

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No.269 of 2007  
Cuttack, this the 19<sup>th</sup> day of January, 2010

Banabihari Panda .... 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?

  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

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

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A.No.269 of 2007  
Cuttack, this the 19<sup>th</sup> day of December, 2009

C O R A M:  
THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)  
A N D  
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Sri Banabihari Panda, aged 66 years, S/o. Late Bhimsen Panda,  
resident of Vill/Po.Ambasal, Via-Machhagaon, Dist. Jagatsinghpur.

.....Applicant

Legal practitioner :M/s.P.K.Padhi Counsel

- Versus -

1. Union of India represented through its Chief Postmaster General (Orissa Circle), At/Po. Bhubaneswar, Dist.Khurda-751 001.
2. Director of Postal Services (Hqrs.), O/O. the Chief Postmaster General (Orissa), At/Po.Bhubaneswar, Dist. Khurda, PIN 751 001.
3. Superintendent of Post Offices, Cuttack South Division, At:P.K.Parija Marg, Po.Cuttack GPO, Dist. Cuttack-753 001.
4. Senior Superintendent of Post Offices, Bhubaneswar Division, At/Po.Bhubaneswar, Dist. Khurda 751 009.

....Respondents

Legal Practitioner :Mr. U.B.Mohapatra, SSC

O R D E R

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

Order of removal dated 17.05.2004 (Annexure-A/6) from the post of EDBPM, Ambasala Branch Post Office in account with Machhagaon Sub Post Office under Jagatsinghpur Head Post Office in Cuttack South Division, order of the Appellate Authority dated 18<sup>th</sup> March, 2005 (Annexure-A/8) and the order dated 21.06.2006 (Annexure-A/9) of the Revisional Authority have been challenged by the Applicant in this Original Application filed U/s.19 of the Administrative Tribunals Act, 1985 by making the following prayers:

“In view of the facts stated above, it is therefore humbly prayed that the Hon'ble Tribunal may kindly be pleased to quash Annexure-A/6, A/8 & A/9. And further be



pleased to direct the Respondents to provide all consequential benefits.

And any other order/orders as the Hon'ble Tribunal deems just & proper in the interest of justice.

And for this act of kindness the applicant as in duty bound shall remain ever pray."

2. It is the contention of the Applicant in support of the relief claimed in this OA that as there has been miscarriage/injustice caused in the decision making process of the matter inasmuch as non-credit of Rs.1500/- has not been proved by the IO, the payee has admitted to have received the money order and Rs.100/- has been credited to the Government Account on 12.07.99 instead of 09.07.1999 he has been imposed with the harsh punishment of 'dismissal' which is not sustainable in the eyes of law. Further contention of the applicant is that he was not supplied with the relied documents for which he was prejudiced to submit effective explanation to the charge sheet and that without considering the reply submitted by the applicant after receipt of the charge sheet, IO and PO were appointed. Applicant asked the IO to supply some additional documents which, on one pretext or the other, was denied to him although those documents were very much essential and vital for the charges framed against the applicant. Though report of the GEQD was one of the basic documents of forming opinion by the IO, the same was not supplied to the Applicant nor the person who furnished the report or produced the report had ever been produced for examination and cross examination. IO took into consideration the report of the GEQD without verifying whether the same was supplied to the applicant. Similarly, the IO held charge No.3 as proved in absence of corroborative statement of the depositors. Respondent No.4 being not the appointing authority of the Applicant, he ought not to have been appointed or imposed the order of punishment as has been imposed on the applicant. In essence it is the stand of the Applicant that the report finding the applicant guilty of the charges is based on conjecture and surmises and bereft

of the materials available before the IO. Next submission of the Applicant is that due to his old age disease he could not submit the revision on time and though power has been vested with the authority to condone the delay and it is trite law that though hyper-technical law of limitation should not stand on the way of dispensation of justice, the revisional authority rejected the revision petition of the applicant by applying the hyper-technical rule of limitation instead of deciding the matter on merit. For the above grounds, it has been contended by the Applicant that this OA deserves to be allowed.

3. Respondents by filing counter as also through Learned Senior Standing Counsel denied the assertion of the Applicant that there has been injustice caused to him in any manner in the decision making process of the matter. It has been stated by Respondents that the findings of the IO are based on records and the DA reached the conclusion and imposed the punishment which was ultimately upheld by the Appellate Authority after going through the report of the IO and the materials based on which the IO reached such conclusion. It has further been contended by the Respondents that there was no application or prayer made by the Applicant in his revision petition seeking condonation of delay. For the first time the applicant took the plea of making the revision belatedly which needs no consideration. On the above ground, the Respondents prayed for dismissal of this OA.

4. No rejoinder has been filed by the Applicant denying or clarifying the stand taken by the Respondents in their counter.

5. Before proceeding to deal with merit of the matter, it is significant to note that it is trite law that Courts/Tribunal can interfere in the disciplinary proceedings and in the order of punishment imposed thereby on an employee if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the

materials before him and within the frame work of the law, could have arrived at. The Courts/Tribunal would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court/Tribunal would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him; nor could the Court/Tribunal substitute its decision to that of the administrator (Ref: **Union of India and another v G.Ganayutham (death)) by LRs, AIR 1997 SC 3387.** Circumstances leading to interference in Disciplinary Proceedings, have more exhaustively been dealt with by the Hon'ble Supreme Court in the case of **State Bank of Patiala & Others v S.K.Sharma, JT 1996 (3) SC 722.** 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. There were four articles of charges framed against the Applicant and they are as under:

Article No.I

That Sri Banabehari Panda who is working as GDS BPM Ambasal BO in account with Machhagaon SO under Jagatsinghpur HQ since 25.2.65 received Lachhipada MO No.1991 dated 18.8.99 for Rs.2000/- payable to Sri Jagabandhu Mohanty of Village Nuagaon, PO-Ambasal, Via Machagaon on 21.8.99 and has shown payment of aforesaid MO to Sri Jagabandhu Mohanty on 27.8.99 for forging the signature of said Sri Mohanty. Thus the said Sri Banabehari Panda violated the provisions of rule 109 of rules for branch offices seventh edition (reprint) corrected up to 31<sup>st</sup> March, 1986.

By the above acts the said Sri Banabehari Panda in the capacity of GDS BPM Ambasal BO failed to maintain absolutely integrity and devotion to duty and thereby violated the provisions of Rule-21 of GDS (Conduct and employment) Rules, 2001.

Article No.II

That Sri Banabehari Panda who is working as such since 25.2.65 received Medlacheruvu MO No.4098 dated 16.8.99 for Rs.2000/- payable to Sri Dijabara Jena of village Nanda PO Ambasal via Machhagaon on 24.8.99 and has shown payment of aforesaid MO to Sri Dijabara Jena on 27.8.99 by forging the signature of said Sri Jena. Thus the said Sri Panda violated the provisions of Rule 109 of Rules for Branch offices Seventh Edition (Reprint) corrected upto 31.3.1986.

By the above acts the said Sri Banabehari Panda in the capacity of GDSBPM Ambasal BO failed to maintain absolute integrity and devotion to duty and thereby violated the duty and thereby violated the provisions of Rule 21 of GDS (Conduct and Employment) Rules, 2001.

Article No.III

That Sri Banabehari Panda while working as such during the aforesaid periods on 9.7.99 made entry of deposit of Rs.100/- (one hundred) only in SB pass book a/c No.950620 standing in the name of Prafulla Kumar Mohapatra under his initial with date stamp impression of Ambasal BO dated 9.7.99 on receipt of the aforesaid amount and the aforesaid Pass Book from the depositor, but accounted for the aforesaid amount of deposit on 12.7.99. Thus the said Sri Banabehari Panda violated the provisions of Rules 131 and 174 of rules for Branch Offices sixth Edition (2<sup>nd</sup> reprint).

By his above acts the said Sri Banabehari Panda in the capacity of GDSBPM Ambasal BO failed to maintain absolute integrity and devotion to duty and thereby violated the provisions of Rule 21 of GDS (Conduct and Employment) Rules, 2001.

Article -IV.

That Sri Banabehari Panda while working as such during the aforesaid periods on 23.06.99 made entry of deposit of Rs.1500/- (one thousand five hundred) only in SB pass book a/c no.952201 standing in the name of Jyoti Ranjan Mohapatra under his initial without date stamp impression of Ambasal BO on receipt of the aforesaid amount and the aforesaid pass book from the depositor but did not account for the same either on 23.6.99 or subsequently thereafter. Thus, the said Sri Banabehari Panda violated the provisions of rules 131 and 174 of rules for branch offices.

By this above acts the said Sri Banabehari Panda in the capacity of GDS BPM Ambasal BO failed to maintain absolute integrity and devotion to duty and

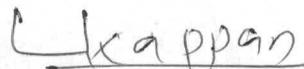
14  
 thereby violated the provisions of Rule 21 of GDS (Conduct and employment) Rules, 2001."

6. Though Applicant received copy of the report of the IO, thereafter submitted its reply and now claims that the said report is based on no materials yet he preferred not to produce copy of the same to enable this Tribunal to know which of the findings of the IO are based on no record. However, we have gone through the points raised by the Applicant in his representations of the applicant vis-à-vis the order of the disciplinary authority and appellate authority. We see that after taking into consideration all the points raised by the Applicant in his representations the Disciplinary Authority imposed the order of punishment which was ultimately upheld by the Appellate Authority. The plea of the applicant that non-supply of documents prejudiced him in defending his cannot be a ground to interfere in the matter in absence of specific instances as to how he was prejudiced as held by the Hon'ble Apex Court in the case of **Harayana Financial Corporation and another v Kailash Chandra Ahuja**, (2008) 2 SCC (L&S) 789. Similarly, Respondent No.4 is higher than the appointing authority and his appeal was considered by the next higher authority. It is not known how the applicant was prejudiced by the passing of order by the Respondent No.4 who is admittedly an authority who is higher than the authority who had appointed him. From the records it is revealed that the misappropriation is well supported by the depositions. Similarly, the orders of the authorities are well reasoned. We also do not see that the punishment is in any manner shocking to judicial conscience; as in the case of proved misappropriation dismissal is not unjustified. This is also fortified by the decision of the Hon'ble Apex Court in the case of **Municipal Committee, Bahadurgarh v Krishan Bihari and others**, AIR 1996 SC 1249 in which it has been held by the Apex Court that "in a case of such nature-indeed, in cases involving corruption-there cannot be

1

any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant."

7. For the discussions made above, we find no merit in this OA; which is accordingly dismissed. No costs.



(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)



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