. Therefore, we are unable to accept the proposition that mere unauthorised absence does not amount to misconduct in the case of the applicant. He was working as Extra Departmental Delivery Agent whose duty was to deliver letters and Money Orders and other postal articles to the public. Unauthorised absence by such a person would certainly amount to misconduct and dereliction of duty. This contention is therefore held to be without any merit and is rejected.

12. In view of the above, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him.

13. Before parting with this case, we have to note that in this case the order of removal has been passed on 1.3.1999 and it has been received by the applicant on 10.3.1999. The applicant has a right of appeal. But as the matter was pending in the OA before us, the applicant might not have filed the appeal. In view of this and in view of the fact that the applicant has been visited with the extreme penalty, we feel that the applicant should get one more chance to exercise his right of appeal. In consideration of this, we direct that the applicant should prefer an appeal, if he is so advised, against the order of removal to the appellate authority within a period of 45 (forty-five) days from the date of receipt of copy of this order. The appeal, if filed during this period, shall be entertainable and the appellate authority should dispose of the appeal strictly in accordance with rules and merits without being influenced by any observation made by us in this order. This appeal of the

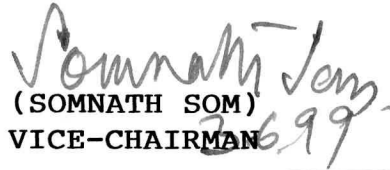
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applicant should be disposed of within a period of 120 (one hundred twenty) days of filing of the same.

14. One more point has also to be noted. This is regarding payment of put-off duty allowance. The applicant has stated that in many letters addressed to him he has been referred to as EDDA under put-off duty. Unfortunately, he has not enclosed any such letter. But as the applicant has been ordered to be removed from service in order dated 1.3.1999, he must be deemed to be under put-off duty during the period prior to that and from 13.1.1997 he shall be entitled to put-off duty allowance as per the amended rules. We direct that the appellate authority should pass appropriate orders in this regard also while disposing of the appeal of the petitioner. We also make it clear that the petitioner will be at liberty to approach the Tribunal in case he is dissatisfied with the order of the appellate authority on the question of penalty as also on the question of put-off duty allowance.

15. With the above observation and direction, the Original Application is disposed of. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN