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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.1426 of 2004
Cuttack, this the 17th day of April, 2007.

Narayan Sahu ... Applicant

Versus

Union of India and Others ... 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?.

(M.R.MOHANTY)
VICE-CHAIRMAN

17/4/07
(B.B.MISHRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 1426 of 2004
Cuttack, this the 17th day of April, 2007

C O R A M:

THE HON'BLE MR. M.R.MOHANTY, VICE-CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Narayan Sahu, Son of Late Mehetram Sahu, Aged about 51 years, resident of Village Jatgarh, Via: Komna, Dist.Nuapada.

..... Applicant.

By legal practitioner: Mr.S.K.Joshi, Advocate.

-Versus-

1. Union of India represented through the Chief Postmaster General, Bhubaneswar, Dist. Khurda.

2. Superintendent of Posts, Kalahandi Division, Bhawanipatna, Dist.Kalahandi.

3. Director of Postal Services, Berhampur Region, Dist. Ganjam.

...Respondents.

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

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ORDER

MR.B.B.MISHRA,MEMBER(A):

Omission and Commission on the part of the Applicant, an Extra Departmental Branch Postmaster of Jatgarh Branch Post Office in account with Nuapada Tanwat Sub Post Office, having come to the notice of the authorities, a set of charges containing six articles was framed and served on the Applicant vide order dated 06.08.1999 under Annexure-1 asking him to explain for the proposed enquiry under Rule 8of the Extra Departmental Agents (Conduct and Service) Rules, 1964.

2. On consideration of the show cause reply filed by the Applicant, the matter was enquired into and finally, in order dated 24th July, 2001, the Disciplinary Authority imposed the punishment of removal from service on the Applicant. The said order of punishment, received due consideration of the Appellate Authority, when the matter was placed before it by the Applicant. The Appellate Authority's order dated 21.10.2002 under Annexure-5 having gone against the Applicant, he questioning the validity, proportionality and legality of these orders, has filed this

Original Application u/s.19 of the Administrative Tribunals Act, 1985 with prayer to quash the order of the Disciplinary Authority under Annexure-4 dated 24th July, 2001 and the order of the Appellate Authority under Annexure-5 dated 21.10.2002. He has also sought for direction to the Respondents to reinstate him in service with all consequential service and financial benefits.

3. In the counter filed by Respondents, apart from raising the preliminary objection of limitation, they have maintained that the Disciplinary Authority, after considering the show cause reply furnished and the gravity of the offence committed by the Applicant, thought it appropriate to go for a regular enquiry in order to give adequate opportunity to the applicant to defend his acts of omission and commission. Accordingly, the matter was enquired into in which the applicant was given enough opportunity to go through the material documents and place his case. On receipt of the enquiry report, the same was supplied to the applicant as per the Rules. Applicant had also submitted his written statement of defence. On consideration of the materials and the report of the IO, the Disciplinary Authority

was of the opinion that punishment of removal should be imposed and accordingly, he passed the order of punishment on the Applicant under Annexure-4 dated 24.07.2001. Being aggrieved by the order of the disciplinary authority, the Applicant carried the matter in appeal and the appellate authority after considering the points raised by the applicant, report of the IO and other connected records, found no reason to interfere with the order of punishment imposed by the Disciplinary Authority. Accordingly, the Appellate Authority rejected the appeal of applicant under Annexure-5 dated 21.10.2002. They have stated that the competent authorities issued the order of punishment on the basis of the records after giving adequate opportunity to applicant and following the Rules. Their further case is that in accordance with the law of the land, this Tribunal cannot re-appreciate the evidence and record their findings in place of the findings reached by the Authorities. Since after giving adequate opportunity to the applicant the authorities came to the conclusion that the applicant is guilty of the charges and accordingly imposed the order of punishment, there is hardly any scope for this Tribunal to interfere in it. They have also

maintained that during the enquiry, the Applicant was given adequate opportunity to defend his case and the Rules on the subject were strictly adhered to and therefore, they have prayed for dismissal of this OA.

4. Since in this case, the Respondents raised the preliminary question of limitation, we thought it proper to hear first on that point. Learned Counsel for the Applicant has submitted that when without any of his faults, he was imposed with the order of punishment of removal, he was shocked and became ill for which he could not approach this Tribunal in time. He has stated that he being a low paid ED employee, a lenient view should be taken in the matter and the delay in filing this OA may kindly be condoned and the matter may be heard on merit. Learned Additional Standing Counsel for the Respondents strongly opposed the stand of the Applicant that he was illegally removed from service as also fervently prayed that the power of condonation of delay should not be exercised in a routine manner in absence of any documentary proof.

5. Section 21 of the Administrative Tribunals Act, 1985 deals with regard to limitation. It provides as under:

> "21.Limitation:- (1) A Tribunal shall not admit an application-
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> (a) in a case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made.
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> (b) In a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.
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> (2) Notwithstanding anything contained in sub section (1), where-
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> (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
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> (b) no proceedings for the redressal of such grievance h ad been commenced before the said date before any High Court.

The application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or , as the case may be, Clause (b) of sub-section (1) of within a period of six months from the said date, whichever period expires later,

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2) an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

6. It is not in dispute that this Tribunal has been conferred with the powers to condone the delay. But for exercising this power, parties are to file an application u/s 5 of the Limitation Act, giving sufficient cause for such delayed approach. If the Tribunal satisfies that there is prima facie case, the Tribunal in exercise of powers may condone the delay. It is only after condonation of delay, the Tribunal can further proceed to hear the matter on merit.

7. In this case, the Appellate Authority rejected the appeal of Applicant on 21.10.2002 (Annexure-5). But this OA has been filed by the Applicant on 27th December, 2004 i.e. two years after the cause of action arose that too without giving any

explanation on the point of delay. No evidence has been filed by the Applicant in support of his plea that he was ill. Also on perusal of records, we find that there is no separate application seeking condonation of delay in approaching this Tribunal.

8. On going more through the records, we find that the Registry has pointed out two defects viz(i) the case is barred by limitation and (ii) this OA has not been verified by the Applicant. The defects were not removed for a long time. However removal of the second defect pointed out by the Registry, the matter was listed on 12.12.2005 for consideration on the question of admission when keeping the question of limitation open, notice was directed to be issued to the Respondents. On 27.02.2006, the matter was listed before the Registrar's Court for completion of pleading. But in absence of Learned Counsel for applicant, the matter was posted to 24.04.2006. On 24.04.2006 none was present for Applicant, though as stated by Learned Counsel for the Respondents that copy of the counter has already been served on him. The matter was listed on 26.06.2006 and 10.08.2006 but none was present on behalf of Applicant; for which the matter was placed before the Bench on

8.12.2006 when Learned counsel for applicant took four weeks time to file rejoinder. Again the matter was listed ion 10.12.2007.But no rejoinder was filed and on the request of Learned counsel for applicant again four weeks time was allowed to file rejoinder. Again the matter was listed on 12.02.2007 and on the request made by Learned Counsel for the Applicant, four weeks time was allowed to file rejoinder. On 20.03.2007 again, learned counsel for applicant was asking time to file rejoinder which was rejected and the matter was heard. Delivery of final orders was kept reserved; as Learned Counsel for Applicant wanted some time to file written note of submission.

9. Learned Counsel for applicant has filed his written note of submission enclosing a copy of the MA stated to have been filed seeking condonation of delay without disclosing the number of the MA or the date when he filed the same in the Registry. In absence of this, we are bound to hold that this document is not reliable and no cognizance can be taken of the same.

10 However, while giving consideration on the point of delay, we also look to the merit of the matter. Before observing

on the merit of the matter, we may remind ourselves of the principles crystallized by judicial decisions. Rulings of the Courts are that strict rules of evidence are not applicable to the departmental inquiries and even violation of procedure does not necessarily vitiate the inquiry. Normally, the Tribunal would not interfere with the findings of fact recorded at the domestic enquiry but if the findings of "guilty" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny. A broad distinction has, therefore, to be maintained between the decision, which are perverse, and those, which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record, which is acceptable, the same would be relied upon. Howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

11. The Tribunal, in respect of departmental enquiries and the findings recorded therein does not exercise the powers of appellate authority. The jurisdiction of the Tribunal in such cases

is very limited. It comes in to play when it is found that the domestic enquiry is vitiated because of the non-observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence and/or the punishment is totally disproportionate to the proved misconduct of an employee (Ref: **V.Ramana v. A.P.S.R.T.C**, 2005 (7) SCALE 121=2006 SCC (L&S) 69)

12. It is not the case of the Applicant that the Respondents reached such conclusion in violation of the principles of natural justice or without adhering to the Rules on the subject. From the pleadings it is revealed that the Applicant without filing copy of the enquiry report wants us to evaluate the evidence recorded by the IO. He has also chosen not to file a copy of the appeal preferred by him which has disabled us to know whether the points raised in this OA have been presented before the Appellate Authority.

13. In the light of the discussions, this OA stands dismissed for being hit by Section 21 of the A.T. Act, 1985 as also on the merits. There shall be no order as to costs.

(M.R.MOHANTY)
VICE-CHAIRMAN

17/4/07
(B.B.MISHRA)
MEMBER(A)

KNM/PS.