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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.851 OF 2005
CUTTACK, THIS THE 26th DAY OF SEPTEMBER, 2007

Raj Kumar Bag **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 or not?

(TARSEEM LAL)
MEMBER(ADMN.)

(DR. K.B.S.RAJAN)
MEMBER (JUDL.)

for concurrence & I

[Signature]

Jm.

Harsik Mohanty (A) Kavita Kal

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 851 OF 2005
CUTTACK, THIS THE 26th DAY OF SEPTEMBER, 2007

CORAM:

HON'BLE DR. MR. K.B.S.RAJAN, MEMBER (JUDL.)
HON'BLE MR. TARSEM LAL, MEMBER (ADMN.)

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Raj Kumar Bag, aged about 33 years, S/o.- Late Santosh Bag, At/P.O.Chandutura, P.S. Sindhekola, Dist. Bolangir, working as E.D.Packer, Sindhekola Sub Post Office, under Bolangir Head Post Office.

..... **Applicant**

Advocate(s) for the Applicant - - - - - M/s D.K.Mohanty, D.Pratihari.

VERSUS

1. Union of India, represented through its Secretary-cum-Director General of Posts, Government of India, Deptt. of posts, Dak Bhawan, New Delhi-110001.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar
3. Superintendent of Post Offices, Bolangir Division, Bolangir
4. Sub-Divisional Inspector (Postal), Titilagarh Sub-Division, Titilagarh 767 033.

..... **Respondents.**

Advocate(s) for the Respondent(s) - Mr. U. B. Mohapatra, Ld. SCGSC.

O R D E R

HON'BLE DR. MR. K.B.S.RAJAN, MEMBER (JUDL.)

The applicant, while serving as ED Packer at Sindhekela S.O. had been issued with a charge sheet containing the

following article of charge:-

"Shri Rajkumar Bag while working as E.D. Packer, Sindhekela S.O under Bolangir H.O during the period from 17.01.94 to 19.02.94 has issued the following bogus mos from Sindhekela S.O and dispatched to Titilagarh S.O. for its payment to his brother Shri Rajesh Chhura. The particulars of bogus MOS are as under:-

Sindhekela M.O No. 3975/17.1.94 for Rs.300/-

-do- 3999/27.1.94 for Rs.300/-

-do- 4006/5.2.94 for Rs.350/-

-do- 4032/10.2.94 for Rs.350/-

-do- 4033/15.2.94 for Rs.350/-

-do- 4044/17.2.94 for Rs.350/-

-do- 4052/19.2.94 for Rs.350/-

On inquiry to above particularized MOS it revealed from Sindhekela S.O office records that those above M.Os were not actually issued from Sindhekela S.O and found totally as bogus issue from Sindhekela S.O by Sri Raj Kumar Bag, ED Packer, Sindhekela S.O Thus Shri Bag by issuing the above bogus MOS has failed to maintain absolute integrity and devotion to duty as enjoined in Rule-17 of P & T ED Agents (Conduct & Service) Rules, 1964."

Applicant having denied the charges, inquiry was held and the I.O. had held the applicant guilty of the charges levelled against him, vide Annexure A-1 report, purported to have been issued on 10-05-1997, which was received by the

Disciplinary Authority and a copy made available to the applicant, who had preferred his representation against the same on 4-06-1997. The Disciplinary Authority had analyzed the case and had stated, "*In the written statement of the C.O. Exhibits Ext. 21 and Ext 22 fully reveals the act of the C.O.*" According to him the charge has been fully proved and he endorsed the report of the I.O. And accordingly, the applicant had been awarded the penalty of Removal from service, vide the Sub Divisional Inspector (Postal) order dated 25-07-1997 at Annexure A-2.

A criminal case No. GR 184/96/TR No. 74/98 was registered against the applicant and the Sub Divisional Judicial Magistrate had, vide Annexure A-3 order dated 31-12-2005 acquitted the applicant and his findings go as under:-

" In cross-examination he has stated that he has not sent the signatures on the bogus money orders to the handwriting expert to know if the said signature had been done by the accused in his own hand. This very admission of the Investigating Officer made this case very weak and non-sending of such bogus money orders to the handwriting expert for its examination to ascertain if those were infact writing by the accused do not prove the case against the accused directly. Further, PW 12 has not stated if the bogus money orders were procured and being processed by the accused. So, I find the prosecution witnesses have not directly or indirectly proved anything against the present accused and the accused on that event cannot be roped in the alleged offence. Hence, I find the accused has not committed

any offence, and prosecution has miserably failed to prove its case against the accused beyond all reasonable doubts.

In the result, I hold that the accused is found not guilty of committing any offence u/s.379/468/471 I.P.C. and he is acquitted from the said offence as per the provision u/s.248(i) Cr. P.C. He be set at liberty forthwith."

On his acquittal, the applicant had preferred a representation to the Respondents on 08-04-2005 for reinstatement, but the same was not attended to by the respondents, and the same led the applicant to move OA NO. 633/05 before this Bench, which was disposed of by order dated 03-08-2005 with a direction to the respondents to consider the grievance of the applicant and pass necessary final orders within a stipulated time. Annexure A-4 of the OA refers.

In compliance with the above order and treating the applicant's representation as an appeal, the respondents have considered the case of the applicant but rejected by order dated 05-10-2005, vide Annexure A-5. The operative portion of the said order reads as under:-

" Shri Raj Kumar Bag herein after called as the " Appellant" was proceeded against under Rule-8 of EDAs (Conduct & Service) Rules-1964 for violation of departmental rules and procedures in force but the GR Case

was set to motion against him basing on the criminal aspect of the case. Both the cases i.e. the Rule-8 enquiry of EDAs (Conduct and Service) Rules 1964 and the GR case set to motion in the Hon'ble Court of SDJM Titilagarh have their own merits. The appellant was given adequate opportunity during the Rule-8 enquiry to prove that he has not violated any departmental rules and procedures but the utterly failed to prove the same and ultimately the charges framed against him were proved beyond any doubt and thus the appellant was removed from service vide SDI(P) Titilagarh Sub-Division Memo No.B/ED-36 dated 25.07.97."

The applicant has now challenged the aforesaid order of the disciplinary authority and appellate authority.

Respondents have contested the OA and according to them, Annexure R-2 whereby the applicant had made a clear admission would suffice to come to the right conclusion by the Disciplinary Authority. The applicant had filed his rejoinder as well as written arguments.

Counsel for the applicant submitted that when the criminal court has honourably acquitted the applicant, the respondents are bound to follow the decision of the criminal court instead of sticking to their findings, which were not based on evidence. He had submitted that admittedly both the Departmental proceedings as well as Criminal proceedings germane from the very same facts and figures and thus, on the same set of facts, charges have been framed. Thus, according

to the counsel for the applicant, the case is identical to that of G.M. Tank, decided by the Apex Court vide 2006(4) SLR (SC) 10. He has also relied upon various other decisions, as itemized in his written submissions.

Counsel for the respondent has submitted that though the departmental proceedings and the criminal proceedings are based on identical sets of facts and the charges are identical, the applicant had vide Annexure R-2 admitted his guilt before the authorities.

Arguments were heard and documents perused. The aforesaid Annexure R-2 is the document exhibited as Ext 21 and 22 and the prosecution witness SW 3 (the SPM) in cross examination deposed that the SDI (P) pressurized the CO on the first day of detection of bogus M.Os. The so called admission before SDI of the applicant is dated 23-02-94. It was the same day when the SDI had inquired the matter for the first time. The I.O. had held that Ext 21 and 22 clearly prove the case of the prosecution, though even as per his report, the prosecution witness deposed that the applicant was pressurized by the SDI. Of course safely, he had further stated

in his report that even if S-21 and 22 are ignored, the charge stands proved. The Disciplinary Authority relied more upon Ex 21 and 22. As regards the criminal case, the acquittal is not a mere acquittal on benefit of doubt. It was after recording, as stated above, that the applicant (the accused) "**cannot be roped into the alleged offence.**" This is a clear honourable acquittal. Admittedly, the two sets of charges (i.e. Departmental and criminal) are based upon the same events/incident. The Apex Court has in the case of G.M. Tank (*supra*) held as under:-

30. *The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid*

conducted at the appellant's residence, recovery of articles therefrom. 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.

The ratio in the above decision of the Apex Court when telescoped upon the facts of this case, exactly fits in and thus, on the above decision of the Apex Court, the OA succeeds. The impugned orders dated 25-09-1997 (Annexure A-2) and order dated 05-10-2005 (Annexure A-5) are hereby quashed and set aside. Respondents shall reinstate the applicant into service. The past period from the date of removal till reinstatement shall be treated as duty for the purpose of continuity of service, experience (for the purposes of ascertaining the

eligibility of the applicant to sit for departmental examination), notional increment (if applicable) but not for past wages. Reinstatement shall be within a period of six weeks from the date of receipt of this order. If the post held by the applicant has been filled by some other incumbent on regular basis, the latter shall not be disturbed but a suitable station be located to accommodate the applicant and the applicant shall be entitled to ask for a transfer to his home station or nearby at appropriate time.

No cost.

Tarsem Lal
(TARSEM LAL)
MEMBER(ADMN.)



(DR. K.B.S.RAJAN)
MEMBER (JUDL.)

CAT/CTC
Kalpeswar