

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.1195/2002.
Cuttack, this the 07th day of July, 2005.

SRIKARA MAHANANDA
VERSUS
UNION OF INDIA & ORS.

APPLICANT.
RESONDENTS.

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of the CAT or not? *yes*

 (B.N.SOM)
VICE-CHAIRMAN

(M.R.MOHANTY)
MEMBER(JUDICIAL)

03/03/03 -

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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

Original Application No. 1195 of 2002
Cuttack, this 07th day of July, 2005.

C O R A M:-

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

Srikan Mahananda, aged about 42 years,
S/o. Late Kaldar Mahananda,
Village- Jalia, Po- Kandhakelgaon,
Ps. Deogaon, District- Bolangir. **APPLICANT.**

For the Applicant:- Mr. D.P. Dhalsamant, Advocate.

VERSUS

1. Union of India represented through its Director General, Department of Posts, Ministry of Communication, Govt. of India, Dak Bhawan, New Delhi-110 001.
2. Member (Personnel), Postal Service Board, New Delhi- 10 001.
3. Director, Postal Services, Berhampur Region, Berhampur – 760 001.
4. Superintendent of Post Offices, Kalahandi Division, Bhawanipatna, Kalahandi- 766 001. **RESPONDENTS.**

For the Respondents:- Mr. U.B. MOHAPATRA, SSC.

O R D E R

MR. M.R.MOHANTY, MEMBER (JUDICIAL):-

Applicant, while was working as Sub-Postmaster of Charbahal Sub Post Office, was issued with a charge-sheet under Rule 14 of the CCS (CCA) Rules, 1965 on 20-03-1997 and, ultimately, he was removed from Service by an order issued on 30.06.1998. Thereafter, he unsuccessfully carried the matter in appeal and in Revision. In the said premise this Original Application has been filed under section 19 of the Administrative Tribunals Act, 1985 challenging the removal from service that was confirmed in his Appeal and Revision. He has also prayed for a direction (to the Respondents) for his reinstatement with all consequential benefits.

2. Respondents-Department have filed a counter denying the case of the Applicant.

3. We have heard Mr. D.P. Dhalsaat, Learned Counsel appearing for the Applicant and Mr. Uma Ballav Mohapatra, learned Senior Standing Counsel appearing for the Respondents and perused the materials placed on record.

4. The learned counsel for the Applicant has submitted that the impugned order of punishment of removal and the rejection orders of the Appellate & Revisional Authorities are not sustainable in the eye of law; as the same have been based on no evidence and as against all canons of justice, equity and fair play inasmuch as (i) the documents asked for by the Applicant (and directed, by the Inquiring Officer to the Presenting Officer, to be produced during the enquiry) could not be produced, (ii) Listed documents could not be supplied to the Applicant, (iii) Certain documents were relied upon as evidence, without being produced by the person having custody of the same, (iv) Statement recorded during enquiry has not been countersigned by the witnesses, (v) documents at Exbts. 1 and 11 were produced without the original, (vi) non crediting of any small amount not being very uncommon, which remains undetected for so many reasons and basing on such mistake one should not be visited with the punishment of removal, (vii) Inquiring officer held that part of the charge of Article IV is proved without stating which part and for what reason, (viii) vital /material witnesses were not examined in support of the charge No. IV, and (ix) written brief submitted by the applicant had not been taken into consideration. He therefore, prayed for quashing of the impugned order of punishment.

5. As against this, the Respondents have submitted that the written brief of the applicant was not signed by the Applicant and it was received from his AGS by Regd. Post only on 13-05-1998; whereas the Inquiring Officer prepared his report on 08-05-1998 and as such there were no scope for the I.O. to take note of the unsigned written brief of the Applicant, out of 35 listed documents , 26 documents were produced in the inquiry and non production of other documents (at Sl.Nos.4,9,14,19,20,21,22,25 and 26) did not stand as barricade in proving the charges framed against the Applicant; the Applicant was provided all reasonable opportunity to defend his case during enquiry and that, the charges were drawn on the basis of the available documents and basing on the statements made by the witnesses during enquiry. As regards the plea of the applicant (with regard to non signing of the statements by the witnesses) , it was submitted by the Respondents that the said plea is far from truth; as all the witnesses signed the statements recorded during enquiry. It has been submitted by the Respondents that Xerox copies of documents did not lose its evidentiary value; more so those were being authentic documents/being duly attested by the Applicant. It has been submitted by the Respondents that Rs. 22,9000/- credited at Bhawanipatna HO on 13.1.1994 included the defrauded amount of Rs.2,00,000/- (in respect of Charbahal 1 (one)Year TD

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Account No. 14201) and penal interest thereon. But in reality deposit of Rs. 2,00,000/- in respect of the said account was not accounted for at Charbahal SO on 09-02-1993 and the applicant did not credit Rs. 50/- in respect of charbahal RD Account No. 7090365 in Post Office account, on 30-01-1993, with dishonest motive. As regards the plea of the Applicant that charge No.IV has been held to be proved partly, without specifying which part of the charge, it has been submitted by the Respondents that this part of the charge relates to four accounts and the IO had categorically reached the findings that charge relating to one year TD Account No. 14207 has been proved. By stating so , the Respondents have reiterated that since the charges are serious in nature and since there was no lacunae in the departmental proceedings and adequate opportunity was given to the Applicant and the same was based on adequate evidence, this Tribunal should not interfere in the matter.

Before recording our findings, it is worthwhile to mention the charges leveled against the Applicant; which are as under:-

ARTICLE:I

Shri Srikar Mahananda while functioning as Sub Post Master,Charbahal SO during the period from 25.07.1990 to 16.12.1993, on 9.2.1993 has opened two one year Time Deposit Accounts bearing one and same account No. 14201, one in the name of Shri Jugajit Mahananda for Rs. 50/- and the other in the name of Shri Biranchi Narayan Meher for Rs. 200000/- (Rupees two lakhs) which is

pledged as security to the Executive Engineer. Shri Srikanth Mahananda has taken the amount of Rs.50/- only in to PO account but did not take the amount of Rs.200000/- (Rupees two lakhs) into PO account.

Further Sri Srikanth Mahananda when was asked by the Executive Engineer, U.I. Left Canal Division No. IV Dharmagarh vide his letter No. Camp (1) dated 08.10.1993 to intimate genuineness of the one year TD account No. 14201 for Rs. 200000/- which is pledged as security to the later, Shri Mahananda in his official capacity confirmed the Executive Engineer UI Left Canal Division No. IV to be genuine under his letter No. SPM/SB/93-94 dated 12.10.1993.

Therefore, it is alleged that Sri Srikanth Mahananda failed to maintain integrity and devotion to duty as required of him under sub rules (i) & (ii) of Rule 3(l) of CCS (Conduct) Rules, 1964.

ARTICLE-II.

Sri Srikanth Mahananda while functioning as Sub Postmaster Charbahal sub Post Office during the period from 25.07.1990 to 16.12.1993, on 18.09.1993 has issued a one year TD Account No. 14210 for Rs. 200000/- (Rupees two lakhs) in the name of Sri Malaya Kumar Mund but did not take the amount of Rs. 200000/- into PO account. On 20.09.1993 Shri Mahananda once again opened a one year TD account No. 14210 for Rs. 1800/- (Rupees one thousand eight hundred) in the name of Shri Asutosh Panda and has taken this amount of Rs.1800/- into PO account on 30.09.1993.

It is, therefore, alleged that Shri Srikanth Mahananda failed to maintain integrity and devotion to duty as required of him under sub rules (i) and (ii) of Rule 3(l) of CCS (Conduct) Rules, 1964.

ARTICLE-III.

Sri Srikanth Mahananda while functioning as Sub postmaster, Charbahal Sub Post Office during the period from 25.07.1990 to 16.12.1993, on 30.01.1993 has shown a deposit of Rs.50/- (Rupees fifty) only against one RD account No. 7090365 standing open in the name of Shri Kedarnath Sabar minor son of Shri Subudhi Sabar for

the month of January, 1993 but did not take the amount into account.

It is therefore alleged that Sri Srikar Mahananda failed to maintain integrity and devotion to duty as required of him under sub rules (i)& (ii) of Rule 3(l) of CCS (Conduct) Rules, 1964.that Sri Srikar Mahananda failed to maintain integrity and devotion to duty as required by him under sub rules (i)&(ii) of rule 3(l) of CCS(Conduct) Rules, 1964".

6. Having regard to the charges, and having considered the submissions of the rival parties, it is seen that the charges leveled against the Applicant were grave in nature. It is the well settled principles of law that in the matter of disciplinary proceeding, this Tribunal is only concerned as to whether the Applicant/delinquent official had been afforded reasonable opportunities to defend his case and/or the principles of natural justice had been complied with and whether the decision taken by the disciplinary authority was based on materials available on record and that as to whether proper procedure of law/rules had been observed in each and every step of the proceeding or not. It is also the well established law that the Tribunal should not act as an appellate authority over the decision of the disciplinary authority and/or re -appreciate the evidence to come to a finding that a better order could have been passed. Thus the role of the Tribunal in so far as disciplinary matters are concerned is very limited to that of a dispassionate superintending authority.

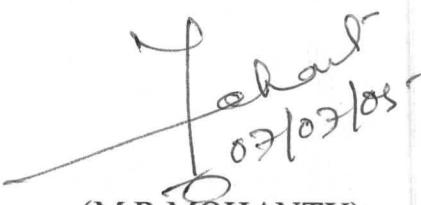
7. In the above circumstances, the Tribunal is required to deal with this case within the scope and ambit of the above noted parameters. It is the case of the Applicant that the documents called for by him were not supplied to him. It is the case of the Respondents that the Applicant had been given the documents which were available and, basing on the same the charges were only proved. As regards the other plea of the Applicant (that he was not given all the documents) is of no use in view of the specific reply of the Respondents that the charges were proved basing on the available records; copies of which were supplied to the Applicant. The Applicant has not been able to make out a case as to how he was prejudiced by that action of the Respondents. It is the Applicant who should have agitated this matter before the disciplinary authority, while replying/representing on the inquiry report supplied to him. The applicant has not placed any material to show that he had, in fact, raised this point before the disciplinary authority. Having not been able to substantiate this fact, the Applicant is estopped to raise this issue before this Tribunal. As regards the other points raised by the Applicant , it has been answered by the Respondents that, basing on the witnesses and available records, the charges have been proved. This categorical submission of the Respondents has also not been refuted by the Applicant by filing any rejoinder. That apart charge No. III, has been

proved basing on the admission of the Applicant. But it has been alleged that as there was no finding of ill, the intention question of misconduct does not arise warranting imposition of the impugned order of punishment. This plea of the applicant does not hold any water as in the charges leveled against the applicant it was clearly alleged that he failed to maintain absolute integrity and devotion to duty and that, on enquiry, his failure was clearly established. It is the settled position of law that the very discipline of an organization is dependent upon each of its officers and officers acting and operating in their allotted sphere and failure to discharge the obligatory duties is by itself a breach of discipline and is a misconduct. That apart, it is to be noted here that when a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and, if not, the Court must strike down the action. But while doing so, the Court must remain within its self imposed limits. Even while exercising the powers of judicial review of administrative action, the Court is not to act as an appellate authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the

Constitution lies within the sphere of legislature or executive. The Applicant has utterly failed to show that the punishment awarded by the disciplinary authority (or, to say, of the appellate authority) is in any way excessive or against the rules of law. Rather the disciplinary authority, while awarding punishment in the instant case, has taken a lenient view which does not warrant intervention of the Tribunal. In the said circumstances, we are of the view that this O.A. is to fail and the same is, accordingly, dismissed. No costs.



(B.N.SOM)
VICE-CHAIRMAN



M.R. Mohanty
09/03/05
(M.R.MOHANTY)
MEMBER (JUDICIAL)