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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 601 OF 2002  
Cuttack this the 17th day of Dec. 2004

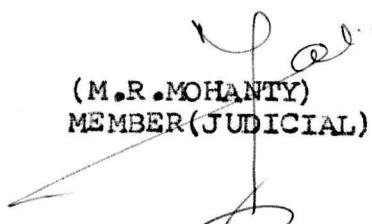
Gobardhan Digal                    ...                    Applicant(s)

- VERSUS -

Union of India & Ors.            ...                    Respondent(s)

FOR INSTRUCTIONS

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

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
( B.N. SOM )  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.601 OF 2002  
Cuttack this the 17th day of Dec. 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

...

Sri Gobardhan Digal,  
S/o. Sri Rajendra Digal,  
At/PO-Kasinipadar, Via-Phiringia  
District-Kandhamal

...

Applicant

By the Advocates

Mr.P.K.Padhi

- VERSUS -

1. Union of India represented by it's Member(Personnel), Dak Bhawan, Sansad Marg, New Delhi-110001
2. Director of Postal Services, Berhampur Region, At/PO-Berhampur Dist-Ganjam (Orissa) 760 001
3. Superintendent of Post Offices, Phulbani Division, At/PO-Phulbani Dist-Kandhamal-762001

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Respondents

By the Advocates

Mr.S.Behera

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Applicant, Shri Gobardhan Digal, formerly Extra Departmental Branch Post Master(in short E.D.B.P.M.), Kaninipadar Branch Office has filed this O.A. challenging the order of removal as well as the orders, confirming the said punishment of removal, passed by Respondent Nos. 3, 1 and 2 respectively.

2. The facts of the case in brief are that the applicant was put off duty with effect from 7.11.1994 on the alleged misconduct in exercise of powers conferred under Rule-9 of E.D.Aagents(Conduct & Service) Rules, 1964, by

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Respondent No.3. The grievance of the applicant is that there has been abnormal delay in concluding the disciplinary proceedings violating the instructions issued by the D.G. Posts vide letter No.294/90-E(P) 1. Trg. dated 26.7.1990. The proceeding continued for a period of three and a half years and the matter was not reported to the higher authority for reviewing the case. With regard to payment of subsistence allowance, it has been submitted by the applicant that although EDAs were not entitled to get the put off duty allowances/consequent upon the judgment of the Hon'ble Supreme Court, the Department had amended the rules and had introduced payment of subsistence allowance/ex gratia payment to the E.D.As with effect from 13.1.1997. Inspite of the said provision made by the competent authority, the Respondent No.3 did not pay him the subsistence allowance and thereby violated Article 21 of the Constitution. Further, that the charges were arbitrary in nature inasmuch as, of the two articles of charge levelled against him, the first one related to keeping excess cash without any liability and the second charge related to shortage of cash balance to the tune of Rs.390.95 and 358.70 on 17.8.1994 and 22.10.1994 respectively. The applicant had submitted his written statement of defence and pleaded not guilty stating that he was a poor Harijan belonging to remote tribal area of the State. Although he was supplied with copies of the deposition, order-sheet, but those were mostly illegible and therefore, did not help him very much. After conclusion of the inquiry and on receipt of the inquiry report, the applicant had submitted a show cause on 30.3.1998 stating

the circumstances under which he had kept cash in excess beyond the limit prescribed, that he did not have any dishonest motive and therefore, a sympathetic view should be taken in the matter. He was also crippled because of non-payment of subsistence allowance and he was unable to keep contact with his defence assistant/A.G.S. or any other person of his area, because of financial constraints. He has also alleged that not only the disciplinary authority (in short D.A.) but also the appellate authority disposed of his representation/appeal without due application of mind. He has alleged that the orders passed by the Respondents are arbitrary, mala fide and whimsical and therefore, the same are liable to be set aside.

3. The Respondents-Department have filed a detailed counter contesting the O.A. while denying the allegation of arbitrariness in the matter of initiating disciplinary proceeding against the applicant, they have pointed out that the instances of misconduct on the part of the applicant were detected by the Inspector of Complaints, office of the Superintendent of Post Offices, Phulbani Division (Res.No.3) in course of verification of cash and stamps of the office. The said Inspector found shortage in Branch Office cash balance and during confrontation, the applicant had stated to have spent the amount for his personal purpose and had consented to make good the same by the end of the day. However, on that day, the applicant credited only Rs.100/- and the rest of the amount of Rs.290.95 was deposited by him on 18.8.1994 under the head 'unclassified receipts'. On another occasion, on a verification

made by the Asst. Superintendent of Post Offices I/c., Phulbani Sub-division, on 22.10.1994, it was found that the applicant had kept shortage of cash to the tune of Rs.358.70 with him. This time also, the applicant, as has been stated in the counter, had spent the amount for his personal purpose and an amount of Rs.330.00 was credited in the branch office account on the same day (22.10.1994) by the applicant. The residual amount of Rs.28.60 was credited by him on 24.10.1994. It has been submitted by the Respondents that the applicant had admitted to have kept the excess cash in branch office account for his personal use. As the Inspection on both the occasions revealed *prima facie* case against the applicant, the Respondent No.3 initiated disciplinary action against him under Rule-8 of E.D.As (Conduct and Service) Rules. The applicant having denied the charges levelled against him, the D.A. appointed an Inquiry Officer (IO) to enquire into the matter. Due opportunity was given to the applicant to defend his case. On completion of the inquiry, the I.O. submitted his report with the findings that the charges had been proved against the applicant and thereafter, the D.A. finalized the case by passing the order of removal of the applicant from service with immediate effect vide his order dated 29.4.1998 (Annexure-6). Against this order of removal, the applicant preferred appeal to Res. No.2, which was considered and rejected. The applicant being not satisfied with the decision of the appellate authority preferred a petition to the Member (Personnel) Postal Service Board.

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Before the said petition could be disposed by the Member(Personnel), the applicant had filed O.A.No.19/91 approaching this Tribunal for early disposal of his petition by Res. No.1. However, that O.A. was disposed of by this Tribunal on 8.8.2000 for having become infructuous on account of disposal of the petition by Res.No.1.

4. The learned counsel for the applicant has can-vassed before us that the disciplinary proceeding had been vitiated on account of non-payment of ex-gratia compensation/subsistence allowance, by the reason of which the applicant could not contact anyother AGS/defence assistance to effectively defend his case, and thereby, he has been seriously prejudiced.

Relying on the decision in the case of M.Paul Anthony vs. Bharat Gold Mines Ltd., (AIR 199 SC 1416) he submitted that the proceedings should be quashed. By referring to another decision of Ernakulam Bench of this Tribunal rendered in O.A.No.56/92 (disposed of on 6.1.1994) the learned counsel for the applicant argued that while awarding punishment, the disciplinary authority did not keep in view the Dictrine of Proportionality with reference to the gravity of the charge levelled against the applicant. Placing reliance on the judgment of the Hon'ble Supreme Court in the Civil Appeal No.3165/81 dated 14.12.1982 (reported in AIR 1986 SC 1040), he submitted that the order dismissing the appeal preferred by the applicant is liable to be set aside if the appellate authority

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failed to consider the appeal under Rule-27 (2) of CCS(CCA) Rules after due application of mind. His allegation is that the appellate authority rejected the appeal in a routine manner.

5. We have heard the learned counsel of both the <sup>have</sup> sides and perused the records/case laws placed before us.

6. In a disciplinary proceeding the Court/Tribunal cannot reappreciate the evidence or sit in appeal or hold that a better judgment could have been passed in the matter. The Court/Tribunal only goes into the process of decision making to see whether the decision makers have followed the principles of natural justice and traversed the rules and procedures laid down for that purpose. The Tribunal/Court also scrutinises whether the decision was taken on the basis of facts and evidence produced in the matter in a fair and unbiased manner.

7. In the instant case, certain allegations concerning the work and conduct of the applicant as EDBPM were levelled and the allegations were sought to be proved by producing the relevant documents and witnesses. For this purpose, all opportunities were given to the applicant to defend his case. The only allegation that has been raised by the applicant is that non-payment of put off duty allowance has seriously prejudiced his interest. On an examination of the facts of the case, we find that the charge-memo was served on him on 28.3.1995 and the disciplinary inquiry continued for about three years. The Respondents have submitted that when the disciplinary proceeding was initiated against the applicant, E.D. Agents

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were not entitled to any ex gratia/put off duty allowance. The oral inquiry was held between 22.5.1995 to 18.11.1997. It was only with effect from 13.1.1997 that the Respondents-Department introduced payment of ex-gratia/put off duty allowance to E.D.Aagents. By that time, the oral inquiry was almost over. As stated by the I.O. the oral inquiry was held by sittings on 22.5.1995, 6.2.1996, 23.7.1996, 24.7.1996, 25.7.1996, 8.1.1997, 9.5.1997 and thereafter two more sittings were held, i.e., one on 2.6.1997 and the final sitting on 18.11.1997. It is also found from the text of the I.O.'s report that the A.G.S. had attended the oral inquiry during all the sittings from 22.5.1995 to 8.1.1997, but did not attend the inquiry on 9.5.1997. Thereupon, the applicant pleaded for one more date for examination of defence witness. The date was accordingly fixed to 8.11.1997, but the sitting could not be held as his A.G.S. did not attend the inquiry on 8.11.1997 also. Thereafter, it was the applicant who agreed to defend his case in person and he was allowed to do so.

8. From the above facts of the case, it would be clear that the facts and circumstances of this case are distinguishable from the facts of the case of Cpt. M. Paul Anthony (supra) and therefore, the ratio of the judgment of the Hon'ble Apex Court in that case cannot be made applicable herein. In other words, the plea of the learned counsel for the applicant that non receipt of ex gratia/put off duty allowance seriously prejudiced

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the interest of the applicant is not sustainable, more so on the ground that no such plea was taken by the applicant before the I.A., and in the circumstances, this appears to be an afterthought, which is not acceptable in the eye of law.

9. From the discussions made above, it is clear that the Respondents/Departmental authorities had afforded full opportunity to the applicant and no infraction of procedure of law has been substantiated by the applicant. In the circumstances, ~~we~~ we uphold the action of this Respondents-Department as well as the orders passed by the disciplinary authority and appellate authority, and also hold that this O.A. is devoid of merit and accordingly the same is dismissed. No costs.

*MoH*  
17/12/04  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

*Som*  
(B.N. SOM)  
VICE-CHAIRMAN

BY