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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 828 OF 2005
CUTTACK, THIS THE ^{08th} DAY OF February, 2008

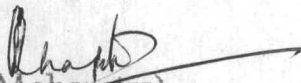
Sri Jagdish Chandra Sethy Applicant

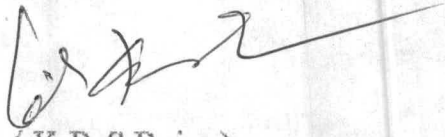
Vs

Union of India & Others Respondents

FOR INSTRUCTIONS

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


(G.R. Mohapatra)
MEMBER (A)


(K.B.S. Rajan)
MEMBER (J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 828 OF 2005
CUTTACK, THIS THE ^{08th} DAY OF February, 2008

CORAM :

HON'BLE Dr.K.B.S.RAJAN, MEMBER (J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

.....

Sri Jagdish Chandra Sethy, aged about 60 years, son of Madhusudan Sethy,
At- Silpandi, P.O. Soguru, Via- Lamatapoto, P.S. Machhakund, Dist.
Koraput.

.....Applicant

Advocate(s) for the Applicant- M/s. D.P.Dhalsamant,
P.K.Behera

VERSUS

1. Union of India represented through its Director General, Government of India, Ministry of Communication, Dak Bhawan, New Delhi-110001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda.
3. Director of Postal Services, Office of the Post Master General, Berhampur Region, Berhampur, Ganjam, Orissa.
4. Senior Superintendent of Post Officers, Koraput Division, Jeypore-(K), Orissa-764001.

..... Respondents

Advocates for the Respondents – Mr. P.R.J.Dash

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ORDER

Hon'ble Dr. K.B.S.Rajan, Member(J)

The applicant was proceeded against under Rule 14 of the CCS (CC&A) Rules, 1965 for certain alleged misconduct as contained in Annexure A-1 Charge Sheet. This was dropped vide order dated 29-01-1998 at Annexure 2, on the ground that the applicant was convicted in the attendant criminal case. However, a rider was made that the dropping of the proceedings was without prejudice to any further action to be taken which may be considered necessary in the circumstances of the case at a later date. The consequence of conviction of the applicant in the criminal case also entailed annexure A-3 order dated 13-04-1998 by the respondent No. 4, whereby the applicant was, under the provisions of Rule 19(i) of the CCS (CC&A) Rules, dismissed from service. However, when the applicant had challenged the order of conviction before the Addl. Sessions Court, by judgment dated 22nd February 2003 in CrI. Appeal No. 10 of 2001, the conviction was set aside and the applicant acquitted of the criminal charges. As a result of the above judgment of the Addl. Sessions Court, respondent No. 4 had, vide Annexure A-5 order dated 25-08-2003, reinstated the applicant by setting aside the order of dismissal. However, the said respondent had ordered for inquiry to be held against the applicant on the allegation which led to his dismissal from service and that the applicant shall be under suspension. With the above development, another charge sheet dated 19-09-2003 (Annexure A-6) was issued. One Shri S.C. Padhi, a Retd. A.D. Berhampur was appointed as the Inquiry Officer and the applicant participated the inquiry. The said authority had furnished his inquiry report dated 13-04-2004 holding that the applicant was found guilty of misconduct alleged of vide the charge sheet. This was, through Annexure A-7 communication forwarded to the applicant who had furnished his representation. The Disciplinary authority had, vide Annexure A-8 order dated 28-09-2004, accepting the

report of the inquiry authority, and rejecting the representation of the applicant, imposed the penalty of Dismissal from service. The Appellate authority being the D.P.S, the applicant had filed an appeal, vide Annexure A-9. This was also rejected by Annexure A-10 order dated 6-9-2005. The applicant has come in challenge against the penalty and the appellate orders.

2. Respondents have contested the OA and submitted that the penalty order and appellate orders are legally valid and fully justified.

3. Applicant has filed his rejoinder reiterating his contentions and grounds raised in the O.A.

4. Counsel for the applicant submitted that the impugned orders cannot stand judicial scrutiny on the following ground:-

(a) Appointment of Inquiry officer is not in accordance with the rules, as the one who has been appointed is a retired public servant. Counsel had relied upon the decision of the Apex Court in the case of **Ravi Malik v. National Film Development Corpn. Ltd., (2004) 13 SCC 427**, wherein the Apex Court has held as under:-

"In this case the Central Vigilance Commission had issued instructions permitting retired officers to be appointed as inquiry officers. The words 'public servant' used in Rule 23(b) mean exactly what they say, namely, that the person appointed as an inquiry officer must be a servant of the public and not a person who was a servant of the public. Therefore, a retired officer would not come within the definition of 'public servant' for the purpose of Rule 23(b). Rule 7 cannot be interpreted to mean that the direction issued by the Central Vigilance Commission would override any interpretation which a court may put, as a matter of law, on it."

(b) The case is one of 'No evidence'. To hammer home this point the counsel has referred to non supply of one of the documents itemized in the list vide the inquiry report i.e. S.S. Land/SB-3. In addition, the counsel referred to the observations of the Inquiry Authority in the penultimate para of his report, where he had observed, **"Further the**

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C.O. In his brief stated that Sri A. Mohapatra confessed before the court during trial of C.R. Case No. 101/95 that the singature on ext s/16 were his own. The undersigned does not like to comment on this fact as such evidence educed during the inquiry." This according to the counsel is illegal since as per the decision in the case of **G.M. Tank vs State of Gujrat (2006) 5 SCC 446** wherein the Apex Court has held as under:-

The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed.

(c) That the penalty is shockingly disproportionate.

5. Counsel for the respondents justified the action taken against the applicant. He has also stated that as per 1988 order of the DOPT, retired government servant could well act as inquiry officer.

6. Arguments were heard and documents perused. As regards the appointment of the inquiry officer, to a pointed question as to whether the inquiry officer at the time of his appointment as such, was a serving public servant or retired one, counsel for the applicant had submitted that the inquiry officer was only a retired public servant and this had not been rebutted by the respondents. As such, if the decision of the Apex Court in the case of Ravi Malik (supra) is kept in view, obviously, the entire proceedings become vitiated.

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7. As regards the contention that the case is one of no evidence since some of the documents have not been made available and that the inquiry officer did not take into account the testimony of the witness who was the very depositor, made before the Criminal court. In so far as the non supply of the document, the finding does not depend upon the same. In so far as the deposition by depositor, the judgment of the criminal court has not been made available to the inquiry officer. That's why he had remarked, "the undersigned does not like to comment on this fact as no such evidence evolved during the inquiry." It is not known whether the applicant made available a copy of the same as a part of his defence documents. Nevertheless, since the judgment could be relied upon, it is to be seen whether the finding by the sessions court is one which had led to the honourable acquittal. The Sessions Court had acquitted the applicant only on the basis of benefit of doubt. In G.M. Tank (*supra*) the Apex Court dealt with a case where there is a complete honourable acquittal and held that in such a case, in the departmental proceedings such findings should be accepted.

8. As regards the proportion of penalty, though the applicant's counsel placed it as a ground, there was no detailed justification at the time of argument.

9. Thus, when the case is overall viewed, the fact that the inquiry was not conducted by a serving public servant, the same vitiates the inquiry. That there was an order in 1988 of the DOPT cannot make the proceedings legally valid in view of the later judgment of the Apex Court. Once the foundation collapses the entire edifice has to crumble.

10. It is appropriate to refer to the words of Hon'ble Mr. Justice R.C. Lahoti, as his Lordship then was in **Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan**, (2003) 1 SCC 197 wherein His Lordship has held, "*An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation & gives rise to avoidable complexities. The*

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present one is a typical example wherein a stitch in time would have saved nine." - The above dictum fits in, in this case in toto.

In view of the above, the OA succeeds. The inquiry report, the order of the disciplinary authority and that of the appellate authority are all quashed and set aside. The respondents shall reinstate the applicant in service and allow him to continue in the post last held. Under the normal circumstances, this Tribunal would have given the liberty to proceed further with the case from the stage of fresh inquiry. However, as it is seen that once the applicant was issued with the charge sheet vide Annexure A-1, which was cancelled and again the self same charge sheet had been issued vide A-6, it would not be appropriate to frustrate the applicant any further. Respondents are directed to pass suitable orders for reinstatement of the applicant within a period of 2 months from the date of communication of this order. The period of absence from the date of dismissal and the date of reinstatement shall be regularized in accordance with the relevant provisions of F.R. Again, the period of suspension prior to dismissal shall also be suitably regularized in the order of reinstatement. As regards consequential benefits, again, since the quashing of the impugned orders is not on merit holding that this is a case of no evidence, we are not inclined to order any back wages. However, fixation of pay shall be by taking into account the notional increments.

Under the circumstances, there shall be no orders as to cost.


(C.R. MOHAPATRA)

MEMBER (A)


(K.B.S. RAJAN)

MEMBER (J)