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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 349 of 2011
Cuttack, this the 5th day of November, 2011

Prasanna Kumar Tripathy 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


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


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

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

O.A.No.349 of 2011

Cuttack, this the 18th of November, 2011

C O R A M:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)

A N D

THE HON'BLE MR. A.K.PATNAIK, MEMBER (JUDL)

.....
Prasanna Kumar Tripathy, Son of Late Rajkishore Tripathy, resident of Bhojadeipur Sasan, PO- Sadasivapur, Via-Godasila, PS-Dhenkanal Sadar, Dist.Dhenkanal 759 025 and now TBOP/LSG Postal Assistant, Talcher MDG (U/S), At/Po-Talcher, Dist. Angul-759100.

.....Applicant

Legal practitioner :M/s.P.K.Padhi,J.Mishra, Counsel

- Versus -

1. Union of India represented through its Secretary-Cum-Director General of Posts Dak Bhawan, Sansad Marg, New Delhi-1.
2. Post Master General, Sambalpur Region, At/Po/Dist. Sambalpur-768 001.
3. Director of Postal Services, O/O PMG, Sambalpur Region, At/Po/Dist. Sambalpur.
4. Superintendent of Post Offices, Dhenkanal Division, Dhenkanal, At/Po/Dist. Dhenkanal.
5. Sri Mukunda Behera, Assistant Superintendent of Post Offices (Investigation), O/O the PMG, Sambalpur Region, At/Po/Dist. Sambalpur 768001.

....Respondents

Legal Practitioner:Mr.R.C.Swain, ASC

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ORDERA.K.PATNAIK, MEMBER (JUDL):-

The facts of the matter are that Applicant is a Postal Assistant of the Department of Posts. He had earlier filed OA No.870 of 2004 praying to quash the notice/letter dated 30.09.2004 and to restrain the Respondents not to proceed with the inquiry pertaining to charge sheet dated 15.3.2004 & in Original Application No.799 of 2006 his prayer was to quash the order dated 15.09.2006 and to direct the Respondents to reinstate the applicant in service with all consequential benefits. There were two proceedings drawn up against him under Rule 14 of CCS (CC&A) Rules, 1965 on different and distinct nature of charges. The main ground of his challenge was that as on the self same allegation criminal case is pending, the Respondents should not have taken a decision to proceed in the disciplinary proceeding till culmination of the criminal case; whereas on another proceedings initiated against him under Rule 14 of CCS (CC&A) Rules, 1965, the Applicant having been inflicted with the punishment of termination of service, approached this Tribunal in OA No. 799 of 2006 seeking to quash the said order dated 15.09.2006 with direction for payment of all service and consequential benefits to him retrospectively.

2. While issuing notices to the Respondents in OA No.870 of 2004 vide order dated 26.10.2004, this Tribunal as an

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ad-interim measure directed the Respondents not to proceed with the enquiry/not to pass the final order in pursuance of the memorandum of charge. On the prayer of the Respondents to grant them leave to proceed/pass final order on the MA No.1029/04, this Tribunal in its order dated 19.05.2005 modified the order dated 25.10.2004 granting leave to the Respondents to proceed/pass final order on the disciplinary proceedings drawn up against the Applicant. Challenging the said order dated 25.10.2004, Applicant approached the Hon'ble High Court of Orissa in WP (C) No.7165 of 2005. The Hon'ble High Court of Orissa in order dated 17.02.2010 disposed of the writ petition.

Relevant portion of the order reads as under:

“ The Opposite Parties shall appear before the Tribunal on 26.02.2010 and on their appearance, the Tribunal shall fix a date of hearing of the Original Application and the said Original Application shall be disposed of by the end of March,2010.

The interim order passed by this Court on 1.6.2005 in M.C.No.4047 of 2005 shall continue till then.”

3. There was no progress in the disciplinary proceedings which was the subject matter of Original Application No. 870 of 2004. But meanwhile, by the order No.F4-1/2003-2004 dated 15.09.2006, the proceedings drawn up against him vide memo dated 15th March, 2005 his services were terminated which was the subject matter of challenge in OA No.799 of 2006. Amongst other grounds, the main ground of challenge of the said order of

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termination in OA No. No.799 of 2006 is violation of the basic principles of natural justice in other words without serving or intending to make service any notice the Respondents conducted the enquiry *ex parte* and on the basis of such *ex parte* decision finding the applicant guilty of the charges imposed the order of punishment which is not sustainable in the touch stone of judicial scrutiny. Respondents by filing counter strongly contested the case of the Applicant. After considering the rival submissions of the parties and upon perusal of the materials placed on record including the proceeding file produced by the Respondents, this Tribunal disposed of both the OAs on 11th May, 2010. Relevant portion of the order dated 11th May, 2010 is quoted herein below:

“ On perusal of the file it was noticed that some of the envelops returned with the postal endorsement “addressee refused” and in some of the envelops with the postal endorsement “addressee absent”. Power has no doubt been vested with the authorities to proceed with the enquiry *ex parte*, the event of absence of the applicant, with due notice and intimation. But while proceeding in the enquiry *ex parte* it has been provided that the IO’s job is not at all affected by the absence of the Charged Officer. The IO is charged with the scrutiny of the evidence both verbal and recorded and then come to a finding in respect of each Article of charge. The IO, therefore, is to examine the records and witnesses to enable him to come to a valid conclusion as to the culpability of the charged officer based on the evidence led before him. But in that event recording of the statement or examination of documents of each sitting has to be sent to the delinquent. But neither in the file nor in the counter whether such step was taken by the Respondents while proceeding with the enquiry *ex parte* is forthcoming. Learned Senior

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Standing Counsel appearing for the Respondents also could not satisfy us whether such mandatory provision was scrupulously followed by the Respondents.

5. Besides the above, on the focused question whether any other modalities, known to law and by way of complying with the principles of natural justice have been adhered to after the notice returned un-served, Learned Senior Standing Counsel for the Respondents based on the documents submitted that there was no necessity to follow the other course of service of notice when the Applicant refused to accept the letter sent to him. If the above argument of the Learned Senior Standing Counsel for the Respondents is accepted then what about the letters returned with the endorsement "addressee absent" and how the Respondents justify their action in proceeding in the enquiry *ex parte* without due opportunity to the Applicant. Due and adequate opportunity does not mean only sending the letter and in case it is returned with endorsement "refused" or "absent", it can justify the action of the authorities in proceeding in the enquiry and based on such *ex parte* report to do away the service of an employee. In this connection it needs to take support of the decision of the Division Bench of this Tribunal in the case of **Balajinath Padhi -v-Union of India and others**, 2002 (II) OLR (CSR) 28. Shri Balajinath Padhi was also an employee of the Postal Department. His services were terminated by an *ex parte* report submitted by the IO appointed in a Rule 14 proceedings initiated against him. Taking support of the decision of the Hon'ble Apex Court in the cases of **Union of India and others v Dinanath Shantaram Karekar and others**, AIR 1998 SC 2722 and **Dr. Ramesh Chandra Tyagi v Union of India and others**, 1994 SC (L&S) 562 this Tribunal quashed the impugned order of punishment imposed on the applicant. The relevant portion of the observation of the Hon'ble Apex Court in the case of **Union of India and others v Dinanath Shantaram Karekar and others** (*supra*) reads as under:

"Respondent was an employee of the appellant. His personal file and the entire service record was available in which his home

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address also had been mentioned. The charge sheet which was sent to the Respondent was returned with the postal endorsement 'not found'. This indicates that the charge sheet was not tendered to him even by the Postal Authorities. A document sent by Regd. Post can be treated to have been served only when it is established that it was tendered to the addressee. Where the addressee was not available even to the postal authorities and the registered cover was returned to the sender with the endorsement 'not found' it cannot be legally treated to have been served."

Observing the above, Their Lordships proceeded to hold in paragraph 4 of the said decision as under:

"xx xx xxx. There is nothing on record to indicate that the news paper in which the show cause notice was published was a popular news paper which was expected to be read by the public in general or that it had wide circulation in the area or locality where the respondent lived. The show cause notice cannot, therefore in these circumstances be held to have been served on the Respondents."

In the case of Dr.Ramesh Chandra Tyagi (supra), it was held by Their Lordships as under:

"..... No charge sheet was served on the appellant. The enquiry officer himself stated that notice sent were returned with endorsement left without address and on other occasion on repeated visits people in the house that he has gone out and they do not disclose where he was gone. Therefore it is being returned. May be that the appellant was avoiding it but avoidance does not means that it gave a right to enquiry officer to proceed ex parte unless it was conclusively established that he deliberately and knowingly did not accept it. The endorsement on the envelope that it was refused was not even proved by examining the postman or any other material to show that it was refusal by the appellant who denied on oath such a refusal. No effort was made to serve in any manner known in law.

Under Postal Act and Rules the manner of service is provided. Even service rules take care of it. Not one was resorted to. And from the endorsement it is clear that the envelope containing charge sheet was returned. In absence of any charge sheet or any material supplied to the appellant it is difficult to agree that the inquiry did not suffer from any procedural infirmity."

6. It was not the case of the Respondents that any such procedure was adopted by them. Nor the endorsement on the envelope that it was refused was even proved by examining the postman or any other material to show that it was refusal by the appellant who denied such a refusal. Neither any publication was given in the reputed local Newspaper as is normally done in such cases.

7. In the light of the discussions made above, we are constrained to hold the irresistible conclusion that the report of the IO is violative of the principles of natural justice and the same is liable to be set aside. Consequently, the order of Disciplinary Authority under Annexure-A/4 dated 15.09.2006 and all other orders passed thereafter have to go being based on the ex parte report of the IO. Accordingly, the report of the IO and the order under Annexure-A/4 dated 15.09.2006 in OA No. 799 of 2006 are hereby quashed and the matter is remitted back to the Inquiry Officer for proceeding in the enquiry from the beginning and complete the proceedings within a period of 120 days, if necessary by conducting the enquiry on day to day basis. Applicant is directed to extend full cooperation and attend the enquiry enabling the Respondents to complete the same within the stipulated period. The status of the Applicant would be under deemed suspension entitling him the subsistence allowance as per rules. The period from the date of termination till the date of the order shall be decided by the Respondents after conclusion of the disciplinary proceedings. With the aforesaid observations and direction OA No. 799 of 2006 stands disposed of. No costs.

So far as the prayer of the applicant in OA No. 870 of 2004, we find no justifiable reason to quash

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the order under Annexure-A/7 as it is a letter to the applicant asking him to furnish the name of the AGS. After submission of the name of the AGS the enquiry will be started. The points raised by the applicant in support of his prayer to stay the departmental proceedings till conclusion of the criminal case is not supported by the Law streamlining grounds for grant of stay where both the proceedings have been initiated against an employee. Hence Original Application No. 870 of 2004 stands dismissed. No costs."

4. According to Respondents, in compliance of the aforesaid direction of this Tribunal in OA No.799 OF 2006, Respondent No.4 [Superintendent of Post Offices, Dhenkanal Division, Dhenkanal, At/Po/Dist. Dhenkanal] vide Annexure-A/2 dated 26-07-2010, issued charge sheet afresh under Rule 14 of the CCS (CC&A) Rules, 1965. IO and PO were nominated. But the enquiry could not be completed in time due to dilatory tactics adopted by the applicant. Hence time petition was filed before this Tribunal explaining the reason of non completion of the inquiry in time. However, enquiry was completed on 29.3.2011. IO submitted his report on 18.5.2011 copy of which was supplied to the applicant on 19.5.2011. But the letter enclosing thereto copy of the report of the IO returned back with postal remarks long absent. Thereafter, the DA issued the order of punishment of dismissal from service vide Memo No. F4-1/2003-04 dated 17.6.2011. According to the Respondents the applicant was imposed with the

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p punishment of dismissal after following rules and principles of natural justice.

5. Being aggrieved by such action of the Respondents, the Applicant has filed the instant OA in which he has prayed to quash the second charge sheet dated 26.7.2010 (Annexure-A/2), order passed by the Respondent No.3 dated 23.03.2011 (Annexure-A/8), order of the Respondent No.4 dated 11.4.2011 (Annexure-9) and the order of punishment of dismissal dated 17.06.2011 Annexure-A/17).

6. Applicant's contention is that issuance of the charge sheet under Annexure-A/2 while the first charge was in existence is neither permissible in the eyes of law nor is in accordance with the order of this Tribunal and as such the same is liable to be set aside. In so far as his prayer to quash the order of the Respondent No.3 dated 23.3.2011 (Annexure-A/8) & order dated 11.4.2011 (Annexure-A/9) is concerned it is the contention of the Applicant's counsel that since the applicant asked change of IO on the ground that he is biased the Respondents should not have rejected the same lightly and that allowing the same person to conduct the IO it cannot be said that the report of the IO is free from bias. As such, by placing reliance on the decisions of the Hon'ble Apex Court in the case of Registrar V F.X.Fernando, 1994 SCC (L&S) 756 and Smt. Indrani Bai V UOI and others, 1994 (3)

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SCT 796 (SC), it was contended by him that the rejection of the request of the applicant for change of IO under Annexure-A/8 & A/9 are not sustainable in the eyes of law and are liable to be set aside and consequently the order of punishment passed under Annexure-A/9 based on the said report of the IO is liable to be set aside. Besides the above, it was contended by him that the order of punishment was imposed in violation of the principles of natural justice and beyond the specific time limit fixed by this Tribunal in earlier OA. As such, the punishment is not sustainable in the eyes of law. Next contention of the Applicant's Counsel is that vide order dated 10th September, 1998, he was promoted to LSG cadre w.e.f. 25.8.1998. Disciplinary authority in respect of LSG official is Director of Postal Services and as such Respondent No.3 lacks jurisdiction and competence to pass the order of punishment. Hence the order of punishment is not sustainable in the eyes of law and is liable to be quashed.

7. The above contentions of the Applicant's Counsel were strongly refuted by the Learned ASC appearing for the Respondents. Besides reiterating the stand taken in the counter, it was contended by Mr. Swain, Learned ASC that in compliance of the order of this Tribunal enquiry was commenced afresh in accordance with Rules and after allowing due opportunity and in consideration of the gravity of the offence and materials available

on record, the Respondent No.3 imposed the punishment but the applicant without availing of the opportunity by way of filing appeal has approached this Tribunal in the instant OA. Hence this OA is liable to be dismissed.

8. We have considered the rival submissions of the parties and perused the materials placed on record. In earlier OA No. 799 of 2006 filed by the Applicant, this Tribunal after quashing the report of the IO and the order of the DA dated 15.09.2006 remitted the matter back to the Inquiry Officer with specific direction to proceed in the enquiry from the beginning and complete the proceedings within a period of 120 days, if necessary by conducting the enquiry on day to day basis. Simultaneously, the Applicant was directed to extend full cooperation and to attend the enquiry enabling the Respondents to complete the same within the stipulated period. Therefore, the Respondents have got no authority to issue charge afresh inviting objection to the same and thereafter conducting the enquiry through another IO. Therefore, we are of the considered view that issuance of the charge afresh is neither supported by rules nor is in accordance with the order of this Tribunal in the earlier OA. Issuance of charge sheet second time while the first charge sheet was in existence is not the correct procedure adopted by the Respondents. Similarly, we do not appreciate the conduct of the Applicant of delaying conclusion of

the proceeding for one grounds or the other. Once the charge sheet issued in Annexure-A/2 is quashed subsequent action/orders passed based on the charge sheet are necessarily forbidden. Thus, without going into the other points whether Respondent No.3 is competent to issue the order of punishment etc, we quash the second charge sheet issued in Annexure-A/2 being contrary to the earlier order of this Tribunal in OA No. 799 of 2006 and remit the matter back to the Respondent No.2 to enquire into the matter by appointing IO afresh, pursuant to the earlier charge sheet and complete the proceedings within a period of 90 days from the date of receipt of copy of this order. The Applicant is directed to co operate with the enquiry and should not take unnecessary adjournments in the enquiry. The status of the Applicant shall be as he was prior to the present order of punishment and the intervening period shall be decided by the DA while passing the final order in the proceedings.

9. With the aforesaid observations and directions this OA stands disposed of. There shall be no order as to costs.


(C.R. MOHAPATRA)
MEMBER(ADMN.)

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(A.K. PATNAIK)
MEMBER(JUDL)