

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.597 OF 2000
Cuttack, this the 21st day of April, 2005.

NIRANJAN BEHERA.

APPLICANT.

VERSUS

UNION OF INDIA & ORS

RESPONDENTS.

FOR INSTRUCTIONS.

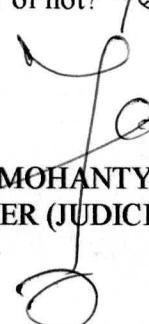
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Whether it be referred to the reporters or not? *Yes.*

2.

Whether it be circulated to all the Benches of CAT or not? *Yes.*


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER (JUDICIAL)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK.**

Original Application No. 597 of 2000
Cuttack, this is the 21st day of April, 2005.

CORAM:-

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

NIRANJAN BEHERA, aged about 59 years,
Son of late Mani Behera of village Sampada,
PO; Bholapur,PS: Tigiria,Dist. Cuttack,at
Present working as Asst.Superintendent of Railway Mails,
R.M.S. 'BG' Division,DIST.GANJAM.

APPLICANT

By legal practitioner:- M/s. S.K.Mohanty, S.P.Mohanty,
P K Lenka Advocates

VERSUS

1. Union of India,through its Secretary,Department of Posts
Dak Bhawan,New Delhi.
2. Director of Postal Services (Hq.),Berhampur(Gm) Region,Berhampur.
3. Postmaster General,Berhampur,At/Po:- Berhampur,Dist.Ganjam.
4. Chief Postmaster General,Orissa Bhubaneswar.

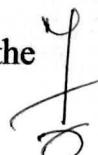
RESPONDENTS.

By legal practitioner:- Mr. Anup K. Bose, Sr. Standing Counsel.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER(JUDICIAL):-

The Applicant while working as Asst. Superintendent of Railway Mails Services (Hqrs.) in the Office of the Superintendent of Railway Mail Services of BG Division at Berhampur, was placed under suspension vide Annexure-1 dated 1.7.1996 in contemplation of disciplinary proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (Annexure-2), dated 26th November,1996. The said disciplinary proceedings, ultimately culminated in imposition of punishment of reduction by one stage (from Rs. 7,100/- to Rs. 6,900/-) in the pay scale of Rs. 6,500-200-10,500/- for a period of one year with immediate effect under Annexure-12 dated 16.07.1999. It was further ordered that the Applicant would not earn increment of pay during the period of reduction and that on the expiry of this period the reduction will have the effect of postponing his future increments of pay. Thereafter, the Applicant carried the matter in appeal to the Postmaster General of Berhampur Region under Annexure-13 dated 30th August, 1999, which was rejected under Annexure-14 dated 28th March, 2000. It is the further grievance of the Applicant that under Annexure-18 dated 6th December,1999 the period of suspension of the

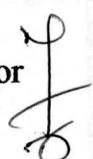


Applicant although was ordered to be treated as duty for all purposes, but the same was restricted to the subsistence allowance that was already paid to him. Challenging the said action of the Respondent-Department, the Applicant has moved this Tribunal in this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, with the following prayers:-

- (i) To quash the order dated 16-07-1999 passed by the Director of Postal Services in Annexure – 12 imposing the punishment of reduction of pay as stated therein;
- (ii) To quash the order of the Postmaster General, Berhampur region dated 28-03-2000 (Annexure-14) confirming the order of punishment;
- (iii) To quash the order of the Director of Postal Services in Annexure-18 restricting the pay and allowances of the Applicant to subsistence allowance already paid with a direction to grant all financial benefits to the Applicant during the period of suspension; And/or
- (iv) To pass such other order as may be deemed just and proper.”

2. Respondents, by placing a counter on record, have stoutly denied the allegations/averments made in the Original Application and have prayed for dismissal of this Original Application.

3. We have heard Mr. S.K. Mohanty, Learned Counsel appearing for the Applicant and Mr. Anup Kumar Bose, Learned Senior



Standing Counsel appearing for the Respondents and perused the materials placed on record including the rejoinder to the counter filed by the Applicant.

4. In course of hearing Mr. Mohanty, learned counsel appearing for the Applicant has submitted that the punishment, that was awarded on the Applicant in the disciplinary proceedings (which was confirmed by the Appellate Authority) are not sustainable in the eye of law; as adequate opportunity was not provided to the Applicant to put up his defence effectively. In support of his allegation (that the applicant was not provided with adequate opportunity), he has submitted that the proceedings under Rule 14 of CCS (CCA)Rules, 1965 was initiated against the Applicant on 26-11-1996 vide Annexure-2 (wherein six articles of charges were framed), and although the Applicant had requested the I.O.,(under Annexure-3 dated 21.07.1997) for supply of certain additional documents, the I.O. (vide its letter under Annexure-4) without calling the Department to produce of all those documents , unilaterally held that only five documents were relevant, had asked the Director of Postal Services for production of the same and, thereby, the Applicant was prejudiced to prove his innocence during the enquiry. He has also submitted that according to law, right to

access to official record not being limited the I.O., in the instant case, neither allowed the Applicant to peruse all those documents nor did he allow the Applicant to take extract of those documents; which were very much essential and relevant to defend himself. He has further submitted that though the Applicant had asked for calling upon certain persons (named in Annexure-3), as his defence witnesses, the said request of the Applicant was not acceded to. It is the further plea of the learned counsel for the Applicant that there was provisions and instructions for providing minimum four Office Assistants to the Central Bags Office, but no Office Assistant was provided and, therefore, in the absence of adequate staff, he was managing the Central Bag Office single handedly. With all these grounds, the applicant has moved this Tribunal with the prayers referred to above.

5. Per contra the learned counsel appearing for the Respondents vehemently opposed the plea of the Applicant by stating that the Applicant having not shown as to how he has been prejudiced by the non supply of additional documents and as to how those documents were relevant in respect of each of the charges his said plea are not sustainable. As regards the plea of the applicant pertaining to not calling the all the defence witnesses to be examined in the inquiry, the learned counsel appearing for

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the Respondents replied that the I.O. having accepted the defence witness named by the applicant (and having asked the applicant to arrange for their presence during inquiry the said plea in question was of no avail in this proceedings. It is the further submission of the learned counsel appearing for the Respondents that according to order No.9 dated 8.4.1999 of the enquiry proceeding (Annexure R-5) the Applicant could make presence of three defence witnesses who were examined by the applicant and cross-examined by the Presenting Officer. It has been further submitted that the applicant failed to bring the remaining defence witnesses in spite of the fact that all defence witnesses were summoned by the I.O. As regards the plea of the Applicant pertaining to nonsupply of adequate supporting staff in the CBO, the Respondents have submitted that there was no justification for sanction of additional staff. It has been further submitted by the learned counsel for the Respondents that due to lack of effective supervision, the Department had to sustain loss and therefore, the O.A. does not merit consideration and that the same is liable to be dismissed. As regards the plea of maintainability of Annexure/18, it has been submitted that F.R.54(B) empowers the authorities to decide as to how the period of suspension is to be treated and that therefore, the authorities competent to take a decision in the matter

(having decided the matter once for all under Annexure/18), it is no more open for the Applicant to agitate the matter before the Tribunal. By stating so, the learned counsel for the Respondents has prayed for dismissal of the entire O.A.

6. We have considered the rival submissions made before us. Before proceeding to discuss the matter, on merits, it is worthwhile to quote the articles of the charges framed against the applicant under Annexure-A/2 dated 26.11.1996, which runs as under:

ARTICLE-I : Shri Niranjan Behera while working as ASRM (Bags) Office of the Supdt. PSD, Bhubaneswar from 22-12-1992 to 15-07-1996 though showed receipt of 24,953 CIII new canvas bags in three lots from the supplying agency through Railways falsely shown distribution of 24,986 bags , thereby falsifying the entries in the stock book of bags maintained by him in respect of CIII new canvas bags and thereby committed grave misconduct.
By his above acts the said Shri Behera failed to maintain absolute integrity and devotion to duty, thereby violated the provisions of Rule 3(l)(i)ii) of CSS (Conduct) Rules,1964.

ARTICLE-II: The aforesaid Shri Behera while working as such during the aforesaid period showed supply of new CIII canvas bags to different DBOs in the Circle and debited the same from the stock book of new canvas bags without issuing supply invoices to the supplying offices, thereby keeping no corroborative records in support of the supply.

By his above acts the said Shri Behera failed to maintain absolute integrity and devotion to duty, thereby violated provisions of Rule 3(l)(i)(ii) of CCS(Conduct) Rules,1964;

ARTICLE-III: The aforesaid Shri Niranjan Behera while working as such during the aforesaid period showed supply of CIII new canvas bags to different D.B.Os but did not keep the acknowledged copies of the invoices of the recipient units concerned, thereby committed misconduct.

By his above acts the said Shri Behera failed to maintain devotion to duty thereby violated the provisions of Rule 3(l) (i) (ii) of CCS (Conduct) Rules,1964;

ARTICLE-IV: The aforesaid Shri Niranjan Behera while working as such during the aforesaid period showed supply of 300 new CIII canvas bags on 16.11.1995, 200 new CIII canvas bags on 30.08.1995 to HRO RMS 'N' Division, Cuttack, 150 CIII new canvas bags on 25.4.1996, 200 CIII new canvas bags on 8.3.1995 to SRO RMS 'N' Division, Jajpur road, 200 CIII new canvas bags on 25.8.1995 to RO , RMS 'N'Division, Howrah, 300 CIII new canvas on 9.5.1995, 200 CIII new canvas bags on 11.7.1995, 200 CIII new canvas bags on 1.8.1995, 200 CIII new canvas bags on 9.8.1995 and 100 CIII new canvas bags on 3.4.1996 to SRO RMS 'N' Division, Bhubaneswar debiting these number of bags from the stock of new canvas bags but the recipient units either denied or confirmed short supply of new canvas bags. The said Shri Behera did not account for the non supplied bags and allegedly falsified the entries in the stock book of bags; thereby committed grave misconduct.

By his above acts, the said Shri Behera failed to maintain absolute integrity and devotion to duty, thereby violated the provisions of Rule 3(l) (i) (ii) of CCS (Conduct) Rules, 1964;

ARTICLE-V

The aforesaid Shri Niranjan Behera while working as such during the aforesaid period supplied old bags to HRO RMS 'N' Division, Cuttack, SRO RMS 'BG' Division, Jeypore (K) and SRO RMS 'N' Division, Bhubaneswar but falsely debited CIII new canvas bags from the stock without accounting for the unsupplied CIII new canvas bags; thereby committed grave misconduct;

By this above acts, the said Shri Behera failed to maintain absolute integrity, thereby violated the provisions of Rule 3(l)(i) of CCS (Conduct) Rules, 1964;

ARTICLE- VI

That the aforesaid Shri Niranjan Behera while working as such during the aforesaid period did not correctly account for the bags received from different DBOs to CBS, Bhubaneswar in the CBO Day Book of Bags as required in Rule 8.3 of Bag Accounting Procedural Manual and did not disclose the disposal of unaccounted bags received on different dates, thereby committed grave misconduct.

By this acts, the said Shri Behera failed to maintain absolute integrity and devotion to duty, thereby violated the provisions of Rule 3(l)(i)(ii) of CCS (Conduct) Rules, 1964".

7. It appears that the charges leveled against the applicant were grave in nature. It is the well settled principles of law that in the matter of disciplinary proceeding, this Tribunal is only concerned as to whether the Applicant/delinquent official had been afforded reasonable opportunities to defend his case and/or the principles of natural justice had been complied with and whether the decision taken by the disciplinary authority was based on materials available on record and that as to whether proper procedure of

law/rules had been observed in each and every step of the proceeding or not.

It is also the well established law that the Tribunal should not act as an appellate authority over the decision of the disciplinary authority and/or re-appreciate the evidence to come to a finding that a better order could have been passed. Thus the role of the Tribunal in so far as disciplinary matters are concerned is very limited to that of a dispassionate superintending authority.

8. In the above circumstances, the Tribunal is required to deal with this case within the scope and ambit of the above noted parameters. It is the case of the applicant that the additional documents called for by him were not supplied to him. It is the case of the Respondents that the Applicant had been allowed to peruse all the documents. As regards the plea of the Applicant that he was not allowed by the Respondents to take the extract of the documents, we would like to note that the Applicant has not been able to make out a case as to how he was prejudiced by that action of the Respondents. It is the Applicant who should have agitated this matter before the disciplinary authority while replying/representing on the inquiry report supplied to him. The applicant has not placed any material to show that he
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had, in fact, raised this point before the disciplinary authority. Having not been able to substantiate this fact, the Applicant is estopped to raise this issue before this Tribunal.

9. As regards the summoning of the witnesses, it is the case of the respondents that the I.O. had summoned all the witnesses of whom three witnesses were examined and cross examined and the presence of rest of the witnesses could not be enforced; for which the applicant is to be held responsible. This categorical submission of the Respondents has not been rebutted by the applicant in his rejoinder. This being the position, it is not for the Tribunal to delve into a roving inquiry and therefore, the said plea of the Applicant falls to the ground.

10. As regards the plea of the Applicant that no supporting additional staff were provided by the Respondents, it is the case of the Respondents that there was no justification for the same and that the predecessor of the Applicant was also managing the job without any additional supporting staff. The applicant has not produced before us any material to show that against the duties he was to discharge as per the prescribed norms, he was to be assisted with more hands. This being the

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situation, we are not inclined to interfere with this issue; especially when nothing has been shown/placed on record to show that the Applicant ever raised this grievances before his authority in writing.

11. As regards the plea of the Applicant that there was no finding of misconduct by any of the authorities warranting imposition of the impugned order of punishment. This plea of the applicant does not hold any water as in the charges leveled against the applicant it was clearly alleged that he failed to maintain absolute integrity and devotion to duty and that on enquiry failure to supervise was clearly established. As observed by the Hon'ble Apex Court, *it is the settled position of law that the very discipline of an organization (more particularly in post offices) is dependent upon each of its officers and officers acting and operating in their allotted sphere and failure to discharge the obligatory duties is by itself a breach of discipline and is a misconduct. That apart, it is to be noted here that when a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and, if not, the Court must strike down the action. But while doing so, the Court must remain within its self imposed limits.* Even while

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exercising the powers of judicial review of administrative action, the Court is not to act as an appellate authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive. The Applicant having utterly failed to show that the punishment awarded by the disciplinary authority (or, to say, of the appellate authority) is in any way excessive or against the rules of law. Rather the disciplinary authority, while awarding punishment in the instant case, has taken a lenient view which does not warrant intervention of the Tribunal. In the said circumstances, we are of the view that the O.A. is devoid of any merit.

12. Before we part with this case, we would like to note that under Annexure/16 dated 7.10.1999 , the Director of Postal Services of Berhampur Region, (in exercise of the powers conferred under FR 54 B) while regularizing the suspension period of the applicant as 'duty' for all purposes, has restricted the salary to the subsistence allowance already paid. We have gone through the provisions of FR 54 B. For the sake of clarity, we would like to quote the relevant provisions of FR 54 B, as under :-

“(1) When a Government servant who has been suspended is reinstated (or would have been so reinstated but for his retirement (including premature retirement) while under suspension), the authority competent to order reinstatement shall consider and make a specific order –

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or (the date of his retirement (including premature retirement) as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty.”

13. Sub-rule 1 of FR 54 B unequivocally speaks that the authority competent to order reinstatement shall make specific order with regard to the treatment of the period of suspension. But in this case, while ordering reinstatement under Annexure/15 dated 16.07.1999, nothing has been said with regard to the period of suspension. Only on 07.10.1999 (under Annexure-16) a notice was issued to the Applicant to show cause as to why the period of suspension should not be restricted to the subsistence allowance already paid to him) and that basing on the show cause reply of the Applicant (Annexure-17, dated 13/14,10,1999), the Director of Postal Services , Berhampur Region, (under Annexure-18 dated 6th December,1999) ordered that the suspension period of the Applicant to be treated as duty for all purposes restricting the pay and allowances to the subsistence allowance already paid. Interestingly the fact of the matter is that the Applicant was

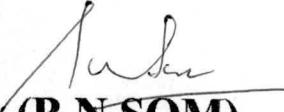
placed under suspension on 11.7.1996, punishment was imposed on 16.7.1999, on which date itself, by a separate order, suspension was revoked and that, after more than two months, he was issued with a notice to show cause as referred to above, whereas, while passing the final order, the Director of Postal Services did not assign any reason with regard to treatment of the period of suspension. Even in respect of administrative orders **Lord Denning M.R. in BREEN v. AMALGAMATED ENGINEERING UNION 1971 (1) All E.R. 1148** observed "*The giving of reasons is one of the fundamentals of good administration*". In **ALEXANDER MACHNERY (DUDLEY) Ltd. v. CRABTREE 1974 LCR 120** it was observed "*Failure to give reasons amounts to denial of Justice*". *Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at*". *Reasons substitute subjectivity by objectivity. Right to reason is an indispensable part of a sound judicial system*. Another rationale is that the affected party can know why the decision has gone against him. *One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words a 'speaking out'* These aspects were also highlighted in the

case of **CHAIRMAN AND MANAGING DIRECTOR, UNITED COMMERCIAL BANK AND OTHERS vs. P.C.KAKKAR** reported in 2003 (4) SCC 364. To add to this, we would say that the order under Annexure-18 is not in accordance with the Rules 54 B; as nothing has been indicated with regard to the period of suspension while ordering reinstatement. Thus, the said order issued by the Director of Postal Services, being not in consistent with the rules of law is not sustainable in the eye of law. This apart, Rule 54 B does not postulate anywhere to restrict the pay to that of the subsistence allowance (that has already been paid); to the applicant, particularly when the suspension order has been revoked. The authorities are also not empowered to issue orders in piecemeal manner, as they have done in the instant case. Apart from the above, if this order is allowed to stand, then it would amount to double jeopardy inasmuch as the applicant cannot be made to suffer in not releasing his arrears of salary for the period of suspension on the face of the fact that the period of suspension has been treated as duty for all purposes and the fact that the suspension order has been merged with the final order, wherein he has been imposed punishment of reduction of pay by one stage. It is to be further noted that the

Respondents have not adduced any reason for the prolongation of suspension of the Applicant.

Having regard to all these facts and circumstances of the case, we annul the order under Annexure-18 dated 06-12-1999 and direct the Respondents to pay the arrears of his salaries (for the period he was under suspension) to the Applicant (minus the Subsistence Allowance already paid to him) within a period of 90 days from the date of receipt of a copy of this order.

14. In the result, this O.A. is allowed in part. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER(JUDICIAL)

KNM/PS.