

10

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 897 of 2006
Cuttack, this the 08th day of May, 2008

Laxman Behera 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?.


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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.897 of 2006
Cuttack, this the 08th day of May, 2008

C O R A M:
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)

Laxman Behera Applicant.

Versus

Union of India & Ors. Respondents

(For Full details, see the enclosed cause title)

By legal practitioner: Ms. P.K.Padhi, Counsel.
By legal practitioner: Mr. U.B.Mohapatra, SSC

O R D E R

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

Applicant is working as Postal Assistant in the Postal Department of the Government of India. Under Annexure-A/1 dated 9th December, 2002, the Applicant was called upon to submit his written statement of defence within ten days against the proposal to take action against him under Rule 16 of CCS (CC&A) Rules, 1965.

Articles of charges leveled against the Applicant under Annexure-A/1 read as under:

"CHARGE No. I.

Shri Laxman Behera was working as SDI(P), Talcher Sub Division from **03.10.2000 to 15.05.2001**. While he was working as such one Sri Khetrabasi Behera whose date of birth as per the descriptive particulars and other appointment papers was 25.03.1930, has been working as EDMC, Burukona BO with effect from 18.01.1961 and the said Sri Khetrabasi Behera continued to work as such till the relief of the said Sri Laxman Behera from Talcher Sub Division on 15.05.2001. As per DG Posts letter No. 10/9/82-Pen dated 28.6.1982 circulated vide C.O. letter No. AP/1-1323/89 dated 6.6.90 it is the responsibility of the appointing authority to ensure that no EDA under his jurisdiction is kept in service beyond the prescribed age limit of 65 years unless prior approval of postal directorate for such retention is obtained. Also as per DG Posts letter no. 18-11/91-ED & Trg dated 13.3.92 it is stipulated that all the SDI (Ps)s should maintain the service records of all the ED Agents and submit an annual statement to the Divisional Superintendent showing the name of ED Agents who have completed 10 years of service, their age etc, so that gradation list of all ED agents at Divisional level can be maintained. This procedure was introduced to stop unauthorized overstyal in service of EDAs beyond the prescribed age of 65 years. It has also been instructed in the aforesaid circular that the failure to comply the requisite instruction in this regard by the SDI(P) will be viewed serious and that the officer found responsible for the lapses will be booked suitably. The said Sri Laxman Behera while working as SDI(P) Talcher Sub Division **did not ensure termination of service of the said Sri**

Khetrabasi Behera on superannuation although he has attained the age of 65 years on 21.03.1995 AN. Also the said Sri Laxman Behera **did not maintain the service records of the EDAs of Talcher Sub Division as well as did not submit the annual statement to Divisional Superintendent.** On the other hand the said Sri Laxman Behera not only allowed the said Sri Khetrabasi Behera to stay in service beyond the date of actual relief of Sri Laxman Behera but also the said Sri Khetrabasi Behera continued in service **till 7.8.2001.** Thus the said Sri Khetrabasi Behera continued in service for six years two months and twelve days more beyond the actual date of superannuation. Due to overstayal in service by the said Shri Khetrabasi Behera, the Department incurred an amount of Rs. 1,34, 297/- towards payment of duty allowances of Sri Khetrabasi Behera. Thereby the said Sri Laxman Behera committed grave misconduct.

Therefore, it is imputed that the said Sri Laxman Behera has not only violated the provisions of D.G. Posts letter No. 10/9/82-PEN dated 28.6.82 and letter no. 19-11/91-Ed.&Trg dated 13.3.92 but also failed to maintain due devotion to duty and acted in a manner which is unbecoming of a govt. servant as enjoined in Rule 3(1) (ii) and Rule 3(1) (iii) of C.C.S. (Conduct) Rules, 1964.

CHARGE NO. II

One Sri Sadasib Naik whose date of birth as per descriptive particulars and other appointment papers was 75.1934, had been working as EDMC Jharbeda BO in account with Pallahara S.O. while the Sri Laxman Behera was working as the SDI(P) Talcher Sub Division during the aforesaid period. Therefore, the real date of attaining the age of

superannuation should have been 6.5.1999. But the said Sri Naik overstayed in service up to 25.12.2001 i.e. two years seven months and nineteen days. The failure on the part of the said Sri Laxman Behera to maintain the service records of the EDAs of Talcher Sub Division as well as the failure to submit the annual statement to Divisional superintendent and failure to ensure termination of the service of Sri Naik although the said Sri Naik attained the age of 65 years on 6.5.99 A/N resulted in overstaying of Sri Naik. As such the said Sri Laxman Behera failed to act as per the provisions of D.G. Posts letter no. 18-11/91-Ed&Trg dated 13.3.92 and letter no. 10/9/82-PEN dated 28.6.82. As such the said Sri Behera committed grave misconduct. Due to failure of on the part of Sri Behera to abide by the provisions of the aforesaid rules the department incurred an amount of Rs. 80,541/- towards payment of his duty allowances due to such overstaying.

Therefore, it is imputed that the said Sri Behera not only violated the provisions of DG Posts letter no. 18-41/91-Ed&Trg dated 13.3.92 and letter no. 10/9/82-PEN dated 28.6.82 but also failed to maintain due devotion to duty and acted in a manner which is unbecoming of a Govt. servant as enjoined in Rule-3 (1) (ii) and Rule 3 (1) (iii) of C.C.S. (Conduct) Rules, 1964.”

2. According to Applicant, to submit written statement of defence, he had, under Annexure-A/2, sought for certain documents. As those documents were not supplied, under Annexure-A/3, dated 23.01.03, he submitted his written statement of defence denying the

charges leveled against him. However, on consideration of the connected materials vis-à-vis the written statement of defence submitted by Applicant, the Disciplinary Authority held the charges, leveled against the applicant proved. But considering the fact that the Applicant was officiating as SDI (P) in an unapproved capacity, the Disciplinary Authority imposed the punishment of recovery of Rs. 10,000/- from the pay of the Applicant @ Rs.500/- per month. Being aggrieved by such order of punishment, Applicant preferred appeal under Anexure-A/5 dated 09.04.2003 before the Director of Postal Services, Sambalpur/Appellate Authority. The appeal of the Applicant having been rejected and communicated to the Applicant under Annexure-A/6 dated 14.07.2005 he has approached this Tribunal by filing this OA on 17.07.2006 i.e. beyond the period of limitation of one year as provided under section 21 of the Administrative Tribunals Act, 1985 seeking to annul the impugned order of punishment imposed by Disciplinary Authority under Annexure-A/4 and confirmed by the Appellate Authority under Annexure-A/6. The grounds of his challenge are as under:

(i) Non-supply of documents sought for by him under Annexure-A/2 disabled him to defend his case which enabled the authority to reach a conclusion contrary to records and thereby by applying the ratio of the decision of the Apex Court in the case of State of UP v Satrughan Lal, AIR 1998 (Supp.) SC 3038 and the decisions reached by this Tribunal in OA No. 299/1995 and OA No. 582/2005- disposed of on 17.01.2007-Mahadev Meher v UOI and Others the penalty imposed on the Applicant by the Disciplinary Authority and confirmed by the Appellate Authority is vitiated.

(ii) (ii) The Superintendent of Post Offices/Disciplinary Authority time and again inspected the BO as also the inspection report sent by the SDI(P)s, time and again but did not point out anything with regard to non-maintenance of the service record of GDS Agents. With a view to be scot-free from the alleged incidents, the Disciplinary Authority (Superintendent of post offices) has unnecessarily thrown the blame on the Applicant by imposing recovery of part of the loss allegedly incurred by the Department. By this he has not only acted contrary to Rules but also against the sound principle of law that no one should be a judge of his own cause.

(iii) The predecessor, namely Sri Nrusingha Charan Das was working as SDI(P) Talcher from 01.06.1995 to 31.07.2000. He was also charged under Rule 16 of the Rules, 1965 like the present Applicant. At the end, while he was let off with the punishment of 'censure', the Applicant was imposed with the punishment of

recovery thereby violating the mandate enshrined under Articles 14 and 16 of the Constitution of India;

(iv) The Applicant has not committed any grave misconduct. He has simply intimated the Date of Birth of all EDAs of the Sub Division to Respondent No.4. He has not deliberately or intentionally committed any wrong of furnishing the date of birth of the EDAs. The personal file of concerned EDAs remained in the custody of Head Post Master who prepares their allowances. The said personal files have never ^{been} seen by the Applicant for preparing the seniority list. The Respondent No.4 has never asked the applicant to intimate the date of birth of any specific person whereas the applicant has intimated the date of birth of all the officials along with other service particulars. Hence the allegation of violation of Rule 3(1)(ii) & (iii) of CCS (Conduct) Rules and imposition of punishment is nothing but only to save the skin of Respondent No. 4.

3. On the other hand, Respondents by filing counter have denied the stand taken by the Applicant in his Original Application. It has been stated that there was no violation of any of the procedure prescribed in the Rules in the matter. The Applicant was allowed all reasonable opportunity to defend his case and after considering the written statement of defence submitted by applicant vis-à-vis the

connected records, as it was found that the Applicant was also responsible for the incident, he was imposed with the recovery of a part of the loss sustained by the Department and Rs. 71,280/- from one Shri H.K.Pradhan, towards the loss sustained by the Department. Hence, there being no miscarriage of justice in the decision making process, there is hardly any scope for this Tribunal to interfere in the order of punishment imposed by the Disciplinary Authority and confirmed by the Appellate Authority.

4 After giving a full-fledged hearing in the matter, I have minutely gone through the materials placed on record including the decisions relied on by Learned Counsel for the Applicant. At the outset I may record that the common thread running through in all the decisions of the Hon'ble Apex Court is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court in the sense that it was in defiance of logic or normal standards (**V.Ramana v. S.P. SRTC and Others** [2005] 7 SCC 338). It is also stated law that Courts/Tribunal should not go into

the correctness of the choice made by the administrator and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision". [See also **Hombe Gowda Edn.**

Trust & Anr v. State of Karnataka and Ors(2005 (10) SCALE 307=2006(l) SCC 430; **State of Rajasthan and another v. Mohammed Ayur Naz** (2006 (1) SCALE 79= (2006) 1 SCC 589, and **Union of India v Dwarka Prasad Tiwari**, (2006) 10 SCC 388.

Further in the case of **State of Tamil Nadu and another v S. Subramaniam**, 1996 SCC (L&S) 627 it has been held by the Hon'ble Apex Court that Courts or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. **Judicial review is not an appeal from a decision but a review of the manner in which the decision is made.** It is meant to ensure that the delinquent receives fair treatment and not that the conclusion which the authority reaches is necessarily correct.

5. Keeping in view the facts and law in mind now it is to be examined as to whether initiation of disciplinary proceedings under

Rule 16 of CCS (CC&A) Rules, 1965 and thereby imposition of punishment is in any way illegal and liable to be quashed. The substance of the charges leveled against the Applicant are that while he was working as SDI(P) Talcher Sub Division did not ensure termination of service of Khetrabasi Behera and Sadasiv Nayak on superannuation although they have attained the age of 65 years on 21.03.1995 and 6.5.1999. Also the Applicant did not maintain the service records of the EDAs of Talcher Sub Division as well as did not submit the annual statement to Divisional Superintendent. On perusal of the written statement of defence as also the appeal, I do not find any substance that he had complied with the deficiencies pointed out. There have been no pleadings either in the OA or any of the communication of Applicant, how the documents are relevant to the charges leveled against him non supply of which prejudice was caused. It is on record that the applicant was working as SDI (P), Talcher Sub Division from 03.10.2000 to 15.05.2001. It is not the case of the Applicant that it was not the duty to look into the allegations leveled against him. It is seen that no where he has taken

11

the stand that although he had discharged his part of his duty, he was unnecessarily roped in the matter. All that he pleaded as to why the Supdt. of Post Offices has not pointed out earlier which cannot be a ground for this Tribunal to interfere in the order of punishment. As stated earlier it was for the authority to decide. When the punishment imposed by the DA was confirmed by the Appellate Authority, as to why the Supdt. of Post offices or Shri N.C.Das were let off cannot be a ground to interfere in the matter. In disciplinary proceedings' matters, one cannot claim to go on scot-free as because another employee has been visited with lesser punishment of 'Censure'. Each case depends on a set of facts and circumstances. Hence, I am not in a position to hold that punishment of Censure, imposed on Shri N.C.Das was adequate or proper; especially, in the absence of details of charge framed against the Shri N.C.Das. Besides, it is seen that the Applicant was punished for his negligence and failure to discharge his duty. The documents sought for were neither cited in the charge memo nor were taken into consideration by the DA/AA while passing the order of punishment. Thus, when no prejudice is caused, non

supply of documents cannot be fatal to the proceedings initiated against an employee. In this regard support could be had from the decision of the Apex Court in the case of **U.P. State Textile Corporation Ltd. V. P.C.Chaturvedi** (205) 8 SCC 211, "it has not been shown as to how the non supply of this list caused any prejudice." Support could also be had from the decision of the Apex Court in the case of **Suresh Pathrella v Oriental Bank of Commerce**, (2006) 10 SCC 572, "No prejudice, whatsoever, has been caused to the appellant by non-furnishing of the copy of the handwriting expert confirming the statement of Mr.G.C.Luthra in cross-examination. Besides the above, there is no allegation of *mala fides*, bias or violation of principles of natural justice, which has been brought to our notice. Also I have gone through the decisions relied on by the Applicant. Factual matrix of those cases being different than the present case, the same are of no help to the Applicant.

6. Besides the above, it was one of the submissions of the Applicant in his appeal that there have been no full particulars as to how the department sustained loss due to the negligence of applicant

alone. During hearing it came to the notice that the loss has not been recovered from the applicant alone. Rs. 71,280/- has also been recovered from Shri H.K.Pradhan. As observed above, the Applicant was working as SDI (P) from 03.10.2000 to 15.05.2001, during which period both the EDAs were in service and ultimately they retired on 07.08.2001 and 25.12.2001. Had he taken step to verify the records, the mistake could have been detected soon after the joining of Applicant i.e. on 03.10.2000. Hence the decision of the authority that for non-verification of records, the EDAs were retained beyond their actual date of superannuation and thereby the Department sustained loss cannot be faulted with. However, considering all aspects of the matter, the Appellate Authority confirmed the order of Disciplinary Authority. I find that the order of the appellate authority is comprehensive and well considered. The requirement in respect of appellate order is that there must be manifestation of application of mind in considering the appeal (Ref. **Ram Chandra v Union of India**, 1986 (3) SCC 103; **R.P.Bhatt v Union of India**, 1986 (2) SCC 651 and **Narendra Mohan Arya v United India Assurance Co**,

(2006) 4 SCC 713) which I find has been fully complied with. Having regard to the gravity of the offence I also do not find that the punishment is in any way shocking warranting interference.

7. In the light of the above discussions, I find no merit in this OA. As a result, this OA stands dismissed by leaving the parties to bear their own costs.


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

KNM/PS.