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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 585 of 2006
Cuttack, this the 24th day of September, 2008

Dilip Kumar Das 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?

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(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.585 of 2006
Cuttack, this the 24th day of September, 2008

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)

Dilip Kumar Dash, aged about 38 years, Son of Dandapani Dash,
Village-Badakhairkhoma, PS. Kodola, Dist. Ganjam, Ex-Departmental
Delivery Agent of Bada Khaira Khama Post Office.

.....Applicant

Legal practitioner :Mr.Samarendra Pattanaik, Counsel.

- Versus -

1. Union of India represented through its Director General of Posts under Ministry of Communication, At-Dak Bhawan, New Delhi.
2. Postmaster General, Berhampur Region, At/Po. Berhampur, Dist. Ganjam.
3. Senior Superintendent of Post Offices, Berhampur (Ganjam) Division, At/Po.Berhampur, Dist. Ganjam.
4. Director of Postal Services Berhampur (Ganjam) Region, Po.Berhampur, Dist. Ganjam.

....Respondents

Legal Practitioner :Mr. S.Barik, ASC.

O R D E R

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

Applicant while working as Extra Departmental Delivery Agent in a Branch Post Office was proceeded with under Rule 8 of ED Agents (Conduct and Service) Rules, 1964 vide Memo dated 16.06.1994. The substance of allegations levelled against the Applicant vide memo under reference read as under:

"Shri Dillip Kumar Das while working as EDDA Badakhairakhama BO account with the Sumandala SO received Experimental post office MO No. 4537 dated 10.5.1991 for Rs.500/- and shown as paid on 25.5.1991 to Sri Dambura Das of Duarasuni Village under Badakhairakhama BO in presence of witness of Sri Kamadeba Nayak. Sri Dillip Kumar Das instead of making correct payment as required under rule 10 of rules for Branch Office put forged signature purported to be of the payee and witness and shown the MO as paid and misappropriated the amount of the money order.

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Sri Dillip Kumar Das by his above acts failed to maintain absolute integrity and devotion to duty and thereby violated rule 17 of EDA's (Conduct and Service) Rule, 1964."

GR case No.276 of 1993 was also registered against the Applicant before the Learned JMFC, Khallikote in regard to misappropriation of money in the same post office. Record reveals that the charges levelled against the Applicant in the Criminal/GR case are as under:

"The accused was working as Extra Departmental Delivery Agent (in short EDDA) of Badakhairakhama, Post Office. As the EDDA he was entrusted with five money orders along with the money of Rs.300/-, Rs.700/-, Rs.259/-, Rs.400/- and Rs.400/- on 29.05.1991, 4.5.1991, 21.1.1991, 6.4.1991 and 11.04.1991 respectively for disbursement of the money order money to the intended payees. The accused made endorsement of receipt of such money order forms and the cash from the Sub Postmaster in the postman book. It is alleged that the accused had returned back the money order payment coupons with the endorsement of the payees and one witness in each case and had reported that he had made payments of the money orders to the intended payees. Later on, it was detected that the accused in fact had not paid the money to the intended persons and had forged their LTIs in the money order payment coupons and had also forged the signatures of the witnesses and thus, had misappropriated the amounts of Rs.2059/- in total. On the basis of the report of the Assist. Superintendent of Post Offices M.Bodu the case was registered and the investigation was taken up by Kodala PS. During course of the investigation the IO seized the relevant registers from the Sub Post Office showing the entrustment and had also seized the money order payment coupons returned by the accused containing the forged signatures of the payees and the witnesses and after examination of the witnesses the IO had submitted CS against the accused to stand his trial.

2. In the disciplinary proceedings initiated against the Applicant, the IO submitted its report 12.2.1998 holding the charge against the Applicant proved. After following due procedure of Rules such as supply of copy of the Inquiry Report etc., ultimately the Disciplinary Authority in order under Annexure-A/1 dated 06/09.07.1998 imposed the order of punishment of 'removal from service' and on appeal, the Appellate Authority in his order under Annexure-A/2 dated 18.06.1999 confirmed the order of the Disciplinary Authority imposing the punishment of removal. It is also

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revealed from the record that in criminal case instituted against the Applicant, the Learned JMFC, Khallikote vide its order dated 23.07.2002 convicted the Applicant Under Sec.409/468 of IPC and sentenced him to undergo RI for 3 years and to pay a fine of Rs.2000/- in default to undergo RI for 6 months on each count. Being aggrieved by the said order of his conviction passed by Learned JMFC, Khallikote, the Applicant filed Criminal Appeal No.8 of 2002/Crl.Appeal No.86/2002 (CDC) in the Court of Learned Addl. District and Sessions Judge, Fast Track, Chhatrapur challenging the order of the Learned JMFC, Khallikote. In order under Annexure-A/3 dated 15.02.2003 the Learned Addl.District and Sessions Judge, Chhatrapur set aside the order of the Learned JMFC, Khalikote holding that the judgment of conviction as recorded by Learned trial court is not maintainable. After the order of the Learned Addl. District and Sessions Judge, under Annexure-A/3, setting aside the order of the conviction of the Learned JMFC, Khallikote holding the Applicant guilty of offence, stated above, the Applicant submitted representation under Annexure-A/4 dated 16.03.2005, seeking his reinstatement in service. The same was rejected and communicated to the Applicant under Annexure-A/5 dated 22.12.2005 on the ground that the representation has been preferred by the Applicant after more than five years and half months after the order of the Appellate Authority confirming the order of punishment imposed by the Disciplinary Authority. As against the above order of rejection, the Applicant preferred review petition under Annexure-A/6 dated 14.01.2006 and thereafter approached this Tribunal in the present Original Application filed U/s.19 of the A.T.Act, 1985 seeking the following relief:

- "(i) Your lordship may graciously be pleased to quash punishment order vide Memo No.F/Badakhariakhama dated 06.07.1998 under Annexure-A/1;
- (ii) To quash the appellate authority order vide memo No.F-3/91-92/dtd.18.6.1994 under Annexure-A/2;

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- (iii) To quash the rejection order dated 22.12.2005 under Annexure-A/5;
 - (iv) To pass such other order/orders /direction as deemed fit and proper."

3. Respondents in their counter have maintained that the Applicant while working as EDDA (now GDS MD) Badakhairakhama BO in account with Sumandal Sub Post Office under Chatrapur Head Post Office was entrusted a sum for Rs.500/- by the Branch Postmaster, Badakhairakhama Branch Post Office for payment of Exptl. Post office money order No. 4537 dated 10.05.1991 for Rs.500/-. But the Applicant did not pay the same to the actual payee and misappropriated the same by forging the signature of the payee of the money order and also witness. The fact having been detected, the Applicant was placed under off duty w.e.f. 10.06.1991 followed by departmental proceedings under Rule 8 of EDAs (Conduct and Service) Rules, 1964. The matter was duly enquired into. After conclusion of the enquiry, the IO submitted its report holding the charge proved against the applicant and the Disciplinary authority after following due procedure of rules imposed the order of punishment and on appeal, the order of punishment was confirmed by the Appellate Authority. After five and half years, the Applicant submitted a petition to Respondent No.4 on 16.03.2005 requesting his reinstatement but the same was rejected being barred by time. It has been averred by the Respondents that the applicant was acquitted in GR Case No. 276/1993 but he was found guilty for misappropriation of money order of Rs.500/- and for not following Rule 10 of the Rules for Branch Office. It has been stated by the Respondents that in the enquiry the applicant was provided all opportunities to defend his case and proceedings were conducted as per Rules. Since there has been no violation of the Rules and principle of natural justice has strictly been adhered to there is hardly any scope for this Tribunal to interfere in

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the matter. Accordingly the Respondents have prayed for dismissal of this OA. No rejoinder has been filed by the Applicant in spite of adequate opportunity.

4. Neither copy of the charge sheet served on Applicant in the disciplinary proceedings, statement of witness recorded during enquiry and supplied to the Applicant nor the charge-sheet in the criminal case has been filed by the Applicant enabling this Tribunal to know as to whether the charge framed against the applicant in the disciplinary proceedings was one of the charges in the criminal case. On bare reading of the charge reported in the order of the Disciplinary authority and order of the Learned Addl. District and Sessions Judge, Chhatrapur, it gives an impression that the charge levelled against the Applicant was not one of the charges in the criminal case initiated against the Applicant. In view of the above, acquittal in criminal case, in our opinion, would have no impact on the order passed in the disciplinary proceedings and, therefore, we do not think that dismissal of the representation made by the Applicant after five and half years was in any way unjustified.

5. Learned Counsel for the Applicant has taken us through the report of the IO annexed as Annexure-R/1 to prove that the IO without weighing the statements recorded during enquiry held the charge proved. He has also taken us through the order of the disciplinary authority as also the Appellate Authority to show that without due application of mind to the report of the IO vis-à-vis the written statement submitted by the Applicant to the report of the IO imposed the punishment of removal which was subsequently confirmed on appeal. Lastly it was argued by the Learned Counsel for the Applicant that even for sake of argument it is held that the charge is proved yet for the silly amount the Applicant ought not to have been visited with the punishment of removal thereby depriving the livelihood of the Applicant and for no fault his family members. Accordingly, he has fervently prayed for quashing

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the order of removal imposed by the Disciplinary Authority. By reiterating the stand taken in the counter, the learned Counsel appearing for the Respondents strongly opposed the stand of the Applicant.

6. From the records as also factual aspects recorded above, it is manifest that none of the provisions of the Rules in regard to conducting the disciplinary proceedings, has been violated; nor has there been any violation of the principles of natural justice during enquiry. It is also seen that both Disciplinary Authority as also Appellate Authority have exhaustively dealt with the matter in their orders impugned in this case. It is no more res-integra that Tribunal cannot sit as a Court of appeal over a decision based on finding of the inquiry authority in disciplinary proceedings (Ref: Principal Secretary Govt. of AP v M. Adinarayana, {(2004) 12 SCC 579}; nor the Tribunal can re-appreciate the evidence and come to a different conclusion other than the conclusion reached by IO (Ref: Lakshmi Narayan Shetty v Shantha and another, (2003) 9 SCC 190. Also it is settled position of law that in departmental proceeding, strict proof of following Evidence Act is not required but preponderance of probability would suffice to impose penalty (ref: Lalit Popli v Canara Bank and others, 2003 (3) SCC 583, Cholan Roadways Ltd v G.Thirugnanasambandam, JT 2005(1) SC 116). The Hon'ble Apex Court time and again held that quantum of money misappropriated by an employee is not a factum. Once an employee betrayed the faith in discharging his duty, removal order is justified. In view of the above, there is hardly any scope for this Tribunal to interfere in this matter.

7. For the foregoing reasons, we find no merit in this OA. This OA is accordingly dismissed by leaving the parties to bear their own costs.

K. Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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