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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No. 112 of 2009  
Cuttack, this the <sup>25<sup>th</sup></sup> day of October, 2011


Shri Kantheswar Kanhar .... Applicant

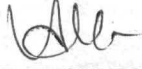
-v-

Union of India & Others .... Respondents

FOR INSTRUCTIONS

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

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

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

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A No. 112 of 2009

Cuttack, this the 25<sup>th</sup> day of October, 2011

CORAM:

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

Shri Kantheswar Kanhar, aged about 60 years, Son of Late Lankeswar Kanhar, permanent resident of Village- Kaladi, Post-Titrapanga, Via-Gumagarh, PS-Khajuripada, Dist. Kandhamal, presently residing at College Square of Phulbani town, Post. Phulbani, Dist. Kandhamal, Orissa-762 001.

.....Applicant

By legal practitioner: M/s.P.K.Padhi, J.Mishra, Counsel  
-Versus-

1. Union of India represented through its Member cum Secretary to Department of Posts, Postal Services Board, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Director of Postal Services, Berhampur Region, At/Po. Berhampur, Dist. Ganjam-760001.
3. Superintendent of Post Offices, Phulbani Division, At/Post-Phulbani, Dist. Kandhamal, Orissa-762 001.

....Respondents

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

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O R D E R

**A.K.PATNAIK, MEMBER (JUDL.):**

The Applicant, vide Memo No. F4-3/95-96 dated 11<sup>th</sup> February, 1998 under Annezxure-A/1 was charge sheeted under Rule 14 of the CCS (CC&A) Rules, 1965. It reads as under:

**“Article-I:**

Sri Kantheswar Kanhar while working as SPM Madimunda NDTSO during the period from 24.5.1993 to 21.8.93 made fraudulent withdrawals of Rs.1500/- on 11.8.93 and Rs.2000/- on 17.8.93 in the fake names of two messenger from madikunda SB account No.3090002 standing in the name of Krsihna Chandra Singh, reader in Chemistry Govt. College, Phulbani. The depositor denied to have received payment of both the above withdrawals and also denied to have sent any

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messenger for withdrawal of amount from his above SB account on both the occasions. The SB account No. 3090002 was also found to have already been transferred to Athagarh HO on 1.12.1982 much before the above dates of fraudulent withdrawals. Thus the said Sri Kantheswar Kanhar in the instant case acted in contravention of Rule 33 and 36 of post office savings Bank manual Volume I. The said Sri Kantheswar Kanhar also made an entry of part III deposit of Rs.1800/- in the modikunda SB ledger against SB account No.3090002 on 13.3.93 without receiving any intimation for such deposit from Phulbani HO although the account was already transferred to Athagarh HO since 1.12.82. Thereby the said Kantheswar other violated Rule 32(22) (b) of POSB Manual Vol.I.

Thus by his above actions the said Sri Kantheswar Kanhar failed to maintain absolute integrity, devotion to duty and also acted in a manner of unbecoming of Govt. servant and thereby violated the provisions of Rule 3(1)(i)(ii) and (iii) of GDS (Conduct Rules) 1964.

#### **Article-II:**

Sri Kantheswar Kanhar while working as SPM Madikunda SO during the period from 24.5.93 to 21.8.93 made entries of interest posting for 1980-81, 01-02, 03-04, 04-05 to 90-91 and 91-92 to 92-93 on 11.8.93 in madikunda SO SB ledger against SB account No.3090002 without receiving any authenticated document through SB slip from Phulbani HO although the above account standing in the name of Krishna Chandra Singh was long before transferred to Athagarh HO since 1.12.82. Thereby the said Sri Kantheswar Kanhar acted in contravention of Rule 74(2) and 77(1) of POSB Manual Volume-I.

Thus, by his above action the said Sri Kantheswar Kanhar failed to maintain absolute integrity, devotion to duty and also acted in a manner of unbecoming of a Govt. servant and thereby violated the provisions of Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964."

Simultaneously GR case No. 261/95, U/s. 409 IPC was registered before the Learned CJM, Phulbani. The substance of the allegation in the Criminal Case, as it appears from the record, is as under:

"That the accused-appellant was the Sub Postmaster of Madikunda N.D.T.S.O which was functioning in the Government College Campus, Phulbani from 25.5.93 to 21.8.93. One Krushna Chandra Singh was working as Lecturer in Chemistry in the Govt. College. Phulbani and opened his Saving Bank Account on 21.2.1978 in the said post office vide his A/c.No.3090002. Subsequently his account was transferred to Athagarh Headquarters Post Office on 2.12.82. Later it was

detected that Rs.1500/- was withdrawn from this transferred account on 11.7.93 and Rs.2000/- was withdrawn on 17.8.93 and the withdrawal slips purported to have been signed by the said Krushna Chandra Singh. It is further alleged that Rs.1500/- was paid through one messenger P.K.Sahu and Rs.2000/- paid to the messenger Ramakanta Mishra....”

2. In the Departmental Proceedings, the matter was duly enquired into by the IO appointed by the DA who held the charges proved. After following due procedures of Rules, the Disciplinary Authority, vide order under Annexure-A/4 dated 16.6.99 imposed the punishment as under:

“I fully agree with the findings of the IO that both the charges against the SPS are proved beyond doubt basing on various documents and the oral inquiry. The duty in the Post Office need to be carried out with highest sense of honesty and integrity, as handling of public money and faith is involved. The SPS Sri Konjhar has failed miserably to carry out his duties with honesty and devotion to duty, as required under rules. As the charges have been fully proved, he is not fit to continue in Government service. Taking into account all aspects of this case and long years of service rendered by the official in this department I Sri S.K.Kamila, Director Postal Services, Berhampur Region order compulsory retirement of Sri Kantheswar Konjhar from Government service with immediate effect.

3. Instead of Appeal, a petition dated 29.11.1999 was made by the Applicant, (long after expiry of the period provided for making appeal against the order imposing punishment by DA) to the Member(D), Postal Service Board, seeking cancellation of the order of punishment under Annexure-A/4.

Meantime in GR case No.261/95 the Applicant, vide order dated 5.8.2000 was convicted by the Learned CJM, Phulbani.

The Member (D), Postal Service Board, Government of India, Ministry of Communications, Department of Posts, New Delhi rejected the petition dated 29.11.1999 and communicated the reasons of rejection under Annexure-A/5 dated 9th August, 2001. Relevant portion of the order under Annexure-A/5 reads as under:

“6. To sum up, the procedure laid down in the rules has been compelled with; the findings of the disciplinary authority are warranted by evidence on the record; and the penalty imposed is appropriate and commensurate with gravity of the proven misconduct. Accordingly, the petition deserves to be rejected.

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7. In exercise of powers conferred vide Rule 29 of CCS (CCA) Rules, 1965, I hereby reject the petition."

4. The order under Annexure-A/4 dated 16.6.1999 and the order under Annexure-A/5 dated 09-08-2001 passed in Disciplinary Proceedings were not challenged by the Applicant in any of the proceedings before any Higher Authority or appropriate court of law. However, on appeal preferred by the Applicant, the Learned District & Sessions Judge, Phulbani vide order under Annexure-A/3 dated 08-08-2005 quashed the order of conviction awarded against the applicant holding therein that the prosecution failed to bring home the charge against the applicant beyond all reasonable doubt. Thereafter, the applicant, as it appears from the record kept silent in the matter of imposition of punishment and rejection of his petition preferred before the Member (D) Postal Board and rose from the slumber by way of making representation only on 17.03.2006 (before the Supdt. of Post Offices, Phulbani Division, Phulbani), and another one dated 11.7.2006 (before the Director of Postal Services, Berhampur Region, Berhampur), dated 13.5.2007 (before the Chief Postmaster General, Orissa Circle, Bhubaneswar) dated 27.8.2007 (before the Postmaster General, Berhampur Region, Berhampur) with different prayers. Thereafter, alleging non-consideration as well in action on his repeated representations, the Applicant has approached this Tribunal in the present Original Application seeking to quash the orders under Annexure-A/4 dated 16-06-1999 as well as under Annexure-A/5 dated 09-08-2001 and to direct the Respondents to treat the applicant to be in service till the date of his normal date of retirement with all consequential benefits including back wages.

5. The contention of the Applicant is that the appointment of a retired official to act as IO and imposition of punishment under Annexure-A/4 dated 16-06-1999 based on the said report, being bad in law is not sustainable. The Respondents ought not have conducted and concluded the departmental proceedings before finalization of the criminal case instituted on the same set of allegation/charges. Further

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the Applicant having been acquitted in the criminal case which was initiated on the same set of charges/allegations, the finding of guilty reached by the IO is not sustainable and, thus, the applicant should have been reinstated to service. Further contention of the Applicant is that the disciplinary proceedings was conducted and concluded holding the applicant guilty of the charges in violation of the principles of natural justice as relevant documents was not supplied to him despite his repeated request and no importance/weightage was given by the IO to the statement of the defence witness. Hence, according to the Applicant, he is entitled to the relief as claimed in the OA.

On the other hand, Respondents in their counter have objected to the prayer of the applicant. It was contended that none of the grounds set forth in the OA is sustainable in the eyes of law so as to enable the applicant to get the relief as claimed by him in this OA. It has been stated that the departmental proceedings were initiated and concluded in accordance with Rules. The Applicant was allowed all reasonable opportunities to defend his case after which the IO has come to the conclusion of guilty of the applicant and after consideration of the report of the IO, reply of the Applicant and all other connected records, the Disciplinary Authority imposed the lenient punishment of compulsory retirement. The Respondents by citing the provisions of the DGP&T instruction No. 13/2/87-Vig.III dated 9.12.1988 have denied the assertion of the applicant to the extent that appointment of a retired person to act as IO de hors the Rules. They have also denied the contention of the Applicant that as the applicant has been acquitted in the criminal case, the order of punishment imposed by the DA and affirmed by the Member (D) of Postal Service Board are non est in the eyes of law. It has been contended that

the Applicant was held guilty. In substance it is the contention of the Respondents that the 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 any procedural improprieties or was one which no sensible decision-maker could, on the materials before him and within the frame work of the law, have arrived at. The 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 Tribunal would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him; nor could the Tribunal substitute its own decision to that of the administrator. According to the Respondents since the punishment imposed on the applicant was based on established facts, after following due procedure of Rules and natural justice, there is hardly any scope for this Tribunal to interfere in the matter. Hence the Respondents have prayed for dismissal of this OA.

6. Despite due opportunity by way of giving adequate time after receipt of counter reply of the Respondents, no rejoinder was filed by the Applicant.

7. Learned Counsel appearing for both sides have led emphasis on the points raised in their respective pleadings which we have noted above and after giving utmost consideration to the points raised by the parties, we have perused the materials placed on record including the decision of the Hyderabad Bench of this Tribunal rendered in **OA No. 45 of 2010** dated **31.08.2010 (R.B.Ravi Shankar V Chief General Manager, A.P. Circle and others)** relied on by the Applicant.

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8. It is worth mentioning to state here that the instant case was listed on 30.3.2009 for admission and on the specific request of the applicant's counsel to grant him some time to file petition for condonation of delay, the matter was adjourned to 8.4.2009. On 8.4.2009 again on the request of the applicant's counsel the matter was adjourned to 9.4.2009. Thereafter the matter was listed on 9.4.2009 along with MA No. 178 of 2009 seeking condonation of delay when after considering the submissions, this Tribunal issued notice to the Respondents keeping the law of limitation open. Therefore, it is the duty of the Tribunal, as ruled by the Hon'ble Apex Court in the case of **D.C.S.Negi -Vs -Union of India and others** in SLP (C ) No.7956 of 2011 disposed of on 11-03-2011 to first consider whether the application is within limitation. Hence, before dealing with the merit of the matter we would like to first deal with the contentions raised by the applicant the MA No. 178 of 2008 seeking condonation of delay in filing this OA. His contention is that he has submitted several representations seeking reinstatement after his acquittal in the criminal case which was not responded by the Respondents. The applicant was ill from 12.10.2006 to 11.10.2007 and again from 01-01-2008 to 15.10.2008 and as such could not approach this Tribunal in time.

9. This OA has been filed by the Applicant on 20.03.2009 challenging the order under Annexure-A/4 dated 16.6.99 imposing the punishment of compulsory retirement and the order of rejection under Annexure-A/5 dated 09-08-2001 of the Member (D), Postal Service Board, Government of India, Ministry of Communications, Department of Posts, New Delhi rejecting the petition dated 29.11.1999 of the Applicant. No-doubt the Applicant was acquitted in the Criminal case by the

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Learned District and Sessions Judge, Phulbani dated 08-08-2005 as stated in his representations on 17.03.2006 (before the Supdt. of Post Offices, Phulbani Division, Phulbani), 11.7.2006 (before the Director of Postal Services, Berhampur Region, Berham), 13.5.2007 (before the Chief Postmaster General, Orissa Circle, Bhubaneswar) dated 27.8.2007 (before the Postmaster General, Berhampur Region, Berhampur). According to the Applicant, he was ill from 12.10.2006 to 11.10.2007 and again from 01-01-2008 to 15.10.2008 and if the same is accepted to be true (though does not show that the illness disabled the applicant to move), yet nothing has been stated for the period from the date of rejection of his petition under Annexure-A/5 dated 9.8.2001 to his date of illness i.e. 12.10.2006. Hence, the reason assigned by the Applicant does not appeal to the conscience to entertain this OA by condonation the delay.

10. While giving consideration to the law of limitation we have also given consideration to the merit of the matter. In this regard we may state that even if the delay is condoned, the applicant cannot be granted the relief as admittedly, the applicant was imposed with the punishment vide order dated 16.6.99 whereas the order of acquittal was passed on 08-08-2005. As such, the findings by the criminal court will have no effect on previously concluded domestic enquiry especially when the applicant allowed the findings in the enquiry and the punishment by the disciplinary authority to attain finality by not challenging the same and, therefore, he is estopped to challenge the decision in disciplinary proceedings after several years on the ground that subsequently he has been acquitted in the criminal case. Hence the applicant is not entitled to the relief

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as claimed by him in this O.A. This view gains support by the decision of the Hon'ble Apex Court in the case of **State Bank of Bikaner & Jaipur -Vs- Nemi Chand Nalwaya**, 2011 (4) SLR 458.

11. This apart, the plea that appointment of a retired person to act as IO is not sustainable is not substantiated as appointment of a retired person as IO is in accordance with the departmental instruction so also is supported by the decision of the Full Bench of the Tribunal in the case of **Satish Kuamr Kukreja -Vs- Additional Secretary and Others**, 2010(1) AISLJ 28 (CAT) in which relying on the instructions of the Government of India, (as relied on in this OA), the Full Bench of the Tribunal upheld the enquiry conducted by a retired person. Hence, we are not impressed on the said submissions of the Learned Counsel for the Applicant so as to interfere in the order of punishment.

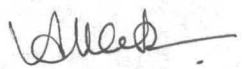
12. Similarly, the Applicant has not stated elaborately which is the document he was required but not supplied to him and as to how he was **prejudiced** due to non-supply of such documents. Unless prejudice is shown or proved, plea of violation of natural justice for non supply of the document is not sustainable as has been held by the Apex Court in a catena of decisions. The Disciplinary Authority after taking note of submissions made by applicant on the report of the IO, in a well reasoned order imposed the punishment which was subsequently upheld by the Member (D) of Postal Board.

13. The common thread running through in all these decisions is that the Tribunal should not interfere with the decision of the Administrator unless it was illogical or suffers from procedural impropriety or was shocking to the conscience

of the Court in the sense that it was in defiance of logic or moral standards (Ref. **Union of India v Dwarka Prasad Tiwari**, (2006) 10 SCC 388). The scope of judicial review is limited to the deficiency in decision-making process and not the decision (vide **V.Ramana v S.P.SRTC and Others**, (2005) 7 SCC 338). Further the law is well settled that mere acquittal in criminal case may not annul the departmental action as in the instant case in which even after acquittal in criminal case the other allegations of omission and commission unbecoming on the part of the Applicant) mentioned in the charge sheet still remains. As such we find no reason to quash the order of punishment imposed on the applicant.

14. Viewed the matter from any angle, we find hardly any scope to interfere in the matter. Hence the OA, for the reasons discussed above, stands dismissed. No costs.

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

  
(A.K. PATNAIK)  
Member (Judicial)