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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No. 262 of 2001

Cuttack, this the 28th day of October, 2011


Basantilata Dash Applicant


-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(A.K.PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

O.A.No. 262 of 2001

Cuttack, this the 28th day of October, 2011

C O R A M:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDICIAL)

.....

**Basantilata Dash, aged 47 years, W/o.Late Pitambar Dash,
At-Adalpanka, PO. Bant, Dist. Bhadrak.**

.....Applicant

**By legal practitioner: M/s.P.Mohanty, D.N.Mohapatra,
G.S.Satpathy, Smt. J.Mohanty, Counsel.**

-Versus-

- 1. Union of India represented through Secretary to the
Government of India, Department of Post, Dak Tar Bhawan,
New Delhi.**
- 2. Director Postal Services, Office of the Chief Postmaster
General, Bhubaneswar.**
- 3. Superintendent of Post Offices, Bhadrak Division, Bhadrak.**

....Respondents

By legal practitioner: Mr.S.B.Jena, ASC

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O R D E R

MR.C.R.MOHAPATRA, MEMBER (A):

**In this Original Application filed under section 19 of
the A.T. Act, 1985, the prayer of the Applicant is as under:**

**"The Applicant prays that the Hon'ble Court may be
pleased to quash the order of punishment as well as the order
of rejection passed by the Appellate Authority as per
Annexures-5&7 respectively and pass such other
order/orders as the ends of justice will require."**

- 2. However from the record, it is seen that Annexure-5
is the appeal preferred by the Applicant against the order of
punishment under Annexure-4 and there is no such document
like Annexure-7 to the OA.**

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But we presume that the applicant seeks to quash the order of punishment under Annexure-4 and the order of the appellate Authority under Annexure-6. The grounds of challenge of the order of punishment and rejection of the appeal are that the IO proved the charges without taking note of the vital documents like pass books and counter foils of the deposits and without proving the authenticity of the deposits. The prosecution has not produced any counter foil during the course of enquiry. The vital document was not taken into consideration while framing the charges. One vital witness has not been examined. The statement of Shri S.C.Sethi recorded in the preliminary enquiry was taken into account without examining him in the enquiry. On 16.11.1998 IO (Shri B.Parida) submitted his report without taking note of the points raised in the written note of submission submitted by the Applicant after the closure of the enquiry. However, subsequently, Shri B.Parida, IO became the Superintendent of Post Offices, who is the Disciplinary Authority of the applicant and forwarded copy of the report to the applicant on 26.4.1999. But without considering all the points raised by Applicant in his reply to the report of the IO, the Disciplinary Authority vide order dated 28.07.1999 removed the applicant from service. The Applicant preferred appeal but the appellate authority without

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8 considering the points raised by him in his appeal rejected his appeal. Hence it is the case of the applicant that since the IO became the judge of his own action and passed the order of punishment the same is not sustainable in the eyes of law.

3. The Respondents while stoutly objecting to all other points raised by the applicant, referred to above, have candidly admitted in paragraph 4(iv) at page 8 of the counter that in the instant case as the IO who conducted the oral enquiry meanwhile got promoted and posted as Supdt of Post Offices, Bhadrak Division. He became the DA and considered the report of the IO (his own report) and reply of the Applicant and passed the order of punishment.

4. Heard Learned Counsel for both sides and perused the materials placed on record including the D&A file produced by the Respondents. We may record that sub rule (2) of Rule 14 of the Central Civil Services (Classification Control & Appeal) Rules, 1965 provides that whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof. In the instant case we find that in exercise

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of the powers the Disciplinary Authority had appointed an IO to enquire into the charges and submit the report. The IO enquired into the matter and submitted its report. The IO who conducted the oral enquiry meanwhile got promoted and posted as Supdt of Post Offices, Bhadrak Division. He became the DA and considered the report of the IO and reply of the Applicant and passed the order of punishment. Had the Disciplinary Authority himself enquired into the matter in terms of sub rule 2 of Rule 14 and passed the order of punishment after considering the reply etc. the matter would have been different. But in the instant case IO conducted the enquiry and thereafter considered the report and reply of the applicant and imposed the punishment which in our considered opinion is against the principle that one cannot be the judge of his own action. Law is well settled in a plethora of judicial pronouncements that one cannot be the judge of his own action nor an authority who is associated with the proceedings should as far as possible dissociate himself from dealing with the matter. Propriety and good conscience demanded that the Disciplinary Authority should have dissociated himself from relying on his own inquiry report before passing the order of removal. According to the Respondents the order passed by the DA is in accordance with the letter under Annexure-R/1 dated 27th January, 1999. It is

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seen that the Annexure-R/1 is a letter issued by the Ministry of Communication, New Delhi directing appointment of adhoc disciplinary authority in the disciplinary proceedings initiated against another employee namely Shri Dayanidhi Parida, PA, Bhadrak. Therefore, the Authority could not have applied the same in the instant case. Rather an adhoc disciplinary authority could have been appointed to maintain fair play in the award of punishment. We are, therefore, constrained to set aside the order of punishment imposed on the applicant though upheld by the Appellate Authority. Hence the orders under Annexures-4&6 are hereby quashed. The matter is remitted back to the Respondent No.2 to appoint an adhoc Disciplinary Authority (if meanwhile Shri Parida is still holding the post of Supdt. of Post Offices, Bhadrak Division) who shall consider the reply of the applicant to the report of the I.O. and pass final order at an early date preferably within a period of 90(ninety) days from the date of receipt of copy of this order. Till then the status of the applicant shall be maintained as it was prior to the order under Annexure-4 and the period from the date of removal shall be decided by the competent authority depending on the final order of the Disciplinary Authority.

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5. With the aforesaid observation and direction this OA
stands disposed of. No costs.


(A.K. PATNAIK)
Member(Judl.)


(C.R. MOHAPATRA)
Member(Admn.)