

4


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.734 of 2006
Cuttack, this the 12th day of August, 2009

Khagapati Jena 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.)

5

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.734 of 2006

Cuttack, this the ~~12th~~ day of August, 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)

.....

Khagapati Jena, aged about 53 years, son of Late Harihara Jena, At/Po.Ranki, Via-Keonjharbazar, Dist. Keonjhar was working as GDS BPM, Ranki BO, At/Po.Ranki, Via-Keonjharbazar, Dist. Keonjhar.

.....Applicant

Advocate for Applicant: M/s.Rama Chandra Jena,
P.K.Satpathy, R.N.Parija

-Vs-

1. Union of India represented through the Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
2. Postmaster General, Sambalpur Region, Sambalpur, At/Po/Dist. Sambalpur.
3. Director, Postal Services, Sambalpur Region, Sambalpur, At/Po/Dist. Sambalpur.
4. Superintendent of Post Offices, Keonjhar Division, Keonjhargarh, At/Po/Dist. Keonjhar.

..... Respondents

Advocate for Respondents: Mr.B.K.Mohapatra

O R D E R

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

Applicant was a GDS BPM of Ranki Branch Post Office in account with Keonjhar Bazar Sub Post Office. In contemplation of disciplinary proceedings, he was placed under 'off duty'vide order under Annexure-1 dated 23rd January, 2004. Thereupon, a set of charge was drawn up and served on the Applicant under Annexure-2 dated 27th August, 2004 by way of giving him an opportunity to rebut. It reads as under:

"Article-I

That Sri Khagapati Jena, while working as GDS BPM, Ranki BO in account with Keonjhar Bazar SO received the following

l

deposits from Smt. Chandramani Panda, W/o.Satyananda Panda, At/Po-Ranki, Via-Keonjhar Bazar SO for deposit in respect of her SB Account No.298049.

Date	Amount
20.03.03.1	Rs.200
05.04.03.1	Rs.1000
05.06.03.1	Rs.200
10.07.03.1	Rs.100
06.09.03.1	Rs.200
Total	Rs.1700/-

Sri Jena entered the amount of deposits in the pass book and authenticated the same his signature and BO date stamp impression. But he did not credit the amounts into BO account on the date of receipt and credited the same into BO account on belatedly i.e. on 30.10.03, 13.11.03, 15.11.03, 17.11.03 and 18.11.03 respectively and thereby violated the provisions of Rule 131 of Rules for Branch offices (Sixth Edition) read with Rule 123, 124, 132, 133 & 134 of Rules for Branch Offices (Seventh Edition). By his above acts the said Sri Jena failed to maintain absolute integrity and due devotion to duty as enjoined in Rule 21 of GDS (Conduct & Employment) Rules, 2001.

Article-II

That the said Sri Khagapati Jena while working as GDSBPM, Ranki BO in account with Keonjhar Bazar SO received a sum of Rs.1000/- on 10.12.2002 from Basumati Bhuyan, At/PO-Ranki, Via-Keonjhar Bazar SO for deposit in her SB account No.298171 and made necessary entries in the pass book authenticated the same with his signature and date stamp impression. But did not credit the amount to the BO account on the very day and credited the same on 10.01.2003.

Thus, Sri Khagapati Jena, violated the provisions of Rule 31 of Rules for Branch Offices (Sixth Edition) read with Rule 123, 124,132,133 and 134 of Rules for Branch Offices (Seventh Edition). By his above acts the said Sri Jena failed to maintain absolute integrity and due devotion to duty as enjoined in Rule 21 of GDS (Conduct and Employment) Rules, 2001.

Article-III.

That the said Sri Khagapati Jena, while working as GDSBPM, Ranki BO in account with Keonjhar Bazar SO received a sum of Rs.100/- (Rupees One hundred) only from Sri

Chaitanya Dehury, At/PO-Ranki, Via-Keonjhar Bazar, Keonjhar on 23.10.2003 towards the deposit for the month of 10/03 on his RD account No.1165421. Sri Jena made necessary entries in the RD pass book showing the deposit and authenticated the same with his initial and date stamp impression of the BO. But he did not credit the said amount of deposit into BO account on the very day on 23.10.2003 and credited the same into BO account on 29.12.2003.

Thus Sri Khagapati Jena, violated the provisions of Rule 131 of Rules for Branch offices (Sixth Edition) read with Rule-123, 124, 132, 133 & 134 of Rules for Branch Offices (Seventh Edition). By his above acts the said Sri Jena failed to maintain absolute integrity and due devotion to duty as enjoined in Rule 21 of GDS (Conduct and Employment) Rules, 2001."

2. After receipt of reply of the applicant, the matter was enquired into. The Inquiring Officer submitted its report holding all the three Article of charges as proved. In consideration of the written statement of defence submitted by the applicant to the report of the IO supplied to him in term of the extant Rules, the Disciplinary Authority imposed the punishment of 'removal from service' on the Applicant vide order under Annexure-5 dated 31st January, 2006. Appeal preferred by the Applicant was rejected by the Appellate Authority under Annexure-7 dated 31st July, 2006. Applicant in this Original Application filed u/s.19 of the Administrative Tribunals Act, 1985 while seeking to quash both the orders under Annexures-5 & 7, also prays issuance of direction to the Respondents to reinstate him in service with all consequential service and financial benefits retrospectively.

3. Respondents filed their counter *inter alia* stating that the order of punishment passed by the disciplinary authority and upheld by the appellate authority need no interference; especially

l

because the punishment was imposed on the Applicant after the charges, with due opportunity to the Applicant, were held proved by the IO and there was no deviation of any of the Rules nor has there been any violation of the natural justice during the enquiry. In the premises stated above, the Respondents opposed the prayer of the Applicant and have prayed for dismissal of this OA.

4. Arguments advanced by the respective parties were heard and documents placed on record were produced.

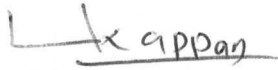
5. It is the contention of the Learned Counsel for the Applicant that the harsh punishment of removal like death sentence was imposed on the Applicant without affording him the opportunity to be heard in person either by the Disciplinary Authority or by the Appellate Authority. The charges levelled against the Applicant were not such so as to justify the order of punishment of removal. There was some mistake committed by the applicant in regard to entries of deposit of collections in the Government account immediately. Neither it was the case of the Respondents that the applicant had misappropriated the Government money nor was it the case of the Respondents that the applicant had done the mistake intentionally or deliberately. As such imposition of the punishment of removal from service is highly disproportionate and though he has taken this as one of the grounds in his appeal the appellate authority without due application of mind rejected the appeal of the Applicant. Accordingly, Learned Counsel for the Applicant sincerely prays for allowing the relief claimed in this OA.

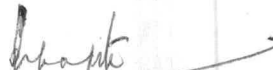
6. On the other hand, Learned Counsel appearing for the Respondents opposed the above contention of the Applicant by stating that there is no rule that the punishment must be only after personal hearing. However, affording personal hearing before issuance of the order of punishment is the discretion of the Disciplinary Authority that too only in the case where no enquiry, allowing the delinquent employee natural justice is held. In the instant case the order of punishment was issued on the basis of fact finding enquiry holding the applicant guilty. Even if there is no such rule, had the applicant asked for any such personal hearing, the disciplinary authority could have taken a view on such request before issuing the order of punishment. But no such request was made by the Applicant either before the DA or before the Appellate Authority. In regard to the disproportionate punishment it has been argued that it is not a question of gravity of the offence. The Applicant betrayed the department in not taking into the amount received by him to the Government Account on the same day as provided in the Rules and this Tribunal being not the appellate authority should not interfere in the order of punishment which has been imposed as per the Rules and after complying with the principles of natural justice.

7. We have considered the rival submission of the parties and perused the documents placed on record. Before proceeding to deal with merit of the matter, it is significant to note that it is trite law that Courts/Tribunal can interfere in the disciplinary proceedings and in the order of punishment imposed

thereby on an employee if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the materials before him and within the frame work of the law, have arrived at. The Courts/Tribunal would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court/Tribunal would also consider whether the decision was absurd or perverse. The Court would not, however, go into the correctness of the choice made by the administrator amongst the various alternatives open to him; nor could the Court/Tribunal substitute its decision to that of the administrator (Ref: **Union of India and another v G.Ganayutham (death) by LRs**, AIR 1997 SC 3387. Circumstances leading to interference in Disciplinary Proceedings, have more exhaustively been dealt with by the Hon'ble Supreme Court in the case of **State Bank of Patiala & Others v S.K.Sharma**, JT 1996 (3) SC 722. It is not the case of the Applicant that any of the above principles has been violated in the disciplinary proceedings initiated against him. His contention is that he was not afforded personal hearing before imposing the order of punishment of removal. But no authority has been produced by him in support of his contention that unless personal hearing is provided the order of punishment would be rendered vulnerable. As such we agree to the contention of the Learned Counsel for the Respondents that in not affording personal hearing would not vitiate the order of punishment which was imposed on the basis of proved

misconduct. The next contention of the Applicant is that the order of punishment of removal is disproportionate to the gravity of offence. In this connection, it is stated that interference in the quantum of punishment is within the discretionary jurisdiction which can only be exercised when inter alia it is found that no reasonable person could inflict such punishment or when relevant facts which would have a direct bearing on the question have not been taken into consideration. Interference in the order of punishment on the ground of disproportionate punishment emanates from sympathy and generosity. When an employee is found guilty of misconduct there is nothing wrong for the authority losing confidence or faith in such an employee and awarding punishment of removal. Higher standard of honesty, integrity, devotion and diligence is expected from every employee. Acting beyond one's authority is itself a breach of discipline and misconduct. In such circumstances, there is no place for generosity or sympathy on the part of the judicial for ~~a~~ for interference with the quantum of punishment. As the Applicant was imposed with the punishment of removal on the proved misconduct, question of holding that the punishment of removal was disproportionate does not arise. In view of the above, we find no merit in this OA which is accordingly dismissed by leaving the parties to bear their own costs.


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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