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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.549 OF 2010

Order reserved on
Order pronounced on 12.02.2013

CORAM
HON'BLE SHRI RAMESH CHANDRA PANDA, MEMBER(A)
HON'BLE SHRI ASHOK KUMAR PATNAIK, MEMBER(J)

Sri Junesh Chandra Behera,
Group D,
Aged about 45 yrs.
S/o. late Hemesh Chandra Behera,
At-Bijipur Tank Road,
PO-Berhampur H.O.,
Dist-Ganjam (O), 760 001,
working as Group D,
City Sub Post Office,
Berhampur,
Dist-Ganjam (O) 760 002

....Applicant
(By Advocates:Mr.P.K.Padhi)

-VERSUS-

Union of India represented through

1. The Director General of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110 001
2. Chief Post Master General,
Orissa Circle,
At/PO-Bhubaneswar,
Dist-Khurda-751 001
3. Director of Potal Services,
Berhampur Region,
At/PO-Berhampur,
Dist-Ganjam(O) 760 001
4. Sr. Superintendent of Post Offices,
Berhampur Division,
At/PO-Berhampur,
Dist-Ganjam(O) 760 001

(By Advocates:Mr.U.B.Mohapatra, SSC)

....Respondents

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O R D E R
A.K.PATNAIK, MEMBER (JUDL.):

In this Original Application, applicant, presently working as Group-D under the Respondent-Organization has moved this Tribunal praying therein to quash Annexure-A/4, A/5 and A/6 with direction to the Respondents to refund the recovered amount along with G.P.F. interest.

2. The entire gamut of the case is that the applicant while appearing at the Lower Grade Official Examination for the post of Postal Assistant Cadre held on 23.5.2004 was found to have adopted unfair means in the said examination by the Vigilance Squad of the Regional Office for the reason that he was in possession of photocopy of Page-1 and 2 of the Question paper (Paper-I English Version) wherein answers to question Nos. 1 and 4 were written due to which disciplinary proceedings were initiated against him under Rule-14 of CCS(CCA) Rules, 1965. On conclusion of the disciplinary proceedings, the applicant was imposed with a punishment of reduction in pay by fourteen stages from Rs.3580 to Rs.2650/- in the scale of Rs.2650-65-3300-70-4000/- for a period of three years with effect from 1.4.2005 vide order dated 29.3.2005. It was further ordered therein that the applicant would not earn increments during the said period of reduction and that on the expiry of that period, reduction would not have the effect of postponing future increments of pay. The applicant preferred an appeal dated 14.5.2005 challenging the said order. The Appellate Authority also confirmed the order of punishment as imposed by the

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Disciplinary Authority vide order dated 31.10.2006 against which the applicant preferred a Revision Petition dated 11.4.2007 before the Chief Post Master General (Respondent No.2), the result of which being not palatable, the applicant has approached this Tribunal seeking the following reliefs:

“....to quash Annexure-A/4, A/5 and A/6 and direct the Respondents to refund the recovered amount along with GPF interest with cost.

And any other order(s) as the Hon’ble Tribunal deems just and proper in the interest of justice.

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

3. Per contra, Respondents by filing counter have stated that there being no infringement of any procedure or rules during the course of disciplinary proceedings and that the principles of natural justice having been complied with at every stage of the proceeding hardly there is any case which needs intervention by this Tribunal. In the circumstances, Respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

4. Applicant has not filed any rejoinder to the counter.

5. We have heard Shri P.K.Padhi, learned counsel for the applicant and Shri U.B.Mohapatra, Learned Senior CGSC appearing on behalf of the Respondents and perused the materials on record.

6. On a close scrutiny of the matter, we are unable to trace out any jot or title with regard to violation of any rules or law making the disciplinary proceedings vitiated; nor do we find that the conclusion arrived at by the Disciplinary Authority to be perverse.

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7. However, during the course of hearing Shri Padhi, learned counsel for the applicant submitted that in line with DG P & T letter No.6/19/72-Misc.I dated 29.11.1972, the punishment imposed is harsh and disproportionate to the gravity of offence committed. In order to test the legality and validity of the submission, we have gone through the said letter which is annexed to the counter at Annexure-R/5. The said letter contains the caption "Nature of disciplinary action and quantum of punishment to be commensurate with the gravity of the offence committed". Annexure appended thereto deals with "Types of cases which may merit action for imposing one of the major penalties". In the fitness of things, the same are quoted hereunder.

"1. Cases in which there is a reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g.,-

- a) possession of disproportionate assets;
- b) obtaining or attempting to obtain illegal gratification;
- c) misappropriation of Government property, money or stores;
- d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate.

1. As per GID below Rule 11, at least censure is to be awarded if official is to be penalized.

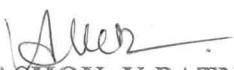
8. We are conscious that the list contained in Annexure is illustrative but not exhaustive and is intended to serve as a guideline. But the fact remains that letter and spirit of the aforementioned lists unequivocally and conspicuously rests upon a point that the imposition

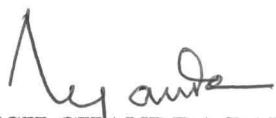
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of one of the major penalties as indicated against the misconducts is only during the course of discharge of duties by an employee in the capacity to which he/she belongs, but not as an examinee, which is beyond the scope of committing any misconduct while discharging his duties in the capacity to which he belongs. In the circumstances, we have no hesitation to hold that the punishment imposed on the applicant is not in commensurate with the gravity of offence committed and as such the same is harsh, disproportionate and shocks the judicial conscience. In view of this, we remit the matter back to the Reviewing Authority, viz., Chief Post Master General, Orissa Circle, Orissa (Respondent No.2), to reconsider the matter in the light of what has been discussed above, and communicate the decision to the applicant within a period of two months from the date of receipt of this order. In effect, we quash the impugned Memo No.ST/53-06/2007 dated 10.09.2009(Annexure-A/6).

9. With the above observation and direction, this O.A. is disposed of. No costs.


(ASHOK K. PATNAIK)
MEMBER(JUDL.)


(RAMESH CHANDRA PANDA)
MEMBER (ADMN.)