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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Cuttack Bench, Cuttack

O.A.2014 of 2011

Date of decision : 20.03.2017

Md Zakir Applicant

Mr. J.K. Lena Advocate for the applicant[s]

Versus

Union of India & Ors. Respondents

Mr. S. Behera. Advocate for the respondent
[s]

C O R A M

The Hon'ble Mr. R.C.Misra, Member [A].

The Hon'ble Mr. S.K.Pattnaik, Member [J]

F O R W A R D I N G

Pre-delivery draft order is being sent herewith for your kind consideration/approval and return please.

FOR REPORTING

1. Whether Reporters of local paper may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Member [A]/[J]

I agree. List for pronouncement on 20/3/2017. The Re:Rm to pronounce the judgment if in order or on behalf of the Member [J]/[A]

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.214 of 2011

Date:March, 2017.

CORAM

HON'BLE MR. R.C. MISRA, MEMBER (A)
HON'BLE MR. S.K. PATTNAIK, MEMBER(J)

Md. Zakir, Son of Md. Ahiya, At/P.O. Sardhapur, P.S./Dist. Khurda,
Retired Postman, Bhubaneswar, G.P.O., Dist. Khurda.

.....Applicant

By Advocate : Shri J.K. Lena.

Versus

1. Union of India, represented through the Director General, Department of Post, Govt. of India, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar G.P.O., Bhubaneswar-1, Dist. Khurda.
3. Senior Post Master, Bhubaneswar G.P.O., Bhubaneswar-1, Dist. Khurda.

..... Respondents.

By Advocates: Shri S. Behera.

O R D E R

S.K. PATTNAIK/ Member (J)- The applicant in a second round litigation challenges the speaking order dated 31.12.2009 (Annexure – A/12) passed by Chief Postmaster General, Orissa Circle, Bhubaneswar. Earlier, the applicant had approached this Tribunal in O.A.839 of 2006 challenging the order of disciplinary authority dated 29th June, 2001 (Annexure – A/5) by which he had held the charges to have been proved against the applicant, but taking his length of service, took a lenient view and reduced to the lower post of Group 'D' until he is found fit after period of three years from the date of the order to restore to the higher post of Postman.

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2. Admittedly, the applicant did not prefer any departmental appeal or representation against the said order of the punishment of 2001 and rather accepting the punishment, joined in the Post of Group 'D'. In the meantime, a criminal case which was pending against the applicant under Section 467/420 IPC for forgery and cheating under G.R. case No.4146 of 1991 was decided vide judgment dated 22.02.2003 wherein Id. SDJM, Bhubaneswar acquitted the accused on the ground that there was absolutely no evidence either oral or documentary to show that the accused was allotted with a franking machine where he had used forged/bogus franking machine stamps. After being acquitted by the criminal Court, the applicant vide his representation dated 21.08.2003 (Annexure – A/9), preferred a revision before the Chief Postmaster General, Orissa Circle, Bhubaneswar. On the backdrop of such revision petition, the Chief Postmaster General, vide order dated 02.05.2006 rejected the revision petition on the ground that it was time barred as the applicant did not submit any representation within six months from the date of receipt of the impugned order. Being aggrieved by the said order, the applicant filed O.A.839 of 2006. This Tribunal, vide order dated 12th November, 2009 observed that merit of the matter has not been considered by the authorities on the revision petition filed by him after his acquittal in the criminal case and matter was remitted back to respondent No.2 to consider and dispose of the revision petition on merit by passing a reasoned order and that is how the present impugned order of the revisional authority dated 31.12.2009 has surfaced.

3. Now, this Tribunal is confining its finding to the speaking order dated 31.12.2009 (Annexure – A/12). The ground reality is that the

see attached

applicant did not challenge the order of the disciplinary authority passed way back on 29th June, 2001 and even accepted the punishment by joining in the Group 'D' post. Even did not prefer any departmental appeal. Cause of action for the present case arose in 2003 after acquittal of the applicant in the criminal case. There is no dispute about the legal proposition that criminal case and departmental proceeding run under different parameters. Before conclusion of the criminal case, the applicant was punished in the departmental proceeding which ran independently. The criminal trial proceeds with a presumption that accused is innocent and forgery has to be proved beyond all reasonable doubt whereas in a disciplinary proceeding, the burden is not that stringent and the department proceeding proceeds under preponderance of probability. In the case of *Suresh Pathrella versus Oriental Bank of Commerce (2007) 1 SCC (L&S) 224* Their Lordships of the Hon'ble Supreme Court have categorically observed that acquittal in a criminal case would be no bar for drawing of a disciplinary proceeding against the delinquent officer as the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding, because while the standard of proof in a criminal case is to prove beyond all reasonable doubt, a departmental proceeding proceeds on the preponderance of probabilities. In the instant case even before finalization of the criminal proceeding, disciplinary proceeding was concluded by passing of the order by the disciplinary authority in 2001.

4. The Tribunal cannot re-appreciate the evidence and reach its own conclusion. The only conclusion, the Tribunal can have in its view is whether the accusation is based on evidence on record and

S. S. Pathak

supports the findings or whether the accusation is based on no evidence [*(1996) SCC (L&S) 627 State of Tamil Nadu vrs. S Subramaniam relied on*]. In the case of *Union of India versus B.K. Srivastav 1998 SCC (L&S)1493*, Their Lordships have observed that the Tribunal cannot sit in appeal against the order of disciplinary authority. Had there been any violation of natural justice or procedure not being followed causing prejudice to the CO, the matter would have been different. Both the disciplinary authority so also revisional authority have assigned reasons for finding the applicant guilty of misusing the Franklin Machine and thereby not only causing personal gain to himself but also causing loss to Government of India. Since re-appreciation of evidence is not under the realms of this Tribunal, such an exercise has to be left to the wisdom of the administrative department. Acquittal in a criminal case does not ipso facto render the order of the disciplinary authority infructuous. Had any order been passed by the department based on the finding of the criminal Court and subsequently if the said judgment of the criminal Court is reversed in the appellate forum, such an order of the disciplinary authority can be reviewed but when the disciplinary authority arrived at its own conclusion basing on evidence laid before it, it has nothing to do with the finding of the criminal Court. Going through the impugned speaking order dated 31.12.2009 passed by the revisional authority, we have every reason to believe that he has assigned cogent reason to conclude that the petitioner was on duty on 15.12.1994 and had received the alleged foreign letters alongwith full payment towards postage stamps but did not handover the required postage stamps to the senders/messengers of the senders of the letters to be affixed on the

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letters and affixed the alleged franked cut out labels on the letters himself. The plea of the petitioner that he was not on the duty and that he had not received the alleged letters was not believable. As it was a grave misconduct and serious lapse on the part of the petitioner, the Appellate authority upheld the punishment passed by the disciplinary authority. There is no material to take a different view. It may not be lost sight of the fact that in view of the authoritative pronouncement of the Hon'ble Supreme Court passed in the case of *State of Tamil Nadu versus S. Subramaniam* (1996) SCC (L&S) 627, in a departmental enquiry, Administrative Tribunal cannot re-appreciate the evidence and reach its own conclusion. Even in the case of *D.P. Sagar, Rural Regional Bank versus Munna Lal Jain* 2005 SCC (L&S) 567 Their Lordships of Hon'ble Apex Court have candidly observed that the scope of judicial review is limited to the deficiency in the decision making process and not the decision. On the backdrop of such judicial pronouncement, nothing was made out to find loopholes on the finding of the revisional authority calling for interference. An order of disciplinary authority passed way back in 2001 and that too the delinquent employee, already undergoing the punishment cannot be altered after a decade. Hence ordered.

5. The O.A., being devoid of merit, is dismissed. No cost.


[S.K. Patnaik]
Member (J)
sk/-


[R.C. Misra]
Member (A)