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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

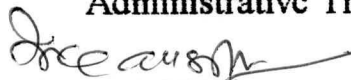
O.A. NO. 1276 OF 2003

Cuttack, the 19th day of January, 2005

Tulsiram Sahoo	Applicant
Vrs.		
Union of India and others	Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? 75
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 75


 (J.K. KAUSHIK)
 MEMBER (JUDICIAL)


 (B.N. SOM)
 VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK
O.A.NO. 1276 OF 2003

Cuttack, the 19th day of January, 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI J.K.KAUSHIK, MEMBER(JUDICIAL)

.....

Tulsiram Sahoo, aged about 36 years, son of Rudradhara Sahoo, village Jhalpali, P.S.Bijepur, District Bargarh, Ex-Extra Departmental Branch Post Master of Jhalpali Branch Post Office

..... Applicant

Vrs.

1. Union of India, represented through its Director General of Posts, Ministry of Communications, Department of Posts, Dak Tar Bhawan, Sansad Marg, New Delhi 110 001.
 2. Chief Post Master General, Orissa Circle, Bhubaneswar, District Khurda 751001
 3. Director of Postal Services, Sambalpur Region, Sambalpur 768001
 4. Senior Superintendent of Post Offices, Sundargarh Division, Sundargarh.
 5. Superintendent of Post Offices, Sambalpur Division, Sambalpur
- Respondents

Advocate for the applicant - Mr.D.P.Dhalsamant

Advocate for the Respondents - Mr.B.Dash, A.S.C.

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Tulsiram Sahoo has filed this Original Application challenging the action of the Respondents initiating disciplinary proceedings against him. He has also assailed the order dated 30.12.2002 (Annexure 7) and the order dated 2.6.2003 (Annexure 8) passed by Respondent Nos. 4 and 3 respectively.

2. The legal objections raised by the applicant against the orders passed by the disciplinary authority and the appellate authority are as follows:

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- (i) The Inquiry Officer (I.O.) and the Presenting Officer (P.O.) were appointed by an authority lower than the appointing authority.
- (ii) No show cause notice was issued before issuing the punishment order of removal by the disciplinary authority.
- (iii) Personal hearing was not allowed by the appointing authority.
- (iv) Ad hoc disciplinary authority could not have imposed any penalty as provided under the Rules.
- (v) Punishment imposed on him was harsh compared to the gravity of offence/charge.
- (vi) The Department failed to prove the charges brought against him.
- (vii) He was denied opportunity to cross-examine the Department's witnesses.
- (viii) The statements/depositions of witnesses were not weighed in a judicious manner and the I.O. mechanically reached the conclusion that the applicant was guilty of the charges.

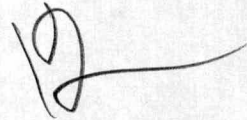
3. The Respondents while contesting the O.A. have denied the allegations and have stated that he was given full opportunity to defend his case. He was also given opportunity to nominate another Assisting Government Servant (A.G.S) on the death of his first AGS, but it is the applicant who failed to avail of the opportunity to cross-examine the witnesses. They have also submitted that the appointment of the ad hoc disciplinary authority was made according to rules laid down in this regard and that an ad hoc disciplinary authority had to be appointed because the

original appointing authority for the applicant was Senior Superintendent of Post Offices, (S.S.P.O), Sambalpur, whereas at the time when the disciplinary proceeding was initiated against him, the charge of Sambalpur Division was being held by a Superintendent of Post Offices and therefore, S.S.P.O, Sundargarh, was made ad hoc disciplinary authority for passing the punishment order in the said disciplinary proceeding.

4. We have heard Shri D.P.Dhalsamant, learned counsel for the applicant and Shri B.Dash, learned Additional Central Government Standing Counsel for the Respondents, and have also perused the records placed before us.

5. The main grievance of the applicant is that the S.P.O, Sambalpur Division, was not the competent authority to either issue charge memo against him or appoint I.O./P.O. in the disciplinary proceedings initiated against him. Referring to the Director-General, P&T's letter No.151/4/77-Disc.II, dated 16.1.1980, he contended that the said authority had issued the instruction that where the particular E.D.Agent had been appointed by a Class-I Divisional Superintendent, it would not be within the competence of a Class II S.P.O. to award the extreme penalty of removal or dismissal from service. It has been further provided in the said letter that in such case the Director of Postal Services or the Regional Director of Postal Services, whoever may be immediately superior to the Divisional Superintendent, would have to act as disciplinary authority.

6. The learned Additional Standing Counsel for the Respondents, by drawing our notice to Director-General, P&T's letter No.43/42/78-Pen/Disc.II dated 22.6.1979, contended that invoking the provision under



Rule 10 of the ED Agents (Conduct & Service) Rules, specific delegation has been made for appointment of ad hoc disciplinary authority and this power has been delegated to the Director of Postal Services to appoint ad hoc disciplinary authority wherever it is so required, as in the present case. Our attention has, however, been drawn to the order dated 22.7.2002 issued by the Post Master General, Sambalpur Region (Annexure R/3) where he had appointed ad hoc disciplinary authority in the matter of disciplinary case initiated against the applicant. In the said order, it was stated that S.P.O., Sambalpur Division, was the appointing authority in respect of the applicant, while he was holding the post of GDSBPM, and the said authority, who was lower in rank than the authority who initially appointed the applicant, would not be in a position to exercise the powers of the disciplinary authority competent to impose penalty under Rule 9 of the GDS (Conduct & Employment) Rules, 2001. On these grounds, the Post Master General, Sambalpur Region, had appointed SSPO, Sundargarh Division, as the disciplinary authority of the applicant in pursuance of the provision of Rule 5 of the GDS (Conduct & Employment) Rules, 2001. He had also ordered that the appeal against the order passed by the SSPO, Sundargarh Division, would lie to the Director of Postal Services, Sambalpur Region, Sambalpur. By issuing the said order dated 22.7.2002, Respondent No.2 had accepted the position that S.P.O., Sambalpur Division, having the status of a Group B officer could not act as disciplinary authority in respect of the applicant as he was appointed by SSPO who was a Group A status holder. After having lengthy discussion regarding the appointing authority of GDSBPM and after referring to the



“Schedule of Appointing Authorities” to the ED Agents (Conduct & Service) Rules/GDS (Conduct & Employment) Rules, we find that by the notification No.10/3/83-Vig.III, dated 3.9.1983, “Officer-in-charge of the Division” has been made the appointing authority in respect of EDSPM/EDBPM (now GDS SPM/GDSBPM). In view of this amendment to the Schedule of Appointing Authorities, it is clear that the position regarding the appointing authorities in respect of GDSBPM has undergone a change since 1980 when the Director General, P&T, had issued his order dated 16.1.1980 referred to earlier. Earlier to 3.9.1983 the appointing authority in respect of EDBPM was either SSPO or SPO, but with effect from 3.9.1983 the designation of the appointing authority was identified not with reference to his status in either Group B or Group A of the Service, but by the fact whether the concerned officer was in charge of the Division. Once an officer concerned was in charge of the Division, his status of either being SSPO or SPO would not be of relevance. We are, therefore, of the opinion that the order dated 22.7.2002 (Annexure R/3) was in clash with the rule position with regard to the appointing authority as given in the “Schedule of Appointing Authorities” to the GDS (Service & Employment) Rules, 2001. Had the Respondents applied the provisions of the Rules as given in the ED Agents (Conduct & Service) Rules/GDS (Conduct and Employment) Rules with regard to the identification of the appointing authority for EDBPM, the present litigation could have been avoided.

7. Be that as it may, in the instant case, the allegation of the applicant that initiation of the disciplinary action as well as appointment of IO/PO

having been done by SPO, Sambalpur Division, who was not competent, is not tenable, as urged by the learned Additional Standing Counsel, because SPO, Sambalpur Division, admittedly being the Officer-in-charge of the Division was the appointing authority under Rule 5 as per the amendment carried out to the EDA (Conduct & Service) Rules, /GDS (Conduct & Employment) Rules with effect from 3.9.1983 and, therefore, fully competent to act as he had acted.

8. The further allegation of the applicant that he was not allowed to cross-examine the Department's witnesses is not of much relevance as he could not explain, on our query, as to what prejudice was caused to him by denial of opportunity to cross-examine them. As regards the allegation about personal hearing, we agree with the submission of the learned Additional Standing Counsel that personal hearing before final order by the disciplinary authority is not mandatory and once he was given opportunity to give his written statement in defence of his case after receipt of the inquiry report, the disciplinary authority had complied with the requirements of the principle of natural justice. His argument that the disciplinary authority has no power to impose penalty is also not acceptable. As per the settled position of law, an ad hoc disciplinary authority is always appointed with full powers delegated to a disciplinary authority. The charges against him being those concerning his integrity and as he was found guilty of the said misconduct, we do not see any merit in his allegation that the punishment meted out was disproportionate. In effect no case of judicial intervention has been made out.

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9. In view of the above findings of ours, we see no merit in this O.A. which is accordingly dismissed.


(J.K. KAUSHIK)
MEMBER(JUDICIAL)


(B.N.SOM)
VICE-CHAIRMAN

AN/PS