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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 277 OF 2001
Cuttack this the 22nd day of May/2003

U.C. Jena

...

Applicant(s)

VERSUS

Union of India & Others

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 ? Yes

[Signature]
(M.R. MOHANTY) 22/05/03
MEMBER (JUDICIAL)

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

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CORAM:

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

Uttam Charan Jena,
E.D.B.P.M., Orikanta,
Village - Brahmankhanda,
Dist - Cuttack

... Applicant

By the Advocates

Mr. D.P. Dhalasamant

VERSUS

1. Union of India represented through the
Chief Post Master General, Orissa Circle,
Bhubaneswar
2. Director of Postal Services,
O/O. the Chief Post Master General,
Orissa Circle, Bhubaneswar
3. Superintendent of Post Offices,
Cuttack North Division, Cuttack

... Respondents

By the Advocates

Mr. B. Dash, A.S.C.

ORDER

MR. B.N. SOM, VICE-CHAIRMAN : This Original Application,
under Section 19 of the Administrative Tribunals Act, 1985,
has been filed by the applicant, Shri Uttam Charan Jena,
seeking the following relief.

- a) That the order dated 16.6.2001 and the
order dated 11.7.2001 (Annexures-3 and 5
respectively) be quashed; and
- b) That direction be issued to Respondents
to reinstate the applicant with consequential
benefits".

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2. The facts of this case in brief are as follows.

Challenging the order of removal passed by the Disciplinary authority the applicant had earlier approached this Tribunal in O.A.421/90 and in O.A.190/95. Non communication of inquiry report was the subject matter of challenge in O.A.421/90. The Tribunal, therefore, being satisfied that the principles of natural justice had been violated, directed the Respondents to ask the applicant to file his show cause and then to decide the matter. Thereafter, on the furnishing of show cause by the applicant against the inquiry report, the Disciplinary Authority, by holding the charges proved, vide his order dated 6.8.1994 removed the applicant from service. The appeal filed by the applicant was rejected. The applicant, thereafter, approached this Tribunal in O.A.190/95 alleging violation of principles of natural justice to his prejudice. This Tribunal, after going into the merits of the matter directed as under.

" In view of this legal position in regard to non communication of tentative views and reasons of the Disciplinary Authority for actually differing from the findings of the Inquiring Authority, the impugned order of punishment dated 8.6.1994 passed by the Disciplinary Authority under Annexure-9 cannot be sustained and the same is, therefore, quashed.

The Disciplinary Authority (Respondent No.3), if he is still of the view that the charges, as per the materials available on record are established, he is not debarred from complying the aforesaid legal requirements and notice to the applicant to show cause against his tentative views and reasonings in which case, the proceeding shall be finalised within a period of 90(ninty) days from the date of receipt of this order, and in case he agrees with the findings of the Inquiring Officer, keeping in mind our observation with regard to charge No.1, he can as well drop the proceeding and pass necessary orders under law.

Since the punishment order is non est, under law the status of the applicant reverts

to the position as it was on the date prior to passing of the impugned order and would continue as such till finalisation of the proceedings, and till then he would be entitled to financial benefits, if any, admissible under the rules"

Through this application the applicant seeks to bring to the notice of the Tribunal that the Respondents did not pass the final order in finalizing the disciplinary proceedings within 90(ninety) days of the date of receipt of the order in O.A.190/95. The applicant has stated that the disciplinary authority, i.e., Respondent No.3, after expiry of this stipulated period granted by the Tribunal issued disagreement notice to him vide his Memo No.F/C/Case-14/95-96 dated 16.6.2001, directing him to submit a statement of defence, if any, within a period of 15 days from the date of receipt of notice. His plea is that as the Res. No.3 issued notice on 16.6.2001, after the expiry of 90 days(as directed by the Tribunal in O.A.190/95) he has become functus officio to deal with the disciplinary matter any further and that is why the applicant, bringing this fact to the notice of the disciplinary authority did not choose to file any reply to show cause notice. It is the case of the applicant that despite this, the disciplinary authority passed an order dated 11.7.2001 removing him from service. The applicant assails that order on the ground that the Disciplinary authority having failed to comply with the direction of this Tribunal lacks jurisdiction. He also alleges bias on the part of the Respondents and that the Respondents are bent upon not to reinstate him and to throw out

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throw him out of job.

3. The most important issue to be decided in this application is whether the Respondent No.3 having failed to pass a final order in the disciplinary proceedings pending against the applicant after giving him due opportunity to defend his decision within a period of 90 days from the date of receipt of the order of the Tribunal passed in O.A.190/95 had become functus officio and therefore, the order dated 11.7.2001 passed by him is liable to be quashed. This matter came up before this Tribunal twice, once in 1990 and again in 1995. It had taken more than five years for the disciplinary authority to file charge sheet against the applicant. The principles of natural justice were not followed in this case which warranted intervention by this Tribunal twice. On the 2nd round of litigation in O.A.190/95, this Tribunal had noticed serious shortcomings in the disciplinary proceedings and therefore, it quashed the order of the disciplinary authority with direction to look into the matter keeping in view the observations made in order dated 01.02.2001. As the matter was going on for years together, the delay was the most dominant feature of this disciplinary case. The Tribunal had, therefore, set time-frame of 90(ninety) days to complete the matter by the disciplinary authority. The said authority failed to do that. It is the settled position of law as enunciated by the Hon'ble Apex Court from time to time that delay in departmental inquiry greatly prejudices the delinquent official. Unexplained delay in conclusion of disciplinary proceedings itself is an indication of prejudice caused to the employee concerned, as in the

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instant case. In A.I.R. 1988 SC 1983, the Hon'ble Apex Court observed that the delinquent employee has the right that the 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. Their Lordships in that case had called upon the Court to see that in considering whether delay has vitiated the disciplinary proceedings, the Court has to consider the nature of charge, its complexity and on what count the delay has occurred. Thereafter they categorically laid down that "if the delay is unexplained, prejudice to the delinquent employee is written large on the face of it. ... It is the basic principle of administrative justice that an officer entrusted with the particular job has to discharge his duties honestly, efficiently and in accordance with the rules. ... Normally, disciplinary proceedings should be allowed to take its course as per relevant rules, but then the delay defeats justice. Delay causes prejudice to the charged officer, unless it can be shown that he is to blame for the delay or when there is no proper explanation for delay in conducting the disciplinary proceedings".

4. In this case, as we have observed earlier, delay has been the inseparable colour of this case. What is more, the applicant had to knock at the door of this Tribunal repeatedly to get justice. This Tribunal had also gone into the nature of the charges, their issuing complexity and the cause of delay while/its order dt.1.2.2001.

It had also asked the disciplinary authority to look into all these aspects of the case and then directed to close that case once for all within a period of 90 days. Not only ~~that the~~ **Disciplinary** authority failed to act upon the findings and direction of this Tribunal in O.A.190/95 but nowhere it has given any explanation as to why the disciplinary proceedings could not be concluded within the period of 90 days. The Respondents in their counter have miserably failed to ~~explain delay in the matter~~. Having not been able to answer this vital aspect of the case the Respondents have proved that they have got no explanation to offer for the delay caused, which as we feel, was the result of inefficiency and ~~mindlessness~~. At this stage we would like to refer to the Apex Court decision reported in 1995(2)SCC 570, wherein while examining the question of delay, the Hon'ble Apex Court had laid down "if the delay is caused and is unexplained, the Court **will** interfere and quash the charges", if the Court is satisfied that the delay caused prejudice to the delinquent in defending his case. Observing on the evil consequence of delay and ordering conclusion of departmental inquiry to be concluded ~~within eight months~~ ^{their Lordships} had set the rule, "if the inquiry is not concluded and final orders are not passed within the aforesaid, the inquiry shall be deemed to have been quashed". We are of the view that the present issue as raised before us is eminently covered by the aforesaid decision of the Apex Court. This Tribunal, in O.A.190/95 had ordered on 1.2.2001 that the disciplinary

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proceedings should be finalized within a period of 90(ninety) days from the date of receipt of this order and in case he is aggrieved with the findings of the inquiry officer, keeping in mind our observation with regard to charge No.1, he can as well drop the proceedings and pass necessary orders under law". We find that the disciplinary authority neither finalized the disciplinary proceedings within the stipulated period of 90 days nor did he make even a feeble attempt to say as to why the disciplinary proceedings could not be completed within the said period of 90 days. Rather it is curious to find that while passing order dated 11.7.2001, the disciplinary authority did not keep in mind the observation made by this Tribunal with regard to Charge No.1. They failed to apply their mind and act justly. From these two aspects of the case, we feel persuaded to believe that the disciplinary authority had a pre-determined mind, full of bias and indifference and wholly devoid of sagacity.

5. In view of the above facts and circumstances of the case and in view of the settled position of law as discussed above, we see every reason to intervene in the matter for the sake of justice and fair play and accordingly we quash the order dated 16.6.2001 and 11.7.2001(Annexures-3 and 5 respectively) and in consequence thereof, direct the Respondents to reinstate the applicant with all consequential service benefits. We, however, pass no order as to costs.

(M.R. MOHANTY)
MEMBER(JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

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