

7

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO.1113 OF 2002
Cuttack, this the 30th day of March, 2005.

TRILOCHAN SATPATHY APPLICANT

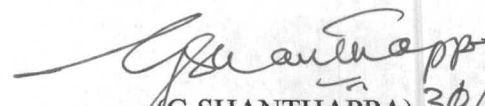
VERSUS

UNION OF INDIA AND OTHERS ... 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? — yes


(B.N. SOM)
VICE-CHAIRMAN


(G. SHANTHAPPA) 30/3
MEMBER(JUDICIAL)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLIATION NO. 1113 OF 2002.
Cuttack, this the 30th day of March, 2005.

CORAM:-

**THE HON'BLE MR. B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. G.SHANTHAPPA, MEMBER(JUDICIAL)**

Trilochan Satpathy.

.....

Applicant

Versus

Union of India & Ors.

....

Respondens.

For the Applicant : M/s.P.K.Padhi,M.P.J.Ray,Advocates.

For the Respondents: Mr. G.Singh,ASC.

2

O R D E R

MR. G. SHANTHAPPA, MEMBER(JUDICIAL):

The above application is filed under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“To set aside Annexures-4,6 & 8 and direct the Respondents to reinstate the Applicant in service with all consequential service benefits including the back wages;

And any other order/s as the Tribunal deem just and proper in the interest of justice”.

2. The brief facts of this case are that the Applicant while working as Extra Departmental Branch Post Master (in short ‘EDBPM’) of Rambhadeipur Branch Post Office under Jagatsinghpur Head Post Office in Cuttack South Division was placed under put off duty w.e.f. 12-02-1988 and was served with a charge Memo dated 05-03-1991 and proceeding under Rule 8 of the EDAs Conduct and Service Rules, 1964 was initiated. During the enquiry proceeding, the Applicant asked for relevant documents by letter dated 25-05-1992; which were not supplied. The Applicant asked the Department to wait till the finalization of the Criminal proceeding in GR Case No. 386/1991 and payment of Subsistence Allowance. He had submitted



10 3

the reply dated 26.07-1995 to the show cause notice dated 06-06-1995. The Applicant was removed from service by penalty memo dated 23-02-1996. Appeal against the said order was also dismissed. Subsequently, the Applicant was acquitted by the Additional District and Sessions Judge, Jagatsinghpur on 14-09-1999. The Applicant submitted a representation for reinstatement. The said representation was also rejected vide order dated 19-12-2000; which was received by the Applicant on 13-01-2001. The Applicant approached the Member(Personnel), Postal Board, New Delhi, but the same was not attended. The Respondents ought to have ^{waited for} ~~(weighed on)~~ the outcome of the Criminal Proceeding, as both the departmental proceedings and Criminal Proceeding were based on identical set of facts. In the enquiry the depositors were not examined. In the meantime Reviewing Authority was changed and power was delegated to Respondent No.1. It is the case of the Applicant that the entire proceedings as initiated against him was illegal, the punishment is disproportionate to the charges leveled against him, the Respondents have not appreciated the facts and had not gone through the records and without applying mind, rejected the petition. The Respondents have not discussed the points raised by the Applicant. Hence, it is the case of the Applicant that the impugned order is not a speaking order which violates

g.p.

Article 14, 16 and 21 of the Constitution of India. Hence, the Applicant is entitled for the reliefs as prayed for.

3. Per contra, the Respondents have filed a detailed counter reply denying the averments made by the Applicant in his Original Application. It is the case of the Respondents that the Applicant while working as EDBPM during the periods from 23-05-1977 to 12-02-1988 committed misappropriation in respect of the following SB pass books causing a loss of Rs. 5,760/- to the Department as detailed below:

Sl.No.	SB Account Nos.	Loss in Rs.
1.	404364	3,595/-
2.	404374	85/-
3.	404398	710/-
4.	404618	1,290/-
5.	404698	80/-

A criminal case was registered in Jagatsinghpur Police station in PS Case No. 157 dated 25.5.1991 U/S 409 IPC. After investigation the police submitted the charge sheet No.116 dated 4.5.1992 in the Court of the SDJM, which was registered as GR case No.386 of 1991 on 16.5.1992. He was also proceeded against departmentally under Rule 8 of the P & T EDAS



12 ✓ 5

(Conduct and Service) Rules, 1964 on 05-03-1991. The Applicant was dismissed from service pending the criminal case before the trial court. The learned Chief Judicial Magistrate has convicted the Applicant holding the Applicant guilty of commission of offence punishable U/S 409 IPC and sentenced to undergo R.I. for four years and to pay fine of Rs. 500/- in default to undergo R.I. for six months. Criminal appeal No. 61/96 was allowed on 14.9.1999 by the learned Additional District and Sessions Judge, and the Applicant was acquitted of the charges leveled against him. The Applicant submitted a representation dated 03.08.2000 for reinstatement into service. The said representation was rejected by the Director of Postal Services (Hqrs.). The Applicant preferred an appeal to the Chief Post Master General, but the same was rejected on 20.12.2002, against which this Original Application is filed. The contention of the Respondents is that during enquiry the request for supply of additional documents was considered not relevant to the charges leveled against the Applicants ^{opined} by the Enquiry Officer. It is the case of the Respondents that there is no bar to start departmental as well as criminal proceedings at a time. At the same time, there was no provision for grant of Subsistence Allowance to the ~~EDAs~~ under put off duty, which came into force only w.e.f. 13.1.1999. Hence, the Applicant was not entitled to the put off duty allowances. The Criminal

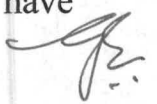
gr.

3

6

proceeding was initiated for misappropriation of money; whereas the departmental proceedings was initiated for violation of the departmental rules. The disciplinary authority had taken all points raised by the Applicant while passing the final order of dismissal from service. Appeal against the said order of dismissal was also rejected by a reasoned order. The order of acquittal has been submitted by the Applicant to the Respondents after dismissal from service in a petition dated 20.3.2000 to the first Respondent. The competent authority i.e. C.P.M.G has rejected the said representation of the Applicant on 20.12.2002 by a reasoned order after considering all facts and evidences on record. The Respondents have supported their action while passing the impugned order. There has been no illegality or irregularity and the principle of natural justice has not been violated. Therefore, it has been prayed by the Respondents that this Original Application being devoid of any merit is liable to be dismissed.

4. During the pendency of this Original Application, the Applicant had filed a Misc. Application No. 178 of 2004 for amendment of the O.A. and the said M.A. was allowed. The Respondents have also filed their additional reply. Applicant has also submitted a representation dated 24.1.2001 to the Member Postal Board, New Delhi and the Respondents have



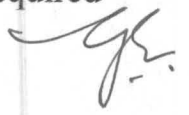
7
stated that the said representation has been rejected by the first Respondent by order dated 20.12.2002(Annexure-R/1).

5. We have heard the learned counsel for both sides and perused the materials placed on record including the judgment referred to by the Applicant.

6. On the basis of the records, the admitted facts of the parties are that the Applicant while working as EDBPM was serve with a charge Memo dated 5.3.199 containing the following articles of charges:-

ARTICLE-I: Shri Trilochan Satpathy, while working as the EDBPM Rambhadeipur during the period from 23.5.1977 to 12.2.1988 made fraudulent withdrawals of Rs. 25,00/- dated 12.2.1982, Rs.200/- dated 18.3.1982, Rs.200/- on 3.4.1982 and Rs.95/- on 8.10.1982 from SB A/c No. 404364 of Shri Gandharba Acharya, did not account for deposits of Rs. 600/- dated 27.9.1983, Rs.1000/- dated 24.6.1985 and Rs.100/- dated 21.9.1987 received from the withdrawal of Rs.2000/- dated 4.1.1985 paid to the depositor of the said SB A/c and did not submit the said pass book to the HO through the Account office for entry of interest in contravention of rules 131,134, and 141 of the Rules for Branch Offices and thereby failed to maintain absolute integrity and devotion to duty as required under rule 17 of the P&T EDAs (Conduct and Service) Rules,1964.

ARTICLE-II:- The said Shri Trilochan Satpathy while working as such made fraudulent withdrawal of Rs. 85 on 16.12.1983 from the SB A/c No.404374 of Smt. Sanju Debi and thereby contravened the provision of Rule 134 of the rules for the BOs and failed to maintain absolute integrity and devotion to duty as required

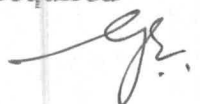


under rule 17 of the P&T EDAs (Conduct and Service) Rules, 1964.

ARTICLE III:- The said Shri Trilochan Satpathy while working as such made fraudulent withdrawals of Rs.100/- dated 4.3.1982 and Rs. 200/- dated 6.3.1982 from SB A/c No.404398 of Shri Aditya Prasad Satpathy, did not account for a deposit of Rs. 760 dated 2.6.1982 received from and withdrawals; of Rs. 50/- dated 31.3.1982, Rs. 100/- dated 28.9.1983 and Rs. 200/- dated 2.4.1986 paid to the said depositor and failed to submit the said pass book for interest posting in contravention of rules 131, 134 and 141 of the rules for the BOs and thereby failed to maintain absolute integrity and devotion to duty as required under rule 17 of the P& T EDAs (Conduct and Service) Rules, 1964.

ARTICLE-IV:- The said Shri Trilochan Satpathy, while working as such failed to account for deposits of Rs. 180/- dated 1.11.1983, Rs.60 dated 17.11.1983, Rs. 70/- dated 10.4.1984, Rs.200/- dated 29.10.1986, Rs.80/- dated 6.1.87, Rs.100/- dated 10.2.1987, Rs.100/- dated 24.3.1987, Rs.1700/- dated 22.5.1987, Rs.200/- dated 5.8.1987 received from Smt.Kamala Nanda, mother; of Charulata Nanda, depositor of SB A/c No. 404618 and withdrawals of Rs.100/- dated 24.8.1984, Rs.200/- dated 1.1.1985, Rs.200/- dated 3.9.1987, Rs.400/- dated 2.11.1987 and Rs.500/- dated 19.12.1987 paid to the said messenger and failed to submit the said pass book for entry of interest in violation of rules 131, 134 and 141 of the rules for the BOs and thereby failed to maintain absolute integrity and devotion to duty as required under rule 17 of the P&t EDAs (Conduct and Service) Rules, 1964.

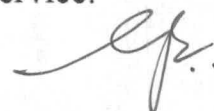
ARTICLE-V:- The said Shri Trilochan Satpathy, while working as such accounted for a sum of Rs.20/- out of Rs.200/- received by him from Barsha Bhanabi Rath towards initial deposit in SB A/c No.406698 on 30.5.1987 and failed to account for deposit of Rs.600/- dated 5.8.1987 received from and withdrawal of Rs.700/- dated 19.12.1987 paid to the said depositor in violation of rules 131 and 134 of the rule for the BOs and thereby failed to maintain absolute integrity and devotion to duty as required



9
under rule 17 of the P&T EDAs (Conduct & Service) Rules, 1964".

7. Along with the charge memo list of documents (Annexure-A/3) and list of witnesses (Annexure-A/4) were also supplied. The Applicant did not submit his reply to the charge memo. However, he participated in the enquiry proceeding and had requested for additional documents by submitting his representation dated 25.5.1992 (Annexure-A/2). The I.O. decided the said representation and passed order; on 28.7.1992. Applicant did not challenge the said order of rejection. At the time of enquiry, the applicant was given ample opportunity to participate in the enquiry and to cross examine the witnesses. The enquiry officer has submitted his report with the findings that the charges leveled against the Applicant are proved. Copy of the enquiry report was also supplied to the Applicant to which the Applicant submitted his reply.

8. On the basis of the enquiry report and the representation submitted by the Applicant, the Disciplinary Authority has passed the order of penalty on 23.2.1996 dismissing the Applicant from Service.



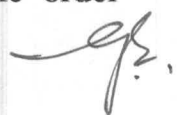
9. We have carefully examined the impugned order which is a speaking one. The impugned order of dismissal from service was passed by Appellate authority acting as disciplinary authority after taking into consideration the relevant documents, enquiry report and the statements of the witnesses. Applicant submitted his representation dated 03.08.2000 by enclosing the judgment of the Addl. District and Sessions Judge in Crl. Appeal No. 69 of 1996 acquitting him of the charges leveled against him by stating that since charges leveled against him in the departmental proceedings as well charges in the Criminal case are one and the same, he is entitled for reinstatement in service. The said representation has been decided by the Director of Postal Services (Hqrs.) dated 19.12.2000 who has passed the order of removal from service. The said representation was submitted to the Member Postal Board, New Delhi by way of appeal. When an opportunity of Appellate forum has been denied, the Member, Postal Board has to consider the representation of the Applicant dated 3.8.2000..Once the Director of Postal services has passed the order imposing penalty, the said Authority has no authority to consider the representation dated 3.8.2000.Hence he has exceeded his jurisdiction in passing order dated 19.12.2000 (Annexure-A/6).



10. The Respondents have contested that there is no bar in initiating both the proceedings i.e. departmental and criminal simultaneously. The representation submitted by the Applicant has been considered and a reasoned and considered order was passed. When the Applicant has requested for reinstatement in service, the Competent authority is only the Director of Postal Services who has exercised his power.

11. Applicant has submitted one more representation dated 24.1.2001 to the Member (Personnel) Office of the Director General Posts, Dak Bhawan, New Delhi. The said representation was forwarded to the Chief Post Master General and in turn, the CPMG has considered the representation and passed the impugned order dated 20.12.2002 by rejecting the said representation. His prayer is to set aside the order under Annexure-A/4, dated 23.2.1996, Annexure-A/6 dated 19.12.2000, and Annexure-A/8 dated 20.12.2002. When the Applicant has submitted his representation to the Member(Personnel), New Delhi, the impugned order has been passed by the Director(Hqrs.), Postal Services.

12. The Respondents have justified their action in considering the representation by the Director Postal Services(Hqrs.) and also the order



9

12

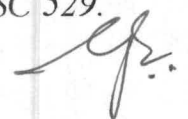
passed by the CPMG. We carefully examined the procedure followed by the Respondents while considering the case of the Applicant. When the Director of Postal services has no authority to entertain the appeal against the order dated 23.2.1996, the same authority cannot deal with the appeal submitted to the Member Postal Services, New Delhi. Here the Director, Postal Services has erred in deciding the appeal submitted by the Applicant. Hence, we considered that the Director of Postal Services (Hqrs.) has no authority to pass order dated 19.12.2000 (Annexure A/6). This view gains support of the decision of the Hon'ble Apex Court in the case of **R.L.Sharma VRS. Managing Committee (AIR 1993 SC 2155)** wherein their Lordships while laying down the rules with regard to principles of natural justice have observed that *no one should be the judge of his own cause*. Hence, we quash the impugned order dated 19.12.2000 under Annexure-A/6 passed without jurisdiction.

13. Subsequently, the Applicant submitted an appeal dated 24.1.2001 to the Member (Personnel), Office of the Director General Posts, New Delhi. The said petition has been considered by the Chief Post Master General, Orissa Circle, Bhubaneswar. We carefully examined the said impugned order. The CPMG, Orissa Circle, Bhubaneswar has not dealt all



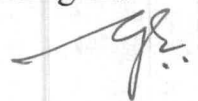
the points raised by the Applicant in his representation dated 24.1.2002. Hence, we hold that the order dated 20.12.2002, impugned in this case is not a speaking order.

14. The charges leveled against the Applicant are serious in nature. As we observe, from the pleadings, the question arises as to whether both the departmental and criminal proceedings can be initiated against a delinquent employee/ officer simultaneously. In our view there is no bar in initiating both the proceedings. To add to this we would say that both the Criminal as well Departmental proceedings are all together distinct and different aspect of the matter. On this aspect, the Hon'ble Supreme Court has held that there is no bar in initiating both the proceedings simultaneously. In the judgment reported in 2005 (1) AISLJ page 197 in the case of **MANAGEMENT OF KRISHNAKALI TEA ESTATE vrs. AKHIL BHARATIYA CHAH MAZDOOR SANGH**, para-21 and 22 are relevant on this aspect. In the said judgment the Hon'ble Supreme Court has also referred to its earlier judgments rendered in the case *Cpt. M. Paul Anthony vrs. Bharat Gold Mines Ltd. And Another*, AIR 1999 SC 1416; *M/s Burn and Co. Limited vrs. Their Workmen and Others*, AIR 1959 SC 529.



15. The issue regarding allegation of misappropriation causes loss of confidence. The Courts and Tribunals should not interfere in quantum of penalty. The said issue has been decided by the Hon'ble Apex Court reported in 2005 (1) AISLJ , page 127 in the case of **DIVISIONAL CONTROLLER, KSRTC (NWKRTC) VRS. A.T.MANE** wherein Their Lordships of the Hon'ble Apex Court has held that dismissal is not harsh for misappropriation of money. Paras 11 and 12 of the said judgment are relevant. In the said judgment, the Hon'ble Apex Court has referred the case of **Karnataka State Road Transport Corporation vrs. B.S. Hullikatti ((2001) 2 SCC 574)**. The said issue has also been decided by the Hon'ble Apex Court in the case of **REGIONAL MANAGER, RAJASTHAN STATE ROAD TRANSPORT CORPORATION vrs. SOHAN LAL** reported in 2005 (1) AISLJ page 232. Para 11 of the said judgment is relevant.

16. We see from the impugned order, the judgments referred to above are applicable. But we are quashing the impugned order of the Director of Postal Services (Hqrs.) dated 19.12.2000 under Annexure/A/6 on the ground that he is functus officio to deal with the appeal of the Applicant by exercising his powers as Appellate Authority. He having exercised his




22

15

power as Disciplinary Authority and having passed the final order, has no power to entertain the appeal dated 3.8.2000 of the Applicant since the appeal lies to the authority higher to the Disciplinary Authority. The Applicant has cited two judgments of this Tribunal of Ernakulam Bench reported in (1990)14 Administrative Tribunals Cases 619 rendered in the case of **P.M.ABDUL KHADER vrs. UNIN OF INDIA AND OTHERS.** In the said case the impugned order was passed by the Assistant Divisional Engineer and not by the Assistant Engineer and therefore, it was held that the impugned order was bad in law for having the same was passed by an incompetent authority. Para 6 of the said order is relevant; which is extracted below:-

“6.It can be said that a Group ‘A’ Officer can pass an order of punishment for which a Group ‘B’ Officer is competent. Such an argument cannot be accepted. An authority which has been given a specific statutory power can exercise that power itself and no authority higher or lower can do that unless the higher or lower authority is also concurrently given similar powers. A statutory authority has to exercise the conferred powers in isolation and distinct from any other authority higher and lower. No other authority which does not enjoy that power can exercise that power directly or constructively merely on the ground that it is superior in status to the statutory authority.”

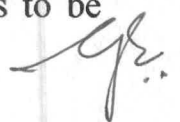
Applicant has also referred to the judgment reported in 250.Swamy's CL Digest 1996/1 rendered by the Ernakulam Bench of this Tribunal in the case of **K.K.RAMAKRISHNAN vrs. POSTMASTER**



27
16
GENERAL, CENTRAL REGION, KOCHI AND OTHERS. which
relying upon the judgment rendered by the Hon'ble Supreme Court in the
case of *State of Gujarat and another VRS. Messers. Krishna Cinema and
others* (AIR 1971 SC 1650) held as under:-


"In this case, it is not in dispute that the appointing authority is the R-2. The impugned order issued by R.1 who is not the statutory authority states: "I direct that Shri E.K. Vijayan be appointed to the post of EDDA". It is clear in the light of the settled law that higher authority cannot usurp the powers of the statutory authority which might be lower in the administrative hierarchy. Power under the statutes or statutory rules can be exercised by an authority only if it is conferred on him by the statute or statutory rule. Powers of administrative supervision available at the higher levels of administration do not by implication confer on such higher levels the statutory power which is exercisable by lower levels. Nothing prevented the legislature from conferring the powers of the appointing authority on R.1 instead; of R.2, if as R.1(A) implies, the powers of appointment are not being properly exercised at the level of R.2 or from conferring revisional or review powers by appropriate rules in this behalf on an authority higher than R.2. The impugned order is without jurisdiction and on that ground cannot be sustained, and is accordingly quashed."

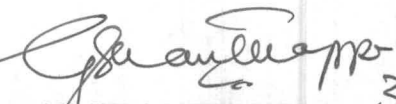
17. In view of the discussions made above, the impugned order passed by the Director of Postal Services dated 19.12.2000 under Annexure-A/6 is not sustainable in the eye of law. We are therefore, of the considered view that since the Director of Postal services (Hqrs.) has no authority to deal with the appeal of the Applicant dated 3.8.2000, the same has to be



17
decided by the Competent Authority higher than the Director Postal Services (Hqrs.). We, accordingly, quash the impugned order dated 189.12.2000 under Annexure-A/6 and remit the matter back to the Respondents to pass appropriate reasoned order considering all aspects of the matter and keeping in view the discussions held above.

18. In the result this Original Application is allowed in part.No costs.


(B.N.SOM)
VICE-CHAIRMAN


(G.SHANTHAPPA) 30/3
MEMBER(JUDICIAL)