

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

O.A.No. 1308 of 2004
Cuttack, this the 13th August, 2010

Rabindra Nath Mallick Applicant
-Versus-
Union of India & Others Respondents

C O R A M

**THE HON'BLE MR.G.SHANTHAPPA, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)**

In this Original Application filed under section 19 of the A.T. Act, 1985, the Applicant seeks the following relief:

“8.1 That the impugned order dated 30.7.1996 and dated 30.3.1998 of the Respondent No.4 and Respondent No.3 respectively be quashed;
8.2. That the applicant be ordered to be reinstated into service forthwith;
8.3. That the period during which the applicant was placed under put off duty and was out of employment on account of the impugned orders be ordered to be treated as duty and pay and allowances for the period be ordered to be paid;
8.4. That any other relief, as deemed fit and proper in circumstances of the case be granted.”

2. Respondents have filed their counter contesting the case of the Applicant. No rejoinder has been filed by the Applicant.
3. Reiteration of the contentions raised in the respective pleadings of the parties having been heard, perused the materials placed on record.
4. The short question that arises for consideration in this Original Application is whether the Disciplinary Authority has furnished the disagreement note to the Applicant prior to passing the order of punishment?
5. It is an admitted fact of the either sides that the enquiry was held against the applicant in which charge no.1 was held not proved whereas charge Nos.2&3 were held proved by the IO. On receipt of copy of the report of the IO supplied to the Applicant, he has submitted his representation. But

the Disciplinary Authority disagreed with the report of the IO after receipt of the representation from the Applicant and without furnishing the reasons of disagreement to the applicant, imposed the punishment of removal from service on the applicant in order dated 30.7.1996 (Annexure-A/7). Relevant portion of the order of the Disciplinary Authority dated 30.07.1996 (at pages 45&46) is quoted herein below:

"I have gone through the report of the IO and other connected records/documents etc. and I fully agree with the findings of the IO in respect of article of charge No.II and article of charge No.III, but I am not agree with the findings of the IO in respect of article of charge No.I for the following reasons.

Taking of leave by the ED Agents subject to providing substitute being recommended and approved by the competent authority. But in the instant case the SPS availed leave with his own accord providing Smt. Ashalata Mallick as his substitute for the first spell of leave and Shri Prasanta Kr. Mallick for the 2nd spell of leave without prior approval and recommendation of the competent authority. Ext.S-8, S-9, S-10, S-16, S-17, S-25, S-26 and S-27 and depositions of SW-5, SW-10, SW-11, SW-13 are vital in this case. As per the report of the SDI(P) West Sub Divison, Bhadrak vide his letter No. A/Bandhatia dated 3-5-91 (Ext.S-17), the leave application (Ext.S-8) and the relinquishing charge report (Ext.S-9) were received whjerein the SDI(P) intimated that the SPS availed leave without prior approval from him w.e.f. 30-04-1991 (A/N) and he also inter alia reported that he (the SPS) has already availed leave more than 180 days at a stretch w.e.f. 27-3-90. Therefore, the SPOs, Bhadrak Divn. In his letter No. B/E-46 dated 6-5-91 (Ext.S-16) refused the leave and directed the SPS to resume duties at once submitting explanation for the same. But the SPS did not pay any heed to it rather availed leave unatuhroisedly and joined duty on 13-6-91 (Ext.S-10) after lapse of 43 days. The plea that he (SPS) or his substitute did not get the refusal letter of the SPOs, Bhadrak (Ext.S-16) since his leave address has been given on the Ext. S-8 as Madan Dutta Lane, Bowbazar, Calcutta-12 is not tenable. The letter (Ext.-16) might have been received by the substitute of the BPM and in turn the substitute might have informed the regular BPM to obey the direction of the SPOs in resuming duties. The regular BPM knowingly disobeyed the orders of the competent authority and remained unauthorized absence of the period mentioned above. Similarly the SPS remained unauthorized absence from duties for the 2nd spell of leave vide Ext.S-25 and Ext.S-26 as it transpired from the Ext.S-27. Such being the highhandedness of the SPS has not only disobeyed the orders but also showed highly indiscipline as envisages in rule 5(1)(1)(2)(5) of EDAs (Conduct and Service) Rules, 1964. Taking into consideration



of all evidences adduced orally and writing I held the article of charge No.I proved beyond all doubts.

As regards article of charge No.II, I am fully agree with the findings of the IO an held the charge proved squarely. The SPS deviated the initial principle that he is to function the BO in post village other than the village under delivery jurisdiction of the BO which he has since opted at the time of his initial appointment during the year 1976 vide his prescribed application for selection a EDBPM (Ext.S-18). But without permission the SPS has been functioning the BO in Radhaballavpur BO in his own residence. Hence it contravened the provision and principles as indicated in his application from given at the time of his appointment as EDBPM. Moreover, the general public of the locality made tremendous complaint through the Sub Collector, Bhadrak for facing immense troubles in postal transaction due to shifting of the BO from Bandhatia the post village to Radhaballavpur the residence of the SPS. Since the BO has been provided by the Department for better postal facilities to the public and it is a public business office, the SPS dis-interrupted the postal business of the public by shifting the BO to other than the post village i.e. to his own residence. The SPM functioned the BO other than the post village prior to 20.10.1990 without prior approval. Shri Mallick the SPS was instructed repeatedly to shift the BO to the post village vide IR/91 dated 11-10-91 (Ext.23) and vide Divnl. Office letter No.L-36/91 dated 11-7-91 (Ext.S-21), but he (the SPS) did not ensure shifting of the BO to the post village rather showed grave misconduct by not shifting it to the post village. Therefore, I held the charge No.II proved beyond all doubts.

As regards article of charge No.III, I fully agree with the findings of IO. This charge relates to grave misconduct of the SPS. The xt. S-1, S-2, S-3, S-4,S-5,S-6,S-6,S-7,S-11,S-12,S-13,S-14,S-15,S-24,S-29,S-30,S-31 and depositions of SW-1, SW-2,SW-3,W-4,SW-5,SW-9,SW-12 and W-13 are vital to the charge. With the sole responsibilities of regular BPM (the SPS) the substitute Smt. Ashalata Mallick paid the MO (Ext.S-3) to the payee (SW-5) taking her LTI on Ext.-S-3. The witness SW-3 and identifier SW-4 have disowned their signatures appearing on Ext.S-3. Even GEQD opined in Ext.S-24 (a)and S-24(b) that the signatures of SW-3 and SW-4 appearing on Ext.S-3 are not the genuine signatures of them. It is clearly proved that Smt. Ashalata Mallick (SW-5) the substitute of SPS did not actually pay the value of MO (Ext.S-3) to the payee (SW-2) and showed it paid taking bogus signatures of the witness as well as identifier and managed to account for the MO in BO account only. The SW-2 made complaint to various quarters that she has not received payment of the MO (Ext.S-3). I am inclined to believe that the SPS has committed grave misconduct by not paying the value of the MO through his substitute (SW-5). I held this charge proved squarely and beyond all doubts.

I have very carefully examined the case records/documents and evidences adduced in the case and I find that the SPS has no legs to stand by to refute the charges level against him (the SPS). The offences committed by him

are not accidental or solitary. I hold that such a person has lost his credibility as an extra departmental branch post master who should have absolute integrity i.e. the integrity beyond doubt and devotion to duty. The charged official is taking lamentably in both. I find him guilty of all the charges framed against him and unfit to be retained in public service. His further retention in service will definite detriment to the interest of public service. I shri N.K.Senapati, Supdt. of POs, Bhadrak Divn. Bhadrak award Shri R.N.Mallick, ED Branch Postmaster Bandhatia BO in account with Dhamnagar SO the punishment of 'REMOVAL FROM SERVICE' with immediate effect."

6. As per the instruction of the DoP&T dated 27-11-1995, the Disciplinary Authority has to furnish the reason of disagreement in brief to the CO along with copy of the report of the IO. In the present ^{case} as it appears from the record as also admitted by Learned Counsel for both sides the said procedure was not followed. The applicant has also taken this as a ground in paragraph 5.4. of his OA. Respondents have not denied the same in the reply filed in this case. For the sake of brevity, relevant portion of the instruction of the DoP&T dated 27-11-1995 is extracted herein below:

"6(A) Supply of copy of inquiry report to the accused Government servant before final orders are passed by the Disciplinary Authority-

Xx xx xx xx xx xx

(3) A question has been raised in this connection whether the Disciplinary Authority, when he decides to disagree with the inquiry report should also communicate the reasons for such disagreement to the charge officer. The issue has been considered in consultation with the Ministry of Law and it has been decided that where the Inquiring Authority holds a charge as not proved and the Disciplinary Authority takes a contrary view, the reasons for such disagreement in brief must be communicated to the charged officer along with the report of the inquiry so that the charged officer can make an effective representation. This procedure would require the Disciplinary Authority to first examine the report as per the laid down procedure and formulate its tentative viewed before forwarding the report of the inquiry to the charge officer."

7. In view of the above, since there is a serious lacunae in the order, it cannot be said that the order of the Disciplinary Authority under Annexure-A7 dated 30-07-1996 is sustainable in the eyes of law.



8. Applicant has also preferred appeal being aggrieved by the aforesaid order of the Disciplinary Authority. But without paying any heed in regard to whether proper procedure was adhered to in the disciplinary proceedings the Appellate Authority rejected the appeal of the applicant and communicated its decision in letter dated ^{12.3.04} ~~12.03.2004~~ (Annexure-A/10).

Relevant portion of the order of the Appellate Authority dated ^{30.3.98} ~~12.3.2004~~ is extracted herein below:

“The proceeding under Rule-8 of ED (C&S) Rules, 1964 are to follow the same process as it was a major penalty under rule 14 of CCS (CCA) Rules, 1965, as such it is obligatory on part of the disciplinary authority to record the reasons of such disagreement and to record his own findings on such charges provided these findings are based on evidences on record as per the inquiry made by the IO and not on extraneous materials. In the instant case the disciplinary authority has discussed sufficiently in his order dated 30.7.96, the reasons for his disagreement with the IO’s findings in article of charge No.1. As regards article of charges Nos.2&3 the IO has held the charge Nos.2&3 as proved and the disciplinary authority has also agreed with him. As such the reasonable opportunity has been given under the scope of the rules to the appellant since the disciplinary authority has issued a reasoned order and recorded his findings based on the facts on record regarding article No.1 where he has disagreed with the findings of the IO. As such I cannot agree with the contentions of the applicant that the inquiry is vitiated due to this.”

9. In terms of the provisions under Rule 15 (2)(a) of CCS (CC&A)

Rules, 1965 disagreement notice has to be supplied to the delinquent along

with the report of the ~~IO~~ and in accordance with the Rules the Appellate

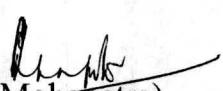
Authority is under obligation first of all to see whether there has been sufficient ^{compliance} ~~complies~~ of the rules/procedures and principles of natural justice.

But from the above narration of facts it would be evident that there has been clear violation of the Rules/provisions by the Disciplinary Authority which was unnoticed by the Appellate Authority. In view of the above, the order of the Disciplinary as well as Appellate Authority under Annexures-A/7 & A/10 & ¹¹ are hereby quashed and the matter is remitted back to the Disciplinary

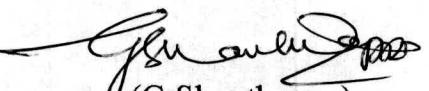


Authority for making de novo enquiry from the stage of supplying of the copy of the report of the IO to the Applicant. Respondents are hereby directed to reinstate the Applicant forthwith and in so far as payment of back wages for the intervening period we leave it to the Disciplinary Authority to decide in accordance with Rules and Law.

10. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(C.R. Mohapatra)

Member(Admn.)


(G. Shanthappa)

Member(Judl.)