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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.408 of 2006
Cuttack, this the 15th day of July, 2009

Bhagirathi Naik

.... Applicant


Versus


Union of India & Ors.

.... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)


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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.408 of 2006

Cuttack, this the ~~15th~~ day of July, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....

Shri Bhagirathi Naik, aged about 45 years, Son of Late
Ramasuru Naik, GDS, Ex-BPM, Tonsir Kalahandi Division,
At/Po. Tonsir, PS/Via - Kesinga, Kalahandi.

.....Applicant

Advocate for Applicant: M/s.S.K.Rath-1,S.Panda,R.K.Parida,
O.P.Mohapatra,B.K.Parida

-Versus-

1. Union of India represented by its Secretary, Department of Posts, Parliament Street, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices, Kalahandi, Bhawanipatna.
4. Director of Postal Services, Berhampur, Dist. Ganjam.

....Respondents

Advocate for Respondents: Mr.R.C.Behera

O R D E R

Per-MR.C.R.MOHAPATRA, MEMBER (A):-

This Original Application has been filed by the Applicant-

Shri Bhagirathi Naik, Ex-GDS BPM, Tonsir BO in account with Kesinga SO of Kalahandi Postal Division challenging the order of removal from service passed by the Superintendent of Post Offices, Kalahandi Division vide Memo No.L2-20/2002 dated 28.07.2004 (Annexure-A/8) and the order under Annexure-10 dated 20.03.2005 rejecting his appeal preferred by him.

2. Respondents by filing their counter opposed the contentions raised by the Applicant in support of his prayer and have prayed for dismissal of this OA.
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3. Heard Learned Counsel for both sides and perused the materials placed on record as also the original proceeding file produced by ASC.

4. It is the contention of the Applicant that the impugned orders under Annexures-8 & 10 are not sustainable in the touch stone of judicial scrutiny as the same is neither supported by any law nor are in conformity with the evidence available on record. Placing reliance on the charge sheet placed at Annexure-3 it has been contended that the enquiry was an empty formality as it was determined by the Disciplinary Authority to proceed with the enquiry to do away the service of the Applicant. His stand is that the charge was issued to him on 13.02.2004 for the incident allegedly took place on 9.8.2002, 18.02.2003 and 18.03.2003 without any explanation either in the charge sheet or in the order of punishment so also order of the appellate authority explaining the reason of such delay and, therefore, by applying the ratio of various decisions of the apex court, the charge sheet is liable to be set aside. Further contention of the Applicant is that the SDI(P) conducted the preliminary enquiry of the charges and as per his knowledge no dirty thing was found out against him in the said preliminary enquiry but without taking into consideration such preliminary report, disciplinary proceedings has been initiated against him. The IO and PO persuaded the applicant with false assurance to admit the charge and accordingly, the IO concluded the enquiry with two sittings holding the charges proved without taking note of the other documents and contentions raised by the Applicant. According to him, finding recorded by the IO is

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unknown to the service jurisprudence and, as such the report of the IO is not sustainable. His next contention that he was held guilty on the basis of his admission of the charges but records would show that he had never admitted his guilty and only explained the situation claiming not guilty of the charges and, therefore, utilization of his admission to punish him is nothing but colourable exercise of power. In substance his contention is that as there has been miscarriage of justice in the decision making process of the matter and the enquiry officer conducted and concluded the enquiry in a pre-determined manner, the entire proceedings is liable to be set aside.

5. On the other hand, by relying on the contentions raised in the counter as also in the written reply submitted by the Applicant during enquiry place at Annexure-R/1 & R/2 it has been contended that it is absolutely incorrect to state that the applicant has admitted his guilt with assurance or under coercion. He attended the enquiry through his defence counsel, allowed by the Department. He admitted his guilt in writing. No assurance or pressure was put on him either by the IO or PO. Though he admitted the charges yet the IO concluded the enquiry by reasoned report which was duly supplied to him on receipt of which he has not raised any such point enabling the DA to take a view on the same. Having not done at the first stage, he is estopped under law to raise before this Tribunal. It has further been contended that the applicant was afforded adequate opportunity in the enquiry. As he admitted the charge in writing as per the rules, the enquiry was concluded and ultimately, he was imposed with the punishment of removal from service. Appeal preferred by him was

duly considered and rejected with a reasoned order. Accordingly, Respondents' Counsel vehemently opposed the contentions of the Applicant and reiterated his prayer for dismissal of this OA.

6. We have examined the rival submission of the parties with reference to the materials placed on record. But we find no substance in any of the grounds set forth by the Applicant for annulling the impugned order of punishment under Annexure-8 or in the order of rejection of the Appeal of the Applicant. But the same time, this Tribunal cannot short its eyes to the irregularity/illegality committed while framing/issuing the charge sheet under Annexure-3. In this connection, we may state that the Hon'ble Apex court in a catena of cases held that charge sheet issued must be definite, precise and specific and must contain full particulars in regard to period, time, place and person. Otherwise it would be considered as vague and the inquiry would be vitiated (Ref: AIR 1971 SC 752-Surat Chandra v State of West Bengal; State of UP v Mohammed Sheriff, AIR 1982 SC 937 and Sawai Singh v State of Rajasthan, AIR 1986 SC 995). Rule/instruction and principles of natural justice also requires that the charge must be framed and issued in the manner indicated above. But Annexure-3 the charge sheet dated 13.02.2004 reads contrary to the above. It reads as under:

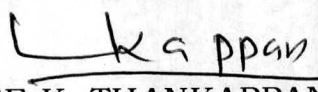
"Shri Bhagirathi Naik while working as GDS Branch Postmaster, Tonsir EDBO in account with Kesinga SO during the period from 17.09.1979 to 01.04.2004 kept the Branch Post Office closed and remained unauthorized absent from duty during working hours on 08.08.2002."


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7. Going through the above, prima facie it gives an impression that the applicant kept the BO under lock and key for last 25 years and remained absent from duty on 08.08.2002. If it is so, then it is not known why the department kept silent for all these 25 years and on the other hand paid the allowance to the applicant every month and what explanation do they have for the delay in initiating the proceedings. Similar is the position in regard to other articles of charges. Therefore, Article of charge under Annexure-3 being not in accordance with the Rules fortified by the decision relied on above, is not sustainable and is quashed. As a consequence the report of the IO, order of the Disciplinary as well as Appellate Authority is held to be non-est in the eyes of law.

8. For the discussions made above, we quash the charge sheet under Annexure-3 dated 13.02.2004 and consequently the order under Annexures-8 & 10 and direct the Respondents to reinstate the Applicant in service. But **he shall not be entitled to any back wages** for the period from his termination till reinstatement which shall be done within a period ^{of} 30 days from the date of receipt of this order. However, quashing of the charge sheet shall not preclude the Respondents from initiating disciplinary proceedings afresh as per Rules.

9. In the result, this OA stands allowed to the extent indicated above. There shall be no order as to costs.


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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