

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 1068 OF 2002
Cuttack, this the 18th day of October, 2004

BHARAT KUMAR BISWAL.

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APPLICANT.

-Vrs.-

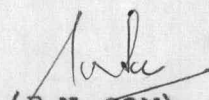
UNION OF INDIA & ORS.

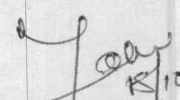
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RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes*.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.


(B.N. SOM)
Vice-Chairman


(M. R. MOHANTY)
Member (Judl.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 1063 of 2002
Cuttack, this the 18th day of October, 2004.

CORAM:

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDL.)

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BHARAT KUMAR BISWAL, aged about 47 years,
S/o. Late Mohan Biswal, at present working
as Lower Division Clerk at Sub-Regional
Office, Asst. Provident Fund Commissioner,
O.S.R.T.C. Building, 1st Floor, Netaji
Subhas Ch. Bose Marg, Berhampur (Ganjam). ... Applicant.

By legal practitioner : M/s. P.V. Ramdas and P.V. Balakrishna,
Advocates.

-Vrs.-

1. Union of India represented by the Secretary,
Ministry of Labour, Government of India,
New Delhi.
2. Additional Central Provident Fund Commissioner,
East Zone, Kalkota, Employees Provident Fund
Organisation, D.K. Block, Sector-II, Salt Lake
City, Kolkata-700 091.
3. Regional Provident Fund Commissioner,
Bhavishyanidhi Bhawan, Janpath, Unit IX,
Bhubaneswar-751 007.

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Respondents.

By legal practitioner: Mr. S.S. Mohanty, Advocate.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Applicant entered into service under EPF Organisation / Respondents as a Gr.D staff. On promotion, he became L.D.C. and, thereafter, on further promotion, he became an UDC on Ad-hoc basis. While continuing as such, he was served with a charge-sheet under Memorandum dated 30.5.1997 (containing two charges) under Rule-10 of the EPF staff (CCA) Rules, 1971. The sum and substance of the first Article of charge was that the Applicant, on 23.4.1996 at 8 P.M. entered into the quarters No. 14 Bhavishyanidhi Enclave, Malaviya Nagar, New Delhi of Shri P.G. Banerjee, APFC (Exam.) and tried to induce and offer rupees one lakh in a bag for declaring six candidates successful in the LDC (Direct Recruitment Quota) Examination held on 31.3.1996 and the second charge was that the Applicant left Bhubaneswar (for New Delhi) in order to attend the marriage ceremony of his friend at 51 of Enclave Colony of Malaviya Nagar, New Delhi but without the permission of the competent authority he met Shri P.G. Banerjee, APFC (Exam.) on 23.4.1996 at 8 PM and on 24.4.1996 at 3 PM. On enquiry, the Inquiring Officer held that the first part/article of charge (so far it relates to offering of money)

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to have not been proved but, so far as the second charge that he met the higher authority without prior permission, was held proved and, basing on such report, the Applicant was imposed with the order of punishment under Annexure-6 dated 16.9.1999 by reverting him to the post of Peon (Gr.D) for a period of two years. However, it was made clear that on expiry of the period of two years, the reduction will not have the effect of his original post. Thereafter, the Applicant unsuccessfully carried the matter in his appeal dated 11.10.1999; which was rejected under Annexure-8 dated 7.8.2002. Hence this Original Application under section 19 of the Administrative Tribunals Act, 1985 with a prayer to set aside the order of punishment imposed on him under Annexures-6 and 8 with consequential benefits.

2. Respondents Department, by filing counter, have stated that since on enquiry, it was proved that the Applicant was guilty of the charge no.2 and since during the enquiry he was given adequate opportunity to defend his case and since the rules on the subject were scrupulously followed, there is no room for this Tribunal to interfere in this matter. It is also the case of the Respondents in the counter that all aspects of the matter were duly considered by the Appellate Authority and as there were no illegality

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in the proceedings leading to award of punishment, the appeal was rejected with a reasoned order. In the said premises, it has been prayed by the Respondents to dismiss this Original Application.

3. We have heard learned counsel for both sides. During the hearing it was submitted by the Learned Counsel for the Applicant that in Rule 3(1) and 3(iii) of the CCS(Conduct) Rules there are no straight-jacket formula as to which work of an employee should be treated as un-becoming on the part of a Govt. servant. It has also been argued by him that any Act/omission of an employee proves to be intentional or wilful or illmotive, then it can be treated as an unbecoming act/omission on the part of an employee and since nowhere in the impugned order it has been mentioned that the alleged act of the Applicant was with an ill-intention (especially when the Article-I of the charge-sheet) has not been found proved in the enquiry the same/impugned orders ought to be quashed/set-aside.

On the other hand it was submitted by learned counsel appearing for the Respondents that in a matter of Disciplinary proceedings, the interference of Courts/Tribunals are very very limited and the same is possible only where there are lacunae in following the procedure prescribed

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under the Rules or where there are gross violation of the principles of natural justice and that since in the present case, there were no such allegation from the side of the Applicant, the argument advanced by the Learned Counsel for the Applicant has no legs to stand that that, therefore, this case should be dismissed.

4. We have considered the rival submissions of the parties. For the sake of better appreciation Rule 3(1) and Rule 3(iii) of CCS(Conduct) Rules are quoted herein below:-

"3. GENERAL.

(1) Every Government servant shall at all times

(iii) do nothing which is unbecoming of a Government servant".

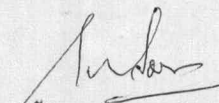
Hon'ble Supreme Court in the case of A.L. KALRA
vrs. PROJECT AND EQUIPMENT CORPORATION OF INDIA LIMITED
(reported in AIR 1984 SC 1361) while dealing with similar
matter held as under:-

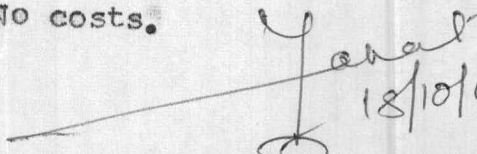
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"Where one of the rules of a public sector company relating to conduct and discipline of its employees provided for maintaining "absolute integrity" and to 'do nothing which is unbecoming of a public servant' held that the rule was vague and of a general nature what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Failure to keep to high standard of normal, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the misconduct, specifically enumerated in the conduct and discipline Rules".

5. In the above view of the matter, we are of the opinion that the punishment that has been imposed on the Applicant appears to be disproportionately high in comparison to the proved facts alleged against him. Certainly he had met higher authority without taking prior permission, but for that matter, we consider the punishment to be disproportionately higher. Therefore, we hereby remit the matter back to the Disciplinary Authority to give a reconsideration in the matter of imposing a lesser punishment than what has been imposed on the Applicant. Finally we hereby quash the order of punishment (under Annexure-6 as also the Appellate order under Annexure-8)

and remit the matter back to the Disciplinary Authority to act in accordance with our observations in the previous paragraph. No costs.


(B.N. SOM)
Vice-Chairman


18/10/04
(MANORANJAN MOHANTY)
Member (Judicial)