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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 278 OF 2002
Cuttack this the 17th day of Dec. 2004

Prahallad Behera ... Applicant(s)

- VERSUS -

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 7<
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 7<

(M.R. MOHANTY)
MEMBER (JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.278 OF 2002
Cuttack this the 17th day of Dec. 2004

CORAM:

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

...

Sri Prahallad Behera, 61 yrs.,
S/o. late Sridhar Behera,
Vill/PO-Kabalpur, Via-Kanakpur
Dist-Jagatsinghpur

...

Applicant

By the Advocates

Mr.P.K.Padhi

- VERSUS -

1. Union of India represented by it's
Director General of Posts, Dak Bhawan,
Sansad Marg, New Delhi-110 001
2. Chief Post Master General (Orissa Circle),
At/PO-Bhubaneswar, Dist-Khurda-751001
3. Superintendent of Post Offices, Cuttack
South Division, At: P.K.Parija Marg
PO-Cuttack G.P.O., Dist-Cuttack-753001

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Respondents

By the Advocates

Mr.J.K.Nayak, A.S.C.

O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Applicant (Shri Prahallad Behera) a retired Sub Post Master of Tyndakura Sub Post Office has invoked the jurisdiction of this Tribunal being aggrieved by the action of the Respondents-Department in serving charge-memo on him for acts of omission and commission, which took place during the years 1991 to 1995-96. His main grievance is that the Respondents, knowing fully well that he is innocent, had issued charge-sheet to him after lapse of 7 to 8 years in respect of certain incidents which had occurred then and just on the eve of his retirement, and received by him four months after his retirement.

2. The facts of the case are that Respondent No.4 served a charge memo dated 26.4.2001 containing four four articles of charge in connection with fraudulent transactions in 32 TD/MIS/SB Acts. and that during the relevant period he had worked as Deputy Post Master, Jagatsinghpur H.O. and/or as Sub Post Master Tyndakura S.O. On account of ^{his} contributory negligence the Department was alleged to have ~~sustained~~ a loss to the tune of Rs. 5,04,211.50 and thereby the applicant had failed to maintain devotion to duty and acted in a manner unbecoming on the part of a Government servant and thus had violated the provisions of Rule-3(I) (ii) and (iii) of CCS(Conduct) Rules, 1964.

3. The applicant has assailed the charge-sheet on several grounds. Firstly, that the fraud in those 32 TD/MIS/S.B.Accounts took place because of the carelessness on the part of Respondent No.3, who had allowed the principal offender, i.e., Shri Maheswar Behera, to remain in charge of Tyndakura and Krishnanandapur SOs, for over two decades, till he breathed his last. Secondly, that the transactions relating to charge No.1 took place in the year 1998, transactions relating to charge No.2 took place in January, 1999, Charge No.3 relates to transactions during February to April, 1999, Charge No.4 relates to the year 1991 to 1996; and that in none of those cases, he has been found to be directly responsible for the commission of fraud by Shri Maheswar Behera. Thirdly, that in terms of D.G. P&T letter No.6/19/72-Disc.I dated 29.11.1972, no major penalty could be imposed for any incidence or occurrence of irregularity or negligence in the discharge of official duties unless a

dishonest motive is established and no such allegation has been brought against him. It is his further case that since the allegation of contributory negligence has been brought against him, the charge-sheet framed and served on him under Rule-14 of CCS(CCA) Rules is in violation of the said instructions of the Respondents-Department. Further, it is the case of the applicant that the charge-memo having been issued four days before his retirement was in violation of the circular No.7-4/88-Vig. Pt. dated 3.5.1995 issued by the Department, wherein it was mentioned that the Hon'ble Minister of State (C) had taken serious view of delay in serving charge-sheet and had called upon the officers to avoid serving of charge-sheet just on the eve of retirement as that would adversely reflect on the working of the Department. On that ground also, this charge-memo is liable to be quashed.

4. With regard to Charge No.4, which relates to certain transactions which took place during the year 1991 to 1996, the principal offender had been convicted by an appropriate Court of Law and that the subsidiary offenders were dealt with under Rule-16 of CCS(CCA) Rules for their negligence, but in his case by issuing a charge-sheet under Rule-14 of CCS(CCA) Rules, the Respondents have not only violated the instructions of D.G.Posts, but have also exposed their bias and mala fide.

4. It is the further case of the applicant that he had asked for a number of documents, which were refused by the Inquiry Officer(in short I.O.) on some pretext or the other. For the above reasons, the applicant has submitted

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that it is a fit case for judicial intervention and in consequence thereof, Annexure-3 is liable to be quashed/ set aside.

6. The Respondents have opposed the prayer of the applicant by filing a detailed counter. Their case is that it is true that Shri Maheswar Behera had committed fraud in several TD/MIS/SB Accounts which came to light only on 13.4.1999 after his death. When his past work as S.P.M., Krishnandapur SO and P.A./SPM, Tyndakura SO were verified, it was pointed out that the Department had sustained a loss to the tune of Rs.5,04,211.50 and in the circumstances, the matter was referred to the Superintendent of Police, CBI/ SPE also. In the departmental investigation, the applicant was also identified as one of the subsidiary offenders and that the CBI, after completion of the investigation had recommended departmental action against the applicant. Again, when the applicant was working as D.P.M., Jagatsinghpur H.O., Shri Bijay Kumar Singh, the then P.A. Nalibar S.O. committed fraud in S.B.Accounts in which the applicant contributed lapse as Supervisor. Taking all the aspects into consideration and the gravity of offence committed by the applicant as DPM, Jagatsinghpur and SPM, Tyndakura SO, it was decided to proceed against him under Rule-14 of CCS(CCA) Rules. It is in this background, the Respondents have prayed for dismissal of this O.A. being devoid of merit.

7. We have heard the learned counsel for the parties and perused the materials placed before us.

In support of his contentions, the learned counsel for the applicant has placed reliance on the following

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decisions:

1. 1998(1) (CAT) AISLJ Page 383 to 386
(Shri K.C. Brahmachary vs. The Chief Secretary & Ors.)
2. 1994(1) ATJ Page-496 - 497
(Shri Satish Chandra vs. UOI & Ors.)
3. 1986(4) SLR Page 471
(Virendra Prasad vs. U.O.I & Ors.)
4. 1996 SC(AIR) Page 1655-58
(State of U.P. vs. Krishna Pandey)

The Respondents have also relied on the following decisions in support of their contentions:

1. AISLJ - 2000(2) CAT, Bangalore, Page-445
(Chandra Sekhar Putur vs. Telecom District Manager & Ors.)
2. AIR 1998 SC, Page-2709 (Union of India vs. B.Dev)
3. AIR 1994 SC 2175
(State of M.P. vs. L.P. Tiwari)
4. AIR 1993 SC P - 1488
(D.D.A. vs. H.C. Khurana)

The Respondents, relying on the decision in the case of State of M.P. vs. L.P. Tiwari (supra) have stated that service of article of charge is not a condition precedent; and that putting it in transmission within the period is sufficient compliance. The same view was taken by the Hon'ble Apex Court in the case of D.D.A. vs. H.C. Khurana that "actual service of charge sheet is not a part of decision making process". So, they have pleaded that since they had despatched the charge-sheet on 26.4.2001, legally, the service of charge-sheet on the applicant was complete. The main thrust of ^{argument of} the applicant, on the other hand, is that by serving the charge-sheet on the verge of his retirement, the Respondents have violated their own instructions issued by the D.G. Posts

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on 3.5.1995. Secondly, that serving of charge sheet on the verge of retirement renders it illegal and is liable to be quashed as decided in the case of K.C.Brahmachari vs. The Chief Secretary(supra). In the that case, the charge-sheet was issued to the applicaht just four days prior to his retirement on the basis of an allegation-incident that had taken place during 1968-78. It was held that such an action would constitute colourable exercise of power. It was also held that such action aimed at allowing the Respondents to hide behind Clause-2(a) of Rule-9 to evade Clause-2(ii)(b) of Rule-9 of CCS(Pension) Rules. The Tribunal was then of the view that both the Clauses 2(2)(a) and 2(2)(b) of Rule-9 should be read together and any charge-sheet issued against the Government servant, who is just awaiting his superannuation should also be subject to the scrutiny of Clause-2(b) of Rule-9 of CCS(Pension) Rules, 1972 and initiation of disciplinary proceedings would be improper if instituted without obtaining the sanction of the President and without ensuring the charge-incident is not a stale by four years as stipulated in Clause-2(b) of Rule-9. It was also held by the Tribunal that in order to consider a departmental proceeding initiated before retirement to be a deemed proceeding under this Rule, it should be one instituted well before the date of superannuation.

8. In the instant case also the transactions and/or alleged misconduct on the part of the applicant having been place much before four years of his retirement, i.e., during the period from 1991 to 1999, the applicant is entitled to reliefs as prayed for by him in this O.A.

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However, we would like to observe that in the instant case the events took place not far before his retirement, but within four years of his retirement so far as charge Nos. 1, 2 and 3 are concerned, although in case of charge No.4, the incident took place between the years 1991-96. However, it cannot be said to be a case similar to one as in the case of K.C.Brahmachari's case (supra).

However, one striking aspect of this case is that the applicant has been charge-sheeted for alleged contributory negligence. The plea of the applicant is that in terms of D.G.(P&T) letter No.6/19/72-Disc. 1 dated 29.12.1972, no major penalty lies on the ground of gross irregularity and negligence in the discharge of official duties, if it is not out of dishonest motive. It is not the case of the Respondents that the applicant neglected his work and/or committed certain irregularity out of dishonest motive. That being the case, in terms of D.G.(P&T) instructions as referred to earlier, we agree that it was not a case to be considered for imposition of major penalty. It is now the law of the land that the pension is not a bounty, but the most valuable property earned by a Government servant for his years of service and that pension is a deferred wage. It is because of this, the valuable property of a pensioner, the President can either withhold or withdraw a part or whole of pension only on the ground of grave misconduct or negligence resulting in loss to the public exchequer.

9. Thirdly, that an offence/misconduct which does not come under the ambit of major penalty cannot be

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characterized as grave misconduct or the loss to the Government cannot be arrogated to a Govt. servant, unless the responsibility could be directly fixed and the quantum of loss due to that individual's negligence could be exactly determined. In this case no such action, as is apparent from the record, has been taken by the Respondents to say as to how much of the financial loss sustained by the Government was attributable to the applicant.

The applicant has assailed the initiation of the disciplinary proceeding against him on the ground of delay and that the decision to initiate major penalty action for alleged negligence in duty is violative of the Govt.'s instructions contained in

. Ordinarily the Courts/ Tribunals should not interfere in the matter concerning disciplinary proceeding at the threshold/interlocutory stage, unless it involves certain peculiar facts and circumstances, as enunciated by their Lordships of the Hon'ble Supreme Court in the case of B.C. Chaturvedi (1996 SCC(L&S(80)). In this case, the disciplinary proceeding is aimed at withholding either in part or in full the pension of the applicant. Pension has already been declared to be a valuable property of a pensioner, which cannot be snatched away, except without the President being satisfied that the pensioner is guilty of grave misconduct or he has caused pecuniary loss to the public exchequer. As it is a pensioner, who is before us and crying for justice, it will be inept on our part

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not to hear him on the ground that disciplinary matters are not sustainable to judicial scrutiny normally. The allegation against the applicant is that because of lack of efficient supervision on his part, fraud could be perpetrated in certain TD/MIS/S.B.Accounts in those two post offices. But so far as applicant is concerned, his responsibility has not either been quantified in terms of money value or in any other form. In other words, it has been a failure in supervision on the part of the applicant not amounting to sabotage, but in the nature of inefficiency. Rule-9 empowers the President right to touch the pension of a pensioner, only if he has caused pecuniary loss to the exchequer by his deliberate negligence punctuated with dishonest motive. Not a single whisper is made in the Memorandum of charges that the applicant had enriched himself by showing negligence to his work. On the other hand, it has been argued on behalf of the applicant that he was befooled by another functionary of the Post Offices, i.e., principal offender, who has since expired. It is also not the case of the Respondents that the deceased Govt. servant was not the principal offender. Further, as per the decision of the Government of India, the act of negligence not performed with dishonest motive does not warrant initiation of major penalty proceeding. It would be too harsh if for a minor offence, the Respondents-Department seek to recommend reduction in pension of a pensioner, like the applicant herein. Needless to say that the Government is bound by the procedure prescribed by itself. Otherwise, it will

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the end of the rules of law.

Another aspect of the case is that the applicant whose pension is now sought to be interfered with was allowed to complete his full official career and during that period the Respondents-Department had found no time to seek his accountability.

This Bench in recent past, in the case of Satyabadi Barik vs. Union of India & Ors. (O.A.No.552/01 - disposed of on 12.10.2004) observed as under.

"... With such serious and grave charges brought against the applicant, it was probably a case for suspension of the official concerned. Not only that no such action was taken, but the applicant was rewarded from time to time by giving him first upgradation under O.T.B.P. and B.C.R. and thereafter, promotion to the summit of the cadre, i.e., H.S.G. I, before his retirement. It is unheard of and an anti-thesis to prudent administration that a person against whom serious charges, like, destruction of official records and fraudulent withdrawals were brought at the fag end of his service career had also enjoyed the confidence of the Department and was rewarded with promotion from time to time elevating him to the pinnacle of the cadre"... "We, therefore, come to the conclusion that the disciplinary authority was not at all serious in pursuing the charge against the employee (applicant) of the charges ~~were~~ brought against him as an after-thought, apart from delay having not been explained satisfactorily".

In the instant case, the charges brought against the applicant is one of the supervisory failure. Following the ratio in the case of Satyabadi Barik (supra) we are of the view that the action now proposed to be taken against the applicant is an after-thought, but not to boost up the administration. The only purpose

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for issuing a charge-sheet to the applicant a few days before his retirement appears to be actuated by the intention of the Respondents in order to delay the benefit of pension. We are to observe following the ratio of the decision in the case of State of U.P. & another vs. Shri Krishna Pandey (reported in AIR 1996 S. C. 1656) that the disciplinary authority disabled itself by deliberate omission to take appropriate action against the delinquent within four years of the happening of the incident of misconduct and thereby the proceeding is vitiated.

In view of the above position of law and undisputed facts of the case, we have no hesitation to hold that the action of the Respondents-Department in initiating disciplinary proceeding a few days before ~~the~~ retirement of the applicant suffers from laches and limitation under the rules framed in that behalf as well as their action in this regard is ultra vires of the provisions Constitutional ~~L~~ as enunciated by the Hon'ble Apex Court from time to time. In the result, while quashing the memorandum of charges dated 26.4.2001 vide Annexure-3, we direct the Respondents that the applicant be given all consequential benefits arising out of his retirement, within a period of 120 days from the date of receipt of this order.

Accordingly, the O.A. succeeds. No costs.

(M.R. MOHANTY) 17/12/04
MEMBER (JUDICIAL)

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(B.N. SOM)
VICE-CHAIRMAN