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O. A. No. 32/2002ORDER DATED : 27/09/2004.

Applicant (an employee of Central Telegraph Office at Bhubaneswar) having faced with the punishment of "withholding of one increment for three years, without cumulative effect" under Annexure-5 dated 29-01-2001; has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985. This punishment order under Annexure-5 dated 29-1-2001 was passed under the signature of Shri S. Mohanty, Sub-Divisional Engineer, I/C, Central Telegraph Office, Bhubaneswar. Initially, the Applicant was called upon (under Annexure-1 dated 6-11-2000) <sup>his</sup> to put up an explanation for certain alleged conduct under the signature of said S. Mohanty, Sub Divisional Engineer, CTO, Bhubaneswar. He was served with a memorandum under Annexure-2 dated 20.12.2000 calling upon him to furnish a representation in reply thereto and the said memorandum under Annexure-2 dated 20.12.2000 was also issued under the signature of said S. Mohanty, SDE, CTO, Bhubaneswar. It is the case of the Applicant that he prayed for inspection of documents/relevant records etc. (before submitting his explanation to Annexure-2 dated 20.12.2000) and since <sup>said</sup> no heed was paid to the grievance of the Applicant, he furnished a reply to the Memorandum dated 20.12.2000 (under Annexure-3 dated 15.1.2001) and, without entering into any

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enquiry, the final order imposing punishment, as aforesaid, was imposed on the Applicant under Annexure-5 dated 29-01-2001. On 18.06.2001, the Applicant preferred an appeal, which was allowed in part under Annexure-6 dated 10-01-2002 by reducing the punishment of stoppage of one increment for one year without cumulative effect.

2. BY filing a counter, the Department has supported the impugned order under Annexure-5 dated 29.01.2001 and that ~~was passed~~ under Annexure-6 dated 10.1.2002. It is the case of the Respondents that a proceeding under Rule-16 of the CCS(CCA) Rules, 1965 was initiated against the Applicant under Annexure-2 dated 20.12.2000 and after taking into consideration the reply/representation under Annexure-3 dated 15.1.2001 of the Applicant, final order imposing minor penalty was passed under Annexure-5 dated 29.1.2001 and the said punishment was modified/reduced in appeal under Annexure-6 dated 10-1-2002 and that, therefore, there was nothing wrong in the impugned order.

3. Heard Mr. Rabinarayan Mishra, learned counsel appearing for the Applicant and Mr. B. Dash, Learned Additional Standing Counsel representing the Respondents

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and perused the materials placed on record.

4. It is the positive case of the Applicant that the charges levelled against the Applicant were not specific and for the reason of unspecific allegations that were given out under Annexure-1 dated 6-11-2000 and under Annexure-2 dated 20.12.2000, the entire proceedings is liable to be set-aside. For appreciating the above argument advanced by the learned counsel appearing for the Applicant, it is worthwhile to quote the statement of imputations of misconduct or mis-behaviour formulated and communicated by the Respondents to the Applicant; which is as under:-

**ANNEXURE-I**

"That Sk. Belal, SS(O)/Sr. TOA(IG) entered the establishment section on 3.11.2000 without permission. He was on leave on the same day. He pointed out about the duty ordered to him. When the SDE(T) told to give the objections in writing, he came violent and started shouting and commented on many undesirable things in loud voice as mentioned below.

Article-(1)- Sk. Belal, SS(O)/Sr. TOA(TG) told that there was no necessity of opening additional counters for TRC collection;

Article-(2)- Sk. Belal, SS(O)/Sr. TOA(TG) told that there was no work in the establishment section although more staff are kept in the section;

Article-(3)- He(Sk. Belal, SS(O)) commented upon transfer and posting of the SDE-I/C, CTO, Bhubaneswar and in particulars about Shri S. Mohanty, SDE which is not desirable from a subordinate official.

Article-(4)- Sk. Belal, SS(O) has spoken in such a loud voice that the Accounts work in the Establishment section came to a stand still

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and work suffered for the day.

The above behaviour of Sk. Belal SS(O) attracts rule-3(1)(iii) of the CCS (Conduct) Rules, 1964 and rule 653(1) of P&T Manual Vol-II.

ANNEXURE-II

List of witnesses by whom the articles of charge framed against Sk. Belal, SS(O)/Sr. TOA(TG) are proposed to be sustained.

Witness Nos-1 to 8".

On a bare reading of Annexure-1 dated 6-11-2000 and Annexure-R/4 dated 20.12.2000 it is crystal clear that the date and time of the misconduct (alleged to have been committed by the Applicant) were not given out therein and as such, the stand of the Applicant that unspecific charges were levelled against him is held to be sustained. By filing counter, the Respondents have disclosed that the Memorandum under Annexure-2 dated 20.12.2000 also carried with it a second sheet of paper containing statement of imputations of misconduct or misbehaviour (quoted above); wherein the alleged date of misconduct (said to have been committed by the applicant) was disclosed to be 3.11.2000 but the time as to when the applicant committed the alleged misconduct having not been disclosed, the objection of the applicant (that the allegations are unspecific) is hereby sustained.

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5. Applicant has raised a case that names of witnesses, through whom the article of charges were proposed to be sustained, having not been disclosed to him, while serving the Memorandum dated 20.12.2000, there were denial of natural justice to him. In order to bring home the said stand, the Applicant took us through the punishment order under Annexure-5 dated 29.1.2001 passed by the Disciplinary Authority; wherein Article of charge No.1 was shown to have been proved through witnesses Nos.1,2,3,4,5,6,7, and 8, Article No.2 through witnesses 1, 2,3,6 and 8; Article No.3 through witnesses 1,2,3,4,5,6,7 and 8 and Article No.4 was brought home against the applicant through witnesses 1,2,3,4,5,6 and 8. When the charges were brought home against the Applicant through the statements of certain witnesses <sup>not only</sup> ~~the~~ names of those witnesses ought to have been disclosed to the Applicant <sup>names</sup> (while serving him the charge-sheet) and ~~also~~ ought to have been disclosed in the impugned order under Annexure-5. It is seen from page 2 of Annexure-R/4 of the counter filed by the Respondents that although a list of witnesses were sought to be disclosed, yet names of eight witnesses were not disclosed therein. Since the

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charges have been brought home under Annexure-5 dated 29-1-2001 against the Applicant through the statements of a number of witnesses, the previous statements of these witnesses ought to have been supplied to the Applicant alongwith Memorandum dated 20.12.2000. Non-disclosure of the names of witnesses (at page-2 of Annexure-R/4 dated 20.12.2000 to the counter) has really vitiated the entire proceedings against the Applicant; especially because the charges have been brought home against him (applicant) (under impugned order at Annexure-5 dated 29.1.2001) through the statements of witnesses .

A plain reading of the impugned order under Annexure-5 dated 29.1.2001 gives an impression, as if there were an enquiry against the Applicant; wherein statements of a number of witnesses were recorded. But it is the positive case of the Applicant that no enquiry was conducted. It is also not the case of the Respondents that they conducted any enquiry as are available under Rule-16 of the CCS(CCA) Rules, 1965. Therefore, without supplying the previous statements of the witnesses, without disclosing the names of witnesses at any point of time and without giving opportunity to the Applicant to cross-examine such witnesses, departmental Authorities could not have relied upon the statements of such witnesses to bring home the charges against the Applicant. Therefore, the findings recorded under Annexure-5 dated 29.1.2001 are not sustainable. The above view of ours, gained support by the decision of the Hon'ble Apex Court

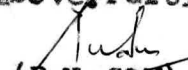
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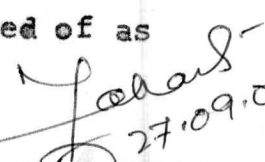
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of India rendered in the case of STATE OF UTTAR PRADESH vs. MOHD. SHARIF (DEAD) THROUGH LRs (AIR 1982 SC 937).

6. That apart, a perusal of Annexure-1 dated 06-11-2000, Annexure-2 dated 20.12.2000, second page of Memorandum under Annexure-R/4 dated 20.12.2000 and Annexure-5 dated 29.1.2001 goes to show that Shri S. Mohanty, SDE, I/C of CTO at Bhubaneswar was the complainant against the Applicant/of the incident; who called for the explanation from the Applicant under Annexure-1 dated 06-11-2000; framed charges against the Applicant under Annexure-2 dated 20.12.2000 and ultimately, passed the punishment order under Annexure-5 dated 29.1.2001. Thus, it shows that here is a case, where the complainant not only became the prosecutor but also became the judge of his own case; for which it cannot be said that the order of punishment is free from bias.

7. Thus, judging from any angles, the impugned order under Annexure-5 dated 29.1.2001 (and the consequential Appellate order under Annexure-6 dated 10-1-2002) are not sustainable in the touch stone of judicial scrutiny and, therefore, the same are hereby quashed. In the result, this O.A. is disposed of as above. Parties to bear their own costs.

  
(B.N. SOM)  
VICE-CHAIRMAN

  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

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