

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

ORIGINAL APPLICATION NO. 582 of 2005

Cuttack, this the 17th day of January, 2007.

MAHADEV MEHER APPLICANT.

Versus

UNION OF INDIA & ORS. RESPONDENTS

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not? *yes*
1. WHETHER it be circulated to all the Benches of the Tribunal or not? *yes*


(B.B.Mishra)
MEMBER (A)

8

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 582 of 2005

Cuttack, this the 17th day of January, 2007.

C O R A M:-

THEHON'BLE MR.B.B.MISHRA, MEMBER(ADMN.)

Shri Mahadev Meher,
Aged about 59 years,
S/o.Late Sanatan Meher,
Deputy Postmaster, Baragarh HO,
At/Po/Dist. Baragarh.

.... APPLICANT.

BY legal practitioner: M/s. D.P.Dhalsamanta,
P.K.Behera,Advocates.

-VERSUS-

1. Union of India represented through its Secretasry, Department of Posts, Dak Bhawan, New Delhi-110 001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Director of Postal Services, Office of the Post Master General, Sambalpur Region, Sambalpur.
4. Superintendent of Post Offices, Sambalpur Division, Sambalpur.

RESPONDENTS

By legal practitioner **Mr.U.B.Mohapatra, SSC.**

ORDER

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

Short facts of the case are that the Applicant was working as the Deputy Postmaster, Jharsuguda Head Post Office during the period from 31-07-1996 to 03-06-2000. He was assigned with the duties of supervising Savings Certificate work and authorized to issue National Savings Certificates on receipt of application from public through counter assistant. While working as such, he contrary to NSC (VIII issue) Rules, 1989 having allowed issue of NSCs (VIII issue) amounting to Rs.95,000/- in the name of M/s. Utkal Engineering Enterprises, Jharsuguda on 22.08.1996 under Regn. No.4197 dated 22.08.1996 bearing Sl.No.6NS/02DD 264982 for Rs.5,000/- and 6 NS/10EE 118884 to 892 for Rs.10000/- each was served with a Memo dated 03.04.2002(Annexure-A/1), under Rule 16 of the CCS (CC&A) Rules, 1965 asking him to show cause within a period of 10 ten days. On the request of the applicant dated 8.04.2002 for supply of documents, the Respondent No.4 directed the applicant in memo 04.06.2002 (Annexure-A/2), to verify the documents sought by him. Accordingly, the applicant appeared in the Head Office on 08.02.2002 for verification of records and submitted another representation dated 2

12.06.2002 requesting respondent No.4 either to supply the letter of the DG Posts dated 08.03.1995 or allow him to peruse the said letter in order to file explanation to the charges. It is the case of the Applicant that without supplying the copy of the letter dated 08.03.1995 and without giving opportunity to file his explanation to the charges, the Respondent No.4 passed the order of punishment dated 14.07.2003 (Annexure-A/4) by ordering recovery of an amount of Rs. 48,462.50 in 23 monthly installment from his salary. Being aggrieved by such decision, the applicant preferred appeal on 29.08.2003 (Annexure-A/5) and the appeal of the Applicant having been rejected under Annexure-A/6 dated 24.03.2005 he has approached this Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985 on the following grounds:

1. The Appellate Authority rejected the appeal of the applicant without considering his grievance that the order of punishment was without giving adequate opportunity to him;
2. That though the applicant mentioned that the order of punishment is illegal, arbitrary and against all canons of justice, equity and fair play inasmuch as there was no mention in the charge-sheet with regard to the verdict of the Consumer Dispute Redressal Forum and how the applicant is responsible for issuing such NSC no answer has been given by the Appellate Authority.

3. That the charge sheet was not supported by any document and though urged in his appeal, no consideration was given to such request of the applicant by the Appellate Authority;
4. The Disciplinary authority reached the conclusion of loss without giving any opportunity to applicant to contest;
5. The maturity money was paid to the payee on the basis of the direction of the Consumer Dispute Redressal Forum in which the applicant was not a party. However, though it was specifically urged before the Learned Forum that "there was no ill intention and the NSC was issued wrongly to the complainant and no suit or legal proceedings shall be against the secretary or other officer of the government of India in respect of any thing which is good faith done or intended to be done under the savings Bank Act (Rule-14)the OP has not done the irregularities as he has issued the NSC to the complainant wrongly with a good faith without having any ill or *mala fide* intention" such fact was not considered by the Appellate Authority;
6. How the Government sustained loss has not been clarified either in the order of the punishment or in the Appellate Authority's order;
7. Since disputed question of fact and substantial question of law involved in this case, without going for a regular enquiry the order of punishment ought not to have been passed;
8. There being no oblique motive of the applicant in issuing the NSC and it was a bona fide mistake, the applicant ought not to have visited with the harsh punishment of recovery;
9. It being not a case of misconduct as defined in the case of Union of India and others v. J. Ahmed, 1979 SLJ 308, the

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applicant ought not to have been punished which has a far reaching consequence in his service career.

2. Factual aspects of the matter are not in dispute but it has been stated by the Respondents in the reply filed in this case that as per the Notification issued by the Government of India, Ministry of Finance (Department of Economic Affairs) under No.MOF (DEA) Notification GSR 120 (E) dated 08.03.1995 issue of NSCs in the name of company, institution, firm, local body and corporate body was prohibited with effect from 1.4.1995. The said notification was circulated to all concerned including the Postmaster, Jharsuguda HO by the Respondent No.4 vide letter dated 24.03.1995. In spite of the prohibition, the applicant in his capacity allowed issue of NSCs (VIII issue) amounting to Rs.95000/- in the name of M/s. Utkal Engineering Enterprises, Jharsuguda on 22.08.1996. The aforesaid NSCs were initially pledged to Superintending Engineer, GRID Corporation of Orissa Ltd, Bhubaneswar and were subsequently released. The Firm again applied for pledging of the aforesaid NSCs in favour of United Bank of India, Jharsuguda but the Postmaster, Jharsuguda HO denied to pledge the same since these were issued irregularly in contravention of rules. The Firm was also asked to exercise option to encash the NSCs on simple interest at SB A/c rate, but the Firm declined to accept SB rate of interest. Consequently, the settlement of the claim of the Firm was delayed. Being

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aggrieved, Shri Mukesh Kumar Agrawal, one of the partners of M/s. Utkal Engineering Enterprises filed CD Case No. 19/2002 before the DCDRF, Jharsuguda. The Learned DCDRF, Jharsuguda in its order dated 16.12.2002 directed the Postal Department to pay the maturity value of the NSCs and Rs.500/- towards the cost of litigation. It has been pointed out that on receipt of the aforesaid order, the Respondent No.4/Disciplinary Authority of the Applicant moved his higher authority seeking further instruction and received direction of the higher authority to the extent that the judgment of the CD Forum should be implemented and the amount be recovered from the official at fault. As the Applicant who was working as the supervisor and Shri Balabhandra Kumara who was working as the counter assistant at Jharsuguda HO on the date of occurrence of the alleged irregularity were held responsible for the loss sustained by the Department they were proceeded against under Rule 16 of CCS (CCA) Rules, 1965 and after complying the rules, they were issued with the order of punishment of recovery after following due procedure of rules and giving him adequate opportunity to defend his case. They have submitted that since there was no infraction of rules nor principles of natural justice have been violated, the order of punishment needs no interference.

3. Heard Learned Counsel for the applicant and Mr. U.B. Mohapatra, Learned Senior Standing Counsel for the Respondents and perused the materials placed on record. During the hearing, Learned Counsel for the applicant reiterated the grounds taken in the OA and noted above and on the other hand, Learned Senior Standing Counsel while reiterating the stand taken in the Counter has argued that since heavy loss was sustained by the Department by way of payment of interest etc. to ineligible persons due to the fault of the Applicant and Shri Kumara, it was rightly held by the authorities to recover the said amount from both of them and accordingly, order of recovery was passed.

4. Heard the parties at length and perused the materials placed on record. From the grounds advanced by the parties and materials placed on record, it is seen that the Respondent No.4 issued the Rule 16 charge as against the applicant on the direction of his higher authority to recover the amount paid to the firm by way of interest and the cost of Rs.500/. Accordingly the said Charge Sheet issued to applicant on 3rd April, 2002 (Annexure-A/1). In response to this, the applicant had sought for verification of records which was permitted by the Respondent in letter under Annexure-A/2. It was also directed to the applicant to submit his reply by 15.6.2002. The Applicant by presenting himself in the Jharsuguda HO

- F -

perused the records and in his representation dated 12.6.2002 requested to supply him the letter of the DG Posts dated 08.03.2002 to enable him to submit his explanation. But it is noticed that without passing any order on his said representation, the Respondents passed the order of punishment under Annexure-A/4 dated 14th July, 2003. This is obviously against the principles of natural justice. If there was any ban or it was not necessary to supply the letter asked for by the applicant, it was incumbent on the part of the disciplinary authority/Respondent No.4 to first give in writing to the applicant asking him to submit the statement of defence. But the Respondent No.4 passed the order of punishment which is contrary to the basic principles of natural justice. Natural justice are foundational and fundamental concepts and law. It has been held by the Hon'ble Apex Court in the case of **Canara Bank and others vs. Shri Debasis Das and others**, AIR 2003 SC 2041 that "Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities" ✓

and grammatical niceties. It is the substance of justice which has to determine its form. Whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omission of a formulated law." By this, the applicant had no reasonable opportunity of defending himself against the charges leveled against him and he was prejudiced in the matter of his defence

5. Besides, the order of punishment under Annexure-A/4 suffers from the vice of non-application of mind and violation of principles of natural justice inasmuch as, it has been observed in the order that while passing the order of punishment Respondent No.4 had taken into consideration the representation of the applicant and all connected records of the case, judgment pronounced by the Learned DCDRF, Jharsuguda in CD Case No. 19/2002 and office memorandum No. F3/3/2003-NSII dated 21.3.2003 issued by the Ministry of Finance and Company Affairs Department of Economic Affairs, Government of India and DG posts Letter No. 65-19(A)-2002/SB dated 25.03.2003. On perusal of the Charge Sheet under Annexure-A/1 it is seen that neither these documents find place in the charges; nor the applicant was ever supplied copies thereof. Law is well

settled in the case of **Union of India v. T.R.Varma**, AIR 1957 SC 882 that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies on that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross examining the witnesses examined by that party and that no materials should be relied on against him without his being given an opportunity of explaining them. But in this case, through the punishment was imposed based on certain documents and judgment of the Learned DECRF, Jharsuguda, neither copies of the documents were supplied to applicant nor it was mentioned in the Charge issued to him. It is also the specific case of the Respondents in the Counter that the applicant did not submit his written statement of defence by the date specified to him. But the order of disciplinary authority speaks that the representation filed by the applicant has been taken care of without disclosing the grievance raised in the said representation. Merely stating that points raised in a representation have been taken care of is not enough to meet the requirement of natural justice. The authority while considering the representation must apply its mind and deal with the points raised therein. Having failed to do so, the order of disciplinary authority is bound to fail.

6. The Appellate Authority has also failed to appreciate the deficiencies in the order of punishment as also points raised by the applicant in his appeal. Excepting stating that there is loss to the Government, no logical explanation is given as to how the Department sustained the loss. The applicant has rightly pointed out in his appeal that had the certificates issued in the name of individual, he would have got the interest. Therefore, the loss pointed out by the Government is far from truth. But the appellate authority did not appreciate such point and rejected the appeal of the applicant without even giving a personal hearing to him.

7. It is worth mentioning that even if the rules do not provide ingress to principles of natural justice, the same has to be implicit in the rules-**Punjab National Bank and others vrs. KunjBehari Mihra- 1998 (7) SCC 84.** In **J.A.Naiksatam vrs. Prothonotary Senior Master 2005 (1) SCC 219** it has been held by the Apex Court that principles of natural justice are to be read in the rule if not already given. In the case of **Madhyapradesh Industries Ltd. v. Union of India and others** -AIR 1966 SC 671 it has been held that principles of natural justice require that a quasi-judicial Tribunal should not make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. In the case of **Union of India and others v. Jayakumar Parida- 1996 SC**

(L&S) 320 it has been held that if any material adverse to the respondent formed a foundation of punishment/termination, principles of natural justice may necessarily require that prior opportunity of notice be given and after considering his reply, an appropriate order may be passed giving reasons in support thereof.

8. Equally forceful is the contention of the applicant that denial of opportunity of being heard in person by the Disciplinary Authority before passing the order had prejudiced his interest in defending his case. The Ahmedabad Bench of this Tribunal in the case of **Mahendra Doshi vs. Union of India & Ors. (O.A.NO.219/01 disposed of on 23.4.2004)- 2005 (1) (CAT) AISLJ 155** while discussing the rights of the delinquent official to be heard, taking support of the decision of the Hon'ble Apex Court made in the cases of **Yoginath D. Bagade vs. State of Maharashtra and another (1999) 7 SCC 739 & Punjab National Bank v. Kunj Bihari Mishra** have held that the right to be heard would be available to the delinquent up to the final stage, the same being a constitutional rights. It was held that such right cannot be taken away by any service Rules and accordingly, they set aside the show cause notice as well as the order of punishment imposed on the applicant therein. In the present case, neither the disciplinary authority nor

80
-12-

the appellate authority has given a personal hearing to the Applicant before passing the impugned orders.

9. Viewed the matter from any angle, the irresistible conclusion is that the order of punishment under Annexure-A/4 dated 14th July, 2003 and the order of the Appellate Authority under Annexure-A/6 dated 24th March, 2005 are not sustainable and, therefore, the same are quashed.

10. In the result, this O.A. stands allowed by leaving the parties to bear their own costs.

BBM
(B.B.Mishra)
Member (A)