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THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 117 of 2006
Cuttack this the 18th day of February, 2011

Subhash Chandra Agrawal Applicant
-Versus-
Union of India & Ors. Respondents

FOR INSTRUCTION

1. Whether it be referred to reporters or not? *Ans*
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? *Ans*

Ale
(A.K.PATNAIK)
Member(Judl)

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(C. R. MOHAPATRA)
Member (Admn.)

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CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
A N D
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Sri Subhash Chandra Agarwal, aged about 58 years, Son of Late N.C.Agrawal, SDE (Sub Divisional Engineer), BSNL, Civil Circle, Bhubaneswar, Sanchar Bhawan, Unit-IX, Bhubaneswar residing in Flat No.101, Block A Okilbagh Enclave, Cuttack Road, PO. Budheswari Bhubaneswar 0751 006, Dist. Khurda, Orissa.

..Applicant

Legal Practitioner: M/s.K.C.Kanungo,S.K.Pattnaik,S.Beura, Counsel
-Versus-

1. Union of India represented through the Secretary, Ministry of Communication and Information Technology, Sanchar Bhawan, 20 Ashoka Road, New Delhi.
2. Member (Production), Telecom Commission, Ministry of Communication & Information Technology, Sanchar Bhawan, 20 Ashoka Road, New Delhi.
3. Chief General Manager, Telecom, BSNL, Orissa, Circle, PS:Kharvel Nagar, Bhubaneswar-1.
4. Secretary to Union Public Service Commission, Dholpur House, Sahjanan Road, New Delhi-69.
5. Superintending Engineer, BSNL, Civil Circle, Sanchar Bhawan, Unit-IX, Bhubaneswar.

....Respondents

Legal Practitioner: Mr.S.B.Jena, ASC

O R D E R

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

The Applicant while working as Assistant Surveyor of Works, Office of the Executive Engineer, Telecom, Civil Division, Telecom, Administrative, Bhubaneswar-7, was

vide Annexure-A/1 dated 11/11/1997. The charge framed against the Applicant reads as under:

That S.C.Agarwal while working as Asstt. Engineer Telecom Civil Sub Division II, Bhubaneswar during 1994-95, connived with Shri S.K.Behl, the then Executive Engineer, Telecom, Civil Division, Bhubaneswar and prepared estimates for carriage of cement by road transport by splitting up the actual volume of work in order to avoid press publicity of the NITs, prepared rate justification reports at a higher side without conducting actual market survey and also unauthorisedly permitted the contractors to transport more quantities of cement than the approved quantity and thereby caused huge avoidable loss to the Telecom Department.

By his aforesaid action Shri Agarwal, committed grave misconduct inasmuch as he failed to maintain absolute integrity and devotion to duty and thereby contravened the Rule 3 (i)(ii) of CCS (Conduct) Rules, 1964".

2. The matter was enquired into. The Applicant participated in the enquiry. The IO submitted its report copy of which is placed at Annexure-A/5. Upon consideration of the reply submitted by the Applicant at Annexure-A/6 to the report of the IO at Annexure-A/5, the Disciplinary Authority vide order No.8-17/98-Vig.II dated 21st April, 2003 placed at Annexure-A/7, imposed the punishment of reduction of the applicant by two stages from Rs.9900/- to Rs.9500/- in the time scale of pay of Rs.6500-200-10500/- for a period of two years, without cumulative effect. The applicant preferred appeal dated 30.07.2003. Thereafter he approached this Tribunal in OA No.

157 of 2006. Ultimately, the said OA was disposed of by this Tribunal on 21.02.2006, with direction to the Appellate Authority to dispose of the appeal within a period of three months. The Appellate Authority disposed of the appeal upholding the punishment at Annexure-A/7 and communicated the decision to the Applicant in letter at Annexure-A/10. Being aggrieved by the action of the Respondents, Applicant filed this OA with prayer to quash the report of the IO as at Annexure-A/5, the order of punishment at Annexure-A/7, Appellate Authority order at Annexure-A/11 and the advice of the UPSC placed at Annexure-A/12. He also seeks to quash the Office Order under Annexure-A/9 passed by the Respondents consequent upon implementation of the order of punishment at Annexure-A/7.

2. According to the Applicant the report of the IO (Annexure-A/5), order of the Disciplinary Authority (Annexure-A/7) and the order of the Appellate Authority (Annexure-A/11) are not sustainable being bereft of any reason and without taking into consideration the points raised by the applicant in his explanation under Annexure-A/6 & A/8. Though he has taken the ground before the Authority as well as before the IO that he

has acted by the instruction of his immediate superior authority (Executive Engineer) to meet the urgency of procuring more cement, he should not have been a victim of selective treatment of getting the punishment letting the Executive Engineer off from the punishment. The quantities of cement transported were accounted for, taken to store and utilized for construction. There was no loss to the Government. This was corroborated by the statement of SW-2, Mr.Neogi, the then Executive Engineer. Procuring more cement than the agreement was required as Respondent No.3 took a decision to complete the work but payment was to be made to the contractors after March, 1994. Applicant has been punished without any evidence. Next submission of the applicant is that he has been visited with the punishment without any evidence and/or for that matter based on perverse findings which are not sustainable. Learned Counsel for the Applicant has relied on the decisions of the Hon'ble Apex Court in the cases of **Moni Shankar v Union of India and others** (2008) 1 SCC (L&S) 819, **Narinder Mohan Arya v United India Insurance Co.Ltd**, (2006) 1 SCC (L&S) 840, **S.N.Mukherjee v Union of India**, AIR 1990 II SC 1984; **Divisional Forest Officer, Kothagudem and others v**

State of Harayana and others (2009) 1 SCC (L&S) 170 and the decision reported in AIR 1964 SC 364 (at page 369) regarding the scope for the Courts/Tribunal to interfere in disciplinary proceedings cases and pleaded for the same.

3. On the contrary, Respondents filed their counter opposing the contentions of the Applicant and have prayed for dismissal of this OA. Their contention is that on the allegation as brought out in Annexure-A/1 the matter was duly enquired into. In the enquiry the applicant was provided with adequate opportunities to defend his case. After considering the statements recorded in the enquiry and based on the materials available on record, the IO held the charge partly proved. Copy of the report of the enquiry was forwarded to the applicant to which he has submitted his reply and upon consideration of the matter in its entirety, the Disciplinary Authority imposed the punishment under Annexure-A/7. On consideration of the points raised by the applicant, the Appellate Authority in consultation with the UPSC rejected the appeal of the applicant thereby upholding the order of punishment. As regards the contention of the applicant that although he acted on the instruction of the

Executive Engineer, he was exonerated whereas the applicant was visited with the punishment, it has been stated by the Respondents that each case is decided on its own merit and therefore merely because the EE was not visited with any punishment cannot be a ground to quash the order of punishment imposed on the Applicant. Accordingly Respondents have prayed for dismissal of this OA.

4. Through rejoinder applicant while reiterating some of the contentions raised in his Original Application has also rebutted some of the points raised by the Respondents in their counter. He also filed notes of submission after serving copy thereof on the other side.

5. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings. Having heard them at length, perused the materials placed on record. We have also gone through the decisions relied on by the Learned Counsel for the Applicant. Considering the specific submission of the Learned Counsel appearing for the Applicant that similar charge memo was issued to the Executive Engineer but with the same evidence and materials he was exonerated, vide order dated 03.12.2010 Mr.Jena, Learned ASC was

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directed to produce the disciplinary proceedings file of the Executive Engineer on 22.12.2010 to which date the matter was fixed for giving further consideration. Despite the positive direction, Learned ASC was not able to produce the file. However, we have examined the case in hand in detail and it is found that the plea taken by the Applicant that the order of the DA and AA are cryptic is not sustainable. It is seen that the orders of the DA & AA are exhaustive and warrants no interference on this score. But we find no cogent justification either in the orders passed by the DA and AA or even in the counter in regard to exonerating the Executive Engineer against whom for the same charge, proceedings were drawn up. In this context, we have gone through the decision of the Hon'ble Apex Court in the case of Man Singh v State of Harayana and others, (2009) 1 SCC (L&S) 170, the text of the decision is quoted herein below:

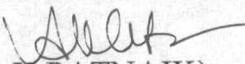
“The Respondent State cannot be permitted to resort to selective treatment to the appellant and Head constable VP, who was involved in criminal case besides departmental proceedings. Any act of repository of power, whether legislative or administrative or quasi judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could even have ever made it. The concept of equality as enshrined in Article 14 of the constitution, embraces the entire realm of state action. It would extend to an individual as well not only when he is

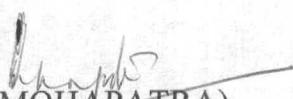
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discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. The doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a government action. The administrative action is to be just on the test of fair play and reasonableness [paragraph 20]. The order of disciplinary authority imposing punishment on the appellant as also the orders of appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-à-vis head constable VP the driver of the vehicle [paragraph 22]."

6. As recorded above, since despite opportunity, Respondents' Counsel failed to produce the connected records, we are constrained to draw ~~an~~ adverse inference and accordingly hold that for the same offence letting of the Executive Engineer who had permitted the applicant to do the ~~work, and at the~~^{some} time imposing the punishment on the applicant, cannot be sustainable in the eyes of law particularly in view of the law laid down by the Hon'ble Apex Court in the case of Man Singh (supra). Hence the order under Annexure-A/7 and Annexure-A/11 are hereby quashed.

7. In the result, this OA stands allowed. There shall be no order as to costs.


(A.K. PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)