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
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No. 891 of 2006
Cuttack, this the 12th day of September, 2009

B.Sahu	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. 891 of 2006

Cuttack, this the 14th day of September, 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)

.....

Biswaranjan Sahu, aged about 51 years, son of Narasingha Sahu, At-Bijayram Chandrapur, W.No.19, PS Baripada, Dist. Mayurbhanj, Ex-GDS SPM, Baghra Road EDSO (Baripada HQ), At/Po.Baripada, Dist. Mayurbhanj.

.....Applicant

Advocate for Applicant: M/s. S.K.Ojha, A.K.Biswal.

-Versus-

1. Union of India represented through the Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
2. Director Postal Services (HQ), Office of the Chief Postmaster General, Orissa Circle, Bhubaneswar-751 001.
3. Superintendent of Post Offices, Mayurbhanj Division, At/Po.Baripada, Dist. Mayurbhanj.

.....Respondents

Advocate for Respondents: Mr.R.N.Mishra,ASC

O R D E R

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

Applicant was working as GDS SPM of Baghra Road ESO under Baripada Head Post Office. On the allegation of misappropriation of money, charge sheet dated 03.09.99 was issued calling upon him to file his reply, if any. On receipt of reply from the Applicant, disciplinary proceedings were initiated against the Applicant. Simultaneously, on the self same ground, criminal case was registered vide GR Case No.571 of 2000 (TC No. 8 of 2003) before the Learned Chief Judicial Magistrate Mayurbhanj, Baripada. In the departmental proceedings, the Applicant was imposed with the order of punishment of removal from service vide

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order dated 30.12.2004. Against this order, the Applicant preferred appeal dated 24.1.2004 (Annexure-6). Meanwhile the criminal case which was in motion during the disciplinary proceedings ended by the order of the Learned Chief Judicial Magistrate, Mayurbhanj, Baripada dated 30th September, 2005. The appeal which was preferred by Applicant on 24.1.2004 was rejected by the Appellate Authority and communicated to the applicant vide order dated 30.12.2005. By filing this OA on 26th December, 2006 he has sought to quash the impugned order dated 30.12.2004 (Annexure-A/5) and the order dated 30.12.2005 (Annexure-7). He has challenged the impugned orders amongst other grounds on the ground that meanwhile he has been exonerated in the criminal case. Respondents filed their counter elaborating the reason of initiating the disciplinary proceedings as also criminal case against the applicant and accordingly contested the stand of the Applicant in this OA. But no whisper has been made in regard to the decision arrived at in the criminal case instituted against the applicant.

2. Heard the rival submission of the parties and perused the materials placed on record. It is the contention of the Applicant that while the standard of proof in the disciplinary proceedings is preponderance of probability, in the criminal case it is to be proved beyond reasonable doubt based on evidence. As such, according to him, the order of the criminal case has overriding effect on the decision reached by the authority in the disciplinary proceedings. Since the Applicant has been exonerated

in the criminal case, the order of punishment imposed on the applicant in the disciplinary proceedings needs to be quashed.

Before going to the merit of the matter, it is recorded that in the case of **G.M.Tank v State of Gujarat and another**, 2006 (4) SLR 10 after the acquittal in the criminal case the Hon'ble Supreme Court held that the order of dismissal ought to have been considered by the Respondents. In another case of **Sunil Kumar Singh vrs. UOI and others**, (2005) 1 ATT (SC) 161- it has been held by the Apex court that as by the time the High Court decided the matter the criminal case instituted against the applicant ended in acquittal, the said factum needs consideration.


3. On perusal of the materials placed on record vis-à-vis the order of the learned Chief Judicial Magistrate, Mayurbhanj (supra) it is seen that in both the proceedings, misappropriation of money was the charge levelled against the Applicant. In the disciplinary proceedings while he was imposed with the punishment of removal, in the criminal case he was acquitted. But fact of the matter is that the order acquitting the applicant in criminal case was dated 30th September, 2005; for which there was no occasion for the disciplinary authority to take cognizance of the same. This was also not taken as one of the grounds by the applicant either in his appeal or while the appeal was pending for decision.


4. In view of the facts stated above; especially for the reason that the Applicant had never placed the order of his acquittal in the criminal case, liberty is given to the Applicant to make a representation in the form of Revision, enclosing thereto

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copy of the order of his acquittal in criminal case within a period of **fifteen days** to the Respondent No.1. On receipt of such representation, the Respondent No.1, notwithstanding the order of rejection of the appeal of the Applicant at Annexure-7, shall consider and dispose of the said representation of the applicant with a reasoned order **keeping in mind the order of Learned Chief Judicial Magistrate, Mayurbhanj and the decision of the Hon'ble Apex Court in the case of G.M.Tank (supra)** and communicate the result thereof to the Applicant within a period of **sixty days** of receipt of this order.

5. With the observation and direction made above, this OA stands disposed of. No costs.


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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