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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A Nos. 870 of 2004 & 799 of 2006
Cuttack, this the 11th of May, 2010

Prasanna Kumar Tripathy Applicants
Versus
Union of India & Ors. 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 CAT or not? — Yes.


(M.R. MOHANTY)

VICE-CHAIRMAN


(C.R. MOHAPATRA)

MEMBER (ADMN.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.Nos.870 of 2004 & 799 of 2006
Cuttack, this the 11th of May, 2010

C O R A M:
THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)
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OA No.870 of 2004

Prasanna Kumar Tripathy, Son of Late Rajkishore Tripathy, aged about 52 years, resident of Bhojadeipur Sasan, Godasila, PS Sadar, Postal Assistant (Under suspension) in the Office of the Sub Post Master, Talcher Sub Post Office, Talcher, District-Angul.

.....Applicant
Legal practitioner :M/s.B.P.Tripathy, P.K.Chand,
D.Satpathy, J.Mohanty.

- Versus -

1. Union of India represented through its Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
2. Superintendent of Post Offices, Dhenkanal Division, Dhenkanal, At/Po/Dist. Dhenkanal.
3. Inquiry Officer-Cum-Assistant Superintendent of Post Offices (I/C), Bargarh Sub Division, Bargarh-768028.

....Respondents

Legal Practitioner :Mr.U.B.Mohapatra,SSC.

OA No.799 of 2006

Prasanna Kumar Tripathy, Son of Late Rajkishore Tripathy, aged about 54 years, resident of Bhojadeipur Sasan, Godasila, PS Sadar, Dhenkanal.

.....Applicant
Legal practitioner :M/s.B.P.Tripathy, P.K.Chand,
D.Satpathy, J.Mohanty.

- Versus -

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1. Union of India represented through its Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
2. Superintendent of Post Offices, Dhenkanal Division, Dhenkanal, At/Po/Dist. Dhenkanal.
3. Sri S.Satpathy, Superintendent of Post Offices, Dhenkanal Division, Dhenkanal.
4. Sri Jumbel Munda, APOS Incharge-cum-Inquiring Officer, Keonjhar Divison, Keonjhar.
5. The Director, Postal Services, Sambalpur.

....Respondents

Legal Practitioner :Mr.U.B.Mohapatra,SSC.

O R D E R

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

These two Original Applications have been filed by the Applicant, a Postal Assistant of the Department of Posts. While in the Original Application No.870 of 2004 the prayer of the Applicant is to quash the notice/letter dated 30.09.2004 at Annexure-A/7 and to restrain the respondent No.2 not to proceed with the inquiry pertaining to charge sheet dated 15.3.2004 as at Annexure-A/3, in the Original Application No.799 of 2006 his prayer is to quash the order dated 15.09.2006 at Annexure-A/4 and to direct the Respondents to reinstate the applicant in service with all consequential benefits. Though two OAs were heard one after the other for the sake of convenience this common order is passed which will govern both the cases.

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2. As it appears, there were two proceedings drawn up against the Applicant under Rule 14 of CCS (CC&A) Rules, 1965 on different and distinct nature of charges. In one such proceedings, Applicant having been asked vide letter under Annexure-A/7 dated 30.09.2004 he challenged the same in Original Application No. 870 of 2004. The main ground of his challenge is that as on the self same allegation criminal case is pending, the Respondents should not have taken decision to proceed in the disciplinary proceeding till culmination of the criminal case; whereas on another proceedings initiated against him under Rule 14 of CCS (CC&A) Rules, 1965, the Applicant having been inflicted with the punishment of termination of service, approached this Tribunal in OA No. 799 of 2006 seeking to quash the said order under Annexure-A/4 dated 15.09.2006 with direction for payment of all service and consequential benefits to him retrospectively.

3. In order dated 26.10.2004, this Tribunal while issuing notices to the Respondents in OA No.870 of 2004, by granting liberty to the Respondents, as an ad-interim measure directed the

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Respondents not to proceed with the enquiry/not to pass the final order pursuant to the memorandum of charge under Annexure-A/3. Accordingly, on the prayer of the Respondents to grant them leave to proceed/pass final order on the MA No.1029/04, this Tribunal in its order dated 19.05.2005 modified the order dated 25.10.2004 granting leave to the Respondents to proceed/pass final order on the disciplinary proceedings drawn up against the Applicant in Annexure-A/3. Challenging the said order dated 25.10.2004, Applicant approached the Hon'ble High Court of Orissa in WP (C) No.7165 of 2005. The Hon'ble High Court of Orissa in order dated 17.02.2010 disposed of the writ petition observing as under:

"The Opposite Parties shall appear before the Tribunal on 26.02.2010 and on their appearance, the Tribunal shall fix a date of hearing of the Original Application and the said Original Application shall be disposed of by the end of March,2010.

The interim order passed by this Court on 1.6.2005 in M.C.No.4047 of 2005 shall continue till then. "

4. Fact of the matter is that there has been no progress or final order in the disciplinary

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proceedings initiated against the applicant which is the subject matter of Original Application No. 870 of 2004 possibly because of the interim order passed by this Hon'ble Court and the Hon'ble High Court or the Rules giving power for keeping the hands off from the rest of the departmental proceedings, after the order of punishment of removal/dismissal passed in any of the disciplinary proceedings. It is not the case of any of the parties that the criminal case taken up against the applicant for which the applicant claims stay of the disciplinary proceedings in OA No.870 of 2004 has come to an end by now. But by filing counter the Respondents have stated that there is no bar either under the Rules or various judge made laws clearly prohibiting the Respondents not to proceed in the departmental proceedings where criminal case is pending on the same allegation. But meanwhile, by the order No.F4-1/2003-2004 dated 15.09.2006 at Annexure-A/7, the proceedings drawn up against him for the separate offences vide memo dated 15th March, 2005 his services have been terminated which is the subject matter of challenge in OA No.799 of 2006. Amongst other grounds, the main ground of challenge

of the said order of termination in OA No. No.799 of 2006 is violation of the basic principles of natural justice in other words without serving or intending to make service any notice the Respondents conducted the enquiry *ex parte* and on the basis of such *ex parte* decision finding the applicant guilty of the charges imposed the order of punishment which is not sustainable in the touch stone of judicial scrutiny. By filing counter, the Respondents opposed the contentions of the applicants especially the contention that no opportunity was given to him to attend in the enquiry and the enquiry proceeded behind his back in a slipshod manner. This was controverted by the Applicant. Since due and adequate opportunity was not given to the applicant to attend the enquiry is the main controversy, to testify the veracity of such allegation, pursuant to our direction, Respondents produced concerned disciplinary proceedings file of the Applicant for the perusal of this Tribunal. On perusal of the file it was noticed that some of the envelops returned with the postal endorsement "addressee refused" and in some of the envelops with the postal endorsement "addressee absent". Power has no doubt

been vested with the authorities to proceed with the enquiry *ex parte*, the event of absence of the applicant, with due notice and intimation. But while proceeding in the enquiry *ex parte* it has been provided that the IO's job is not at all affected by the absence of the Charged Officer. The IO is charged with the scrutiny of the evidence both verbal and recorded and then come to a finding in respect of each Article of charge. The IO, therefore, is to examine the records and witnesses to enable him to come to a valid conclusion as to the culpability of the charged officer based on the evidence led before him. But in that event recording of the statement or examination of documents of each sitting has to be sent to the delinquent. But neither in the file nor in the counter whether such step was taken by the Respondents while proceeding with the enquiry *ex parte* is forthcoming. Learned Senior Standing Counsel appearing for the Respondents also could not satisfy us whether such mandatory provision was scrupulously followed by the Respondents.

5. Besides the above, on the focused question whether any other modalities, known to law and by way of complying with the principles of natural

justice have been adhered to after the notice returned un-served, Learned Senior Standing Counsel for the Respondents based on the documents submitted that there was no necessity to follow the other course of service of notice when the Applicant refused to accept the letter sent to him. If the above argument of the Learned Senior Standing Counsel for the Respondents is accepted then what about the letters returned with the endorsement "addressee absent" and how the Respondents justify their action in proceeding in the enquiry ex parte without due opportunity to the Applicant. Due and adequate opportunity does not mean only sending the letter and in case it is returned with endorsement "refused" or "absent", it can justify the action of the authorities in proceeding in the enquiry and based on such ex parte report to do away the service of an employee. In this connection it needs to take support of the decision of the Division Bench of this Tribunal in the case of **Balajinath Padhi -v-Union of India and others**, 2002 (II) OLR (CSR) 28. Shri Balajinath Padhi was also an employee of the Postal Department. His services were terminated by an ex parte report submitted by the IO appointed in a Rule

14 proceedings initiated against him. Taking support of the decision of the Hon'ble Apex Court in the cases of **Union of India and others v Dinanath Shantaram** **Karekar and others**, AIR 1998 SC 2722 and **Dr. Ramesh Chandra Tyagi v Union of India and others**, 1994 SC (L&S) 562 this Tribunal quashed the impugned order of punishment imposed on the applicant. The relevant portion of the observation of the Hon'ble Apex Court in the case of Union of India and others v Dinanath Shantaram Karekar and others (supra) reads as under:

“Respondent was an employee of the appellant. His personal file and the entire service record was available in which his home address also had been mentioned. The charge sheet which was sent to the Respondent was returned with the postal endorsement ‘not found’. This indicates that the charge sheet was not tendered to him even by the Postal Authorities. A document sent by Regd. Post can be treated to have been served only when it is established that it was tendered to the addressee. Where the addressee was not available even to the postal authorities and the registered cover was returned to the sender with the endorsement ‘not found’ it cannot be legally treated to have been served.”

Observing the above, Their Lordships proceed to hold in paragraph 4 of the said decision as under:

"xx xx xxx. There is nothing on record to indicate that the news paper in which the show cause notice was published was a popular news paper which was expected to be reads by the public in general or that it had wide circulation in the area or locality where the respondent lived. The show cause notice cannot, therefore in these circumstances be held to have been served on the Respondents."

In the case of Dr.Ramesh Chandra Tyagi (supra), it was held by Their Lordships as under:

"....No charge sheet was served on the appellant. The enquiry officer himself stated that notice sent were returned with endorsement left without address and on other occasion on repeated visits people in the house that he has gone out and they do not disclose where he was gone. Therefore it is being returned. May be that the appellant was avoiding it but avoidance does not means that it gave a right to enquiry officer to proceed ex parte unless it was conclusively established that he deliberately and knowingly did not accept it. The endorsement on the envelope that it was refused was not even proved by examining the postman or any other material to show that it was refusal by the appellant who denied on oath such a refusal. No effort was made to serve in any manner known in law. Under Postal Act and Rules the manner of service is

provided. Even service rules take care of it. Not one was resorted to. And from the endorsement it is clear that the envelope containing charge sheet was returned. In absence of any charge sheet or any material supplied to the appellant it is difficult to agree that the inquiry did not suffer from any procedural infirmity."

6. It was not the case of the Respondents that any such procedure was adopted by them. Nor the endorsement on the envelope that it was refused was even proved by examining the postman or any other material to show that it was refusal by the appellant who denied such a refusal. Neither any publication was given in the reputed local Newspaper as is normally done in such cases.

7. In the light of the discussions made above, we are constrained to hold the irresistible conclusion that the report of the IO is violative of the principles of natural justice and the same is liable to be set aside. Consequently, the order of Disciplinary Authority under Annexure-A/4 dated 15.09.2006 and all other orders passed thereafter have to go being based on the *ex parte* report of the IO. Accordingly, the report of the IO and the order under Annexure-A/4 dated 15.09.2006 in OA No. 799 of 2006 are hereby

quashed and the matter is remitted back to the Inquiry Officer for proceeding in the enquiry from the beginning and complete the proceedings within a period of 120 days, if necessary by conducting the enquiry on day to day basis. Applicant is directed to extend full cooperation and attend the enquiry enabling the Respondents to complete the same within the stipulated period. The status of the Applicant would be under deemed suspension entitling him the subsistence allowance as per rules. The period from the date of termination till the date of the order shall be decided by the Respondents after conclusion of the disciplinary proceedings. With the aforesaid observations and direction OA No. 799 of 2006 stands disposed of. No costs.

So far as the prayer of the applicant in OA No.870 of 2004, we find no justifiable reason to quash the order under Annexure-A/7 as it is a letter to the applicant asking him to furnish the name of the AGS. After submission of the name of the AGS the enquiry will be started. The points raised by the applicant in support of his prayer to stay the departmental proceedings till conclusion of the criminal case is not

supported by the Law streamlining grounds for grant of stay where both the proceedings have been initiated against an employee. Hence Original Application No. 870 of 2004 stands dismissed. No costs.

Mohanty
(M.R.MOHANTY)
VICE-CHAIRMAN

Ch. Mohapatra
(C.R.MOHAPATRA)
MEMBER (AMDN.)