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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 130 of 2008
Cuttack, this the 25th day of March, 2011

Gadadhar Majhi .... Applicant

-v-

Union of India & Others .... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? Yes.

2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? Yes.

(A.K.PATNAIK)
Member (Judl)

(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)

Shri Gadadhar Majhi, aged about 50 years, Son of Kalandi Majhi, At/Po.Badaserana, PS-Begunia, Dist. Khurda.

....Applicant

By legal practitioner: M/s.K.C.Kanungo,S.K.Pattnaik,S.Behera,Counsel

-Versus-

Union of India, represented through-

1. The Secretary, Communication-Cum-D.G.Posts, Dak Bhawan, New Delhi-1.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, New Capital-751 001, Dist. Khurda, Orissa.
3. Director of Postal Services(Hqrs), O/o.the Chief Postmaster General, Orissa, Bhubaneswar-751 001, Dist. Khurda, Orissa.
4. The Senior Superintendent of Post Offices, Sambalpur Division, Orissa.

....Respondents

By legal practitioner: Mr.U.B.Mohapatra, SSC

O R D E R

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

The Applicant, in this Original Application, filed U/s.19 of the A.T. Act, 1985, calls in question the charge-sheet issued vide Memo No.7/Misc.-11/99-2000 dated 05-11-2000 in Annexure-A/2, the order of penalty issued vide Memo No. F/Misc.-11/99-2000 dated 27-10-2003 in Annexure-A/4 and the

Appellate Authority order issued vide Memo No. ST/48-04/2004 dated 02-01-2004 in Annexure-A/6 on the ground that the charges, set out in Annexure-II and III to Annexure-A/2 are not good and sufficient enough to constitute misconduct. Hence both the orders (Annexure-A/4 & A/6) being baseless and misconceived are liable to be set aside and the Respondents be directed to reinstate the applicant forthwith in the post of GDSBPM of Badaberana Branch Post Office and to pay him the consequential arrear salary and other benefits with effect from 14-02-2001.

2. Respondents filed their counter contesting the case of the Applicant. No rejoinder has been filed by the Applicant.

3. The Applicant's Counsel contends that the charges levelled against the Applicant in Annexure-A/2 do not come within the purview of misconduct. This may be in the nature of trivial Departmental irregularity and was not good and sufficient enough to proceed against him under Rule 10 of GDS (Conduct & Employment) Rules, 2001. As such, based on such allegation, imposition of harsh punishment of removal is highly illegal and arbitrary. His contention is that one of the evidence for sustaining the charge was the Xerox counterfoil of a pay in slip though the said 'counterfoil' and 'Receipt' were not relevant in so far as the charge is concerned. In terms of the DGP&T instruction No.6-8/74-

Disc.1 dated 21-09-1974 and No.201/70/74-Disc.II dated 20.05.1976 the appointment of the IO should be either from a Division of the station or nearly different from the one to which charged official belongs. But the Respondent No.5 appointed Shri Kaiblya Prasad Parida who is working as Sub Divisional Inspector of Post Offices, Balugaon Sub Division directly under him. As such, the report submitted by him cannot be construed free from bias. The Disciplinary Authority passed the order of punishment without examining all the points raised by the Applicant in his reply to the report of the IO. The Applicant preferred appeal on 26.12.2003 whereas the Appellate Authority rejected the appeal of the applicant mechanically that too after passage of three years. Thereafter he preferred revision dated 20-02-2007 in Annexure-A/7. That the the punishment was disproportionate is also one of the grounds taken by the applicant and accordingly prayed for the reliefs claimed in this OA.

On the other hand, the sum and substance of the contention of the Respondents' Counsel is that the scope of judicial review in matters relating to disciplinary action against an employee has been well settled by a catena of decisions. The Hon'ble Apex Court unequivocally précised the law that the Tribunal or the High Court, exercising jurisdiction are not

hearing an appeal against the decision of the Disciplinary Authority imposing punishment upon the delinquent employee. The jurisdiction exercised by the Tribunal or the High Court is a limited one and while exercising the power of judicial review, they cannot set aside the punishment altogether or impose some other penalty especially when there has been no miscarriage of justice to an employee. His stand is that there was no infraction of any of the provisions of the Rules in the matter of conducting the enquiry or imposing the punishment to the Applicant. It is the prerogative of the DA to decide who should be the IO in a particular case. Merely because the IO appointed in this particular case was subordinate to the DA, this cannot be a ground to draw the inference of bias. However, if, according to the Applicant, the enquiry conducted by the IO was biased in any manner, he could have agitated the same then and there. He cannot have the choice to participate in the enquiry without any demur and when the report of the IO went against him can agitate that the appointment of the IO was in any manner irregular or not in accordance with Rules. Further it was contended by him that the charges levelled against the applicant were serious in nature. It was proved by the IO based on the materials and statements available with him. The Applicant participated and contested the matter in enquiry. There was no

procedural irregularity committed starting from issuance of the charge sheet till the imposition of punishment. The report of the IO, order of the DA so also AA are exhaustive leaving no room for doubt. The applicant was granted all reasonable opportunity in course of enquiry. Hence, it was prayed by the Respondents' counsel that this being a case of full proof evidence, no interference is warranted. Accordingly, Respondents' Counsel prayed for dismissal of this OA.

4. After giving consideration to various points raised by the parties, perused the materials placed on record.

5. We feel that there is no need to elaborately state the power and jurisdiction of the Courts/Tribunal to interfere in the disciplinary proceedings taken up against an employee of the Government except to state that Court/Tribunal cannot interfere with the findings of fact based on evidence and substitute its own independent findings and that even where the findings of the disciplinary authority or the Appellate Authority are based on some evidence the Court/Tribunal cannot reappreciate the evidence and substitute its own findings as judicial review is not an appeal from a decision but a review of the manner in which the decision is made and that power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure

that the conclusion which the authority reaches is necessarily correct in the eye of the Court.

6. We have minutely gone through the charge sheet under Annexure-A/2 but we find no reasonableness on the submission of the Applicant that the charges do not come within the purview of the misconduct. However, it is not for this Tribunal to decide which act of a Government servant comes under the purview of misconduct and which is not. At the same time, we record that if a Government servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct. It is sufficient if the conduct is prejudicial or is likely to be prejudicial to the interests or to the reputation of the Department. However, this was not a ground taken by the Applicant at any point of time other than in this OA. Therefore, this plea of the Applicant cannot be sustained.

7. In regard to the appointment of the IO, we also examined the point of argument advanced by the Learned Counsel for the Applicant with reference to the Rules. No where in the Rules, the DA is debarred from appointing a person working directly under him as IO. The instruction cited by him does not unequivocally also say so. However, if the applicant was in any manner prejudiced for this appointment of the IO he could have

agitated the same before his authority or before the appropriate court of law, prior to the conduct of the enquiry. Having not done so, and having participated with the enquiry and when the report of the IO went against him, making the plea that the appointment of the IO was not in accordance with DGP&T instruction is not acceptable in the eyes of law. Hence the said plea is accordingly rejected.

9. The plea that the disciplinary authority or the Appellate Authority had not correctly appreciated the objections taken by the delinquent to the report is normally not a plea which is available as a ground for judicial review. Perused the report of the IO, order of the DA & AA and on perusal of the orders it is conclusively proved that the above orders are well supported by reason warranting no interference by this Tribunal.

10. We also find no ground to interfere for non-examination of the vital witness in absence of any specific stand as to how for such non-examination of the witnesses, the applicant was prejudiced in any manner.

11. We have also gone through the charge sheet. It is seen that the charges levelled against the Applicant are grievous in nature. It is well settled law that when charges framed and proved

are grievous in nature normally an order of removal from service is passed in such cases as sentiments and compassion have no role to play in such a situation when the gravity of misconduct has been found well proved against the employee concerned.

12. Similarly, discretionary jurisdiction to interfere with quantum of punishment can only be exercised when inter alia it is found that no reasonable person could inflict such punishment or when relevant facts which would have a direct bearing on the question have not been taken into consideration. But on perusal of record, we find no such thing in the instant case, rather the charges are proved to the hilt. Hence the punishment of removal in no circumstances can be held to be disproportionate in any manner.

13. When the factual scenario is examined in the background of the legal principles set out above, the inevitable conclusion is that the OA deserves to be dismissed. As such, this OA stands dismissed by leaving the parties to bear their own costs.

(A.K.PATNAIK)
Member(Judl)

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