

11

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 19 OF 2006
CUTTACK, THIS THE 23rd DAY OF December, 2009


Bhaskar Mishra.....Applicant


Vrs.

Union of India & OrsRespondents

FOR INSTRUCTIONS

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


(C.R. MOHAPATRA)
MEMBER (ADMN.)


(K. THANKAPPAN)
MEMBER (JUDL.)

12
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**ORIGINAL APPLICATION NO. 19 OF 2006
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CORAM :

HON'BLE MR. JUSTICE K.THANKAPPAN, MEMBER(J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

.....

Bhaskar Mishra, aged about 66 years, S/o. Late Banamali Mishra,
At/PO: Baddasankha, Nuasahi, Town/Dist. Puri. Retired
Superintendent of Postal Store Depot, Bhubaneswar.

...Applicants

By the Advocates -

M/s. S. Pattnaik, L.K.Mohanty,
D.K.Mohanty.

-Versus-

1. Union of India represented through the Secretary to Govt. of India in Ministry of Communications Department of Post, Dak Bhavan, Sansad Marg, New Delhi.
2. Chief Postmaster General, Orissa, Bhubaneswar.
3. Postmaster of Puri Head Post Officer, At/PO/Dist-Puri.
4. Union Public Service Commission, represented through its Secretary, At- Dholpur House, Shahjahan Road, New Delhi-110011.

...Respondents

By the Advocates - Mr. U.B.Mohapatra (SSC for R-4),
Mr. R.N.Mishra (For R-1 to 3)

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13

ORDER

Shri Justice K. Thankappan, Member (J):-

A retired Superintendent of the Postal Store Depot, Bhubaneswar, has filed this O.A. challenging an order of penalty of 20% cut in the pension for a period of 10 years.

2. This Tribunal, while admitting the O.A., as per order dated 9.1.2006 stayed the implementation of the penalty order dated 21.12.2005 until further orders.

3. In pursuance to the notice, the Respondents have filed an objection against the interim order dated 09.01.2006 in M.A. 90/06, which was heard by this Tribunal on 08.03.2006 but the same was adjourned till the filing of the counter reply to the O.A., and the interim order was allowed to continue whereafter the Respondents filed their counter on 06.07.2006. It is stated in the counter statement that the applicant was proceeded under Rule 14 and 15 of the CCS(CCA) Rules, 1965, on obtaining sanction of the President. All the charges relating to incurring expenditure without obtaining administrative approval from the competent authority against the applicant have been proved. Further, it is stated that the expenditure incurred by the applicant is beyond the financial power and also



in violation of the tender procedure and the cardinal principles of incurring expenditure of Govt. money. It is further stated in the counter that as per the charges levelled against him and on the basis of the evidence adduced before the Inquiry Officer, it is specifically revealed that the applicant placed order for printing and supply of MSY-4 forms to the tune of Rs. 2 lakhs as per the order dated 21.3.1997 by a private firm and continued such misconduct beyond his financial power. Further, it is stated in the counter that all the allegations levelled against the applicant have been proved during the course of inquiry and hence, the punishment now awarded on him being in accordance with the laid down procedure and after taking advice both from the CVC and UPSC at the appropriate stage, the Tribunal should not interfere in the matter. Hence, it is submitted that the O.A. being devoid of any merit is liable to be dismissed.

4. We heard Mr. S.Pattnaik, Ld. Counsel for the applicant and Mr. U.B.Mohapatra, Ld. Sr. Standing Counsel for the Respondents and also perused the relevant rules and other documents produced to the O.A. including Annexure-R/1 produced on behalf of the Respondents.



5. Ld. Counsel for the applicant, Mr. Pattnaik, confined his arguments on the following counts:

Firstly, all the charges framed against the applicant are vague and the applicant has not been given sufficient opportunity to explain his case by filing his defence statement.

Secondly, since the allegations are of the period 1996-97 while the applicant was working as Superintendent of the Postal Store Depot, Bhubaneswar, and on receiving the charge itself at a later stage, he was allowed to go on superannuation at the age of 58 years and, thereafter, after a lapse of more than three years the departmental inquiry had been initiated on the alleged irregularities, wherein he has been deprived of sufficient opportunities to defend himself.

Thirdly, by unprecedented delay in conducting the inquiry against him and that too without he being supplied with copies of the minutes of the Purchase Committee, though prayed for, the applicant has been prejudiced, as supply of such minutes and documents were necessary to effectively defend himself and



therefore, the entire proceedings against the applicant is vitiated.

Fourthly, the amount spent by the applicant having been approved by the Purchase Committee, the entire purchase done by him cannot be called in question.

Finally, the penalty of 20% cut on his pension for 10 years is harsh in the absence of any pecuniary loss sustained by the Government, and if so, as per Rule 9, the penalty now imposed is not tenable.

6. To the above contention, the Ld. Counsel for the Respondents reiterating the stand taken in the counter reply submits that the applicant being the Superintendent of Postal Depot had invited tenders without proper sanction and he spent the Govt. money beyond his financial power. It is submitted that even if the Purchase Committee had agreed, such agreement cannot wipe out the act of omission by the applicant for incurring expenditure beyond his financial power without proper sanction. Further, the Ld. Counsel invited attention of this Tribunal to the charges framed against the applicant, especially charge nos. 4, 5 and 6, which would show that the applicant had spent more than Rs. 9,40,000/- without any



sanction from the authority. The applicant had also floated tender for providing 10 lakhs tag labels with condition of completing the work within 30 days to M/s Konark International, Bhubaneswar, which supplied 6 lakhs tag labels on the next day and the applicant sanctioned an amount of Rs. 28,800/- in favour of the said Firm as per sanction memo and thereby committed a grave misconduct in violation of Rule 6 of GFR, which is unbecoming on the part of a Govt. employee. The Ld. Counsel further submits that even though there was no charge of misappropriation of any amount or any loss to the Govt., the action of the applicant is in complete derogation of the norms and instructions in the matter of spending Govt. money. Lastly, Ld. Counsel for the Respondents submits that penalty of 20% cut on pension is within the jurisdiction of the President of India or the competent authority and it is not in any way excess or disproportionate to the misconduct committed. In the above circumstances, Ld. Counsel for Respondents submits that the O.A. being devoid of merit has to be dismissed.

7. Upon considering the contentions of the parties and perusing the record, we are of the view that there is no violation of any procedure in the inquiry conducted against the



18

applicant. The applicant had participated through out the inquiry and he was supplied with the documents which were relied on by the Department to probe into the charges. The proceeding was initiated against the applicant on 17.1.2000, inquiry started on 7.12.2000 and hearing was closed on 19.8.2002. Though the applicant has contended that he was not given any opportunity and the inquiry has been conducted ex parte, all the representations filed by the applicant would show that he only wanted the copies of the minutes of the Purchase Committee in support of his defence. Further, as per the explanation offered by the applicant to the charges, the only case set up by him is that he being an old man of 60 years, he was not in a position to recollect the facts as mentioned in the memorandum of charges and, therefore, he wanted copies of the listed documents mentioned in Annexure-A/3 to be supplied to him. However, this was also considered by the Departmental authorities and it was held that the applicant could have had the access of records as per Office Memorandum dated 4.2.2000 as directed by the Deputy Director General (Vigilance) as per the letter dated 10.5.2000. Thereafter, it is seen that the applicant has mentioned only one sentence in Annexure-A/5 to the effect



that "I beg to state that I deny all charges framed against me in toto". The applicant has also not stated as to how by the non-supply of minutes of the Purchase Committee he has been prejudiced. In the above circumstances, we are of the view that the applicant was given sufficient opportunity to defend his case.

8. The next ground urged by the applicant is that he had spent the Govt. money only after getting the sanction of the Purchase Committee but he has no reply on the question of spending money beyond his financial power. If so, we do not propose to interfere with the findings entered by the Department for imposing penalty.

9. Lastly, we have to look into the contention of the Ld. Counsel for the applicant that the penalty now imposed is disproportionate to the gravity of the misconduct. In this context, we have to consider the defence statement, which the applicant had submitted to the charges framed against him and, at the same time, we are not ignoring the fact that there was no charge against the applicant on the ground of any misappropriation except the only misconduct alleged that the applicant had spent Govt. money without proper sanction from



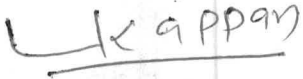
the superior authority, which was beyond his financial power vested in him as per F.R. If so, it is only proper for this Tribunal to conclude, considering the facts and evidence, that the misconduct alleged and proved against the applicant are not so grave, so as to construe misuse, mismanagement or misappropriation of Govt. money whereby public exchequer has sustained loss. But at the same time, we cannot lose sight of the fact that in a disciplinary matter the scope of the Tribunal is very limited. The Court or Tribunal can interfere in such matters if the conclusion arrived at is based on no evidence. However, keeping in view that the applicant has already retired from service and by his act of omission and commission, the Department have not sustained any loss, though undoubtedly, the same construe misconduct, the punishment of 20% cut in pension for a period of 10 years is certainly harsh, which shocks our conscience. Therefore, in our considered view, the ends of justice would be met, if the punishment of 10% (ten percent) cut on pension for a period of 5 (five) years is imposed on the applicant. Ordered accordingly. The Respondents are directed to modify the impugned punishment order dated 21.12.2005 (Annexure-A/14) accordingly, and the difference



worked out thereon, if any, be paid back to the applicant within a period of 60 (sixty) days of the receipt of this order.

10. With the above observation and direction, the O.A. is allowed in part. No costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)


(K. THANKAPPAN)
MEMBER (JUDL.)

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