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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.255 OF 2009
Cuttack this the 1st day of November, 2011

Krishna Chandra Nayak.....Applicant

-VERSUS-

Union of India & Ors.....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi or not ? ✓


(C.R.MOHAPTRA)
ADMINISTRATIVE MEMBER


(A.K.PATNAIK)
JUDICIAL MEMBER

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CORAM:

**HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER**

...

Sri Krishna Chandra Nayak, aged about 46 years, Son of late Govinda Nayak, Ex-E.D.B.P.M., Bhimpur Branch Post Office, At/PO-Bimpur, Via-Patrapur, Dist-Ganjam

...Applicant

By the Advocates:M/s.S.P.Mohanty, R.Mohanty, P.Lenka &
M.P.Barik

-VERSUS-

1. Union of India represented through the Director General, Posts, Dak Bhawan, New Delhi
2. Chief Post Master General, Orissa Circle, Bhubaneswar
3. Post Master General, Berhampur Division, Berhampur, Dist-Ganjam
4. Senior Superintendent of Post Offices, Berhampur (GM) Division, Berhampur
5. Director, Postal Services Office of the Post Master General, Berhampur Region, Berhampur-760001, Dist-Ganjam

...Respondents

By the Advocates:Mr.U.B.Mohapatra, SSC

...

ORDER

MR. A.K.PATNAIK, JUDICIAL MEMBER:

Shorn of unnecessary details, it would suffice to state that while the applicant was working as EDBPM/GDSBPM, Bhimpur BO under Patrapur SO a set of charge under Rule 8 of

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the EDA(Conduct and Service) Rules, 1964 was drawn up and served on the applicant vide Annexure-A/2 dated 10-09-1998 calling upon him to file his show cause. The charge framed against the applicant reads as under:

"ARTICLE-I.

That the said Krishna Chandra Nayak, while functioning as ED BPM, Bhimpur BO in a/c with Patrapur SO during the period from 7.8.92 to 3.7.98 F/N, received S.B.Pass book account No. 9261855 standing in the name of Smt. Sabita Padhy for interest posting vide SB-28 receipt No.2 dated 22.11.97 (Book No.7177), with the balance of Rs.15,810.95 without making over the depositor's copy of the SB-28 receipt to the depositor on 22.11.97. After receiving back the pass book on 3.12.97 duly interest posted, he got Rs.10/- deposited therein on 4.12.97 without the knowledge of the depositor. On 6.12.97 he had shown a withdrawal of Rs.16000/- in respect of the above amount to have been paid to the depositor without actually paying the withdrawal amount to the depositor and he accounted for the withdrawal amount in the BO account. He issued the SB-28 receipt No.4 dt.18.12.97 with balance of Rs.21.75 as if the above pass book is again received from the depositor on 18.12.97 in connection with difference in balance. On 25.2.98 he got Rs.5/- deposited in the above pass book, without knowledge of the depositor. Subsequently he refunded the withdrawal amount of Rs.16,000/- to the depositor on 15.5.98 through Sri Suryanarayan Padhy, her husband.

Therefore, the said Sri Krishna Chandra Nayak by displaying the aforesaid behaviour violated Rules 3,133, 134 and 165 of BO Rules (Sixth edition) and thereby failed to maintain absolute integrity and devotion to duty as enjoined in Rule 17 of EDAs (Conduct & Service) Rules, 1964".

2. Simultaneously, based on 26.03.1998 FIR was lodged before the concerned police station for which a GR Case No.44/99 was registered before the Learned JMFC, Patrapur against the applicant. The allegation in the GR Case No. 44/99 is as under:

"Misappropriation of Government money in respect of a total amount of Rs.16,000/- (rupees sixteen thousand) only from SB A/c.No.2261855 of Bhimpur Branch Post Office belongs to the deposit holder Sabita Padhy (PW 5) between

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the period from 6.12.97 to 14.5.98 by making fraudulent withdrawal and falsifying different Government records in his capacity as Extra Departmental Branch Post Mster of Bhimpur Branch Post Office."

3. In the departmental proceedings initiated against the applicant the applicant was held guilty & accordingly the punishment of removal from service was passed against him vide order dated 11.10.1999 under Annexure-A/4. The said order dated 11.10.1999 under Annexure-A/4 was challenged by the applicant in OA No. 132 of 2000 filed before this Tribunal. As the OA was filed by the applicant without availing of the opportunity of appeal, the same was dismissed by this Tribunal with a liberty to file an Appeal before the appropriate authority.
4. Meanwhile, Learned JMFC, Patrapur vide order dated 04.09.2001 under Annexure-A/8 held that the applicant is not guilty U/s. 409 of IPC and accordingly acquitted him from the criminal charges leveled against him on the ground that the prosecution has failed to establish the case U/s.409 of IPC against the applicant beyond all reasonable doubt.
5. After the aforesaid acquittal in the Criminal case, the Applicant moved the authorities for his reinstatement. However when the Applicant did not receive any response from the authorities he again moved this Tribunal in OA No. 1170 of 2002. This Tribunal, vide order dated 13.4.2004 disposed of the said O.A No.1170 of 2002., the relevant portion of which reads as under:

"...In this case after such order of dismissal was passed, no further action was taken by the delinquent challenging the Disciplinary Authority's order of dismissal by

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filing an appeal before the competent appellate authority. In such circumstances, we do not want to interfere in the matter. Accordingly, the application is dismissed as not maintainable. If the applicant is so advised he can approach the appellate authority if not otherwise barred".

6. Being aggrieved with the above order, the applicant filed Review Application No.2/2004. The said Review Application was disposed of by this Tribunal vide order dated 16.4.2004, the relevant portion of which reads as under:

"...Therefore, we have once again heard the matter on merits. While examining his contention, we found that there is no reason to differ from our original observation made in the order. Mr.Mohanty has submitted that during the pendency of this application a Memorandum has been submitted before the Appellate Authority. In that view of the matter, let such Memorandum be treated as an appeal against the order passed by the Disciplinary Authority and the Appellate Authority shall address itself on the merits of the appeal and dispose of the same in accordance with rules. This order may be treated as a part of the order dated 13.4.2004".

7. The appellate authority vide order under Annexure A/17 dated 24th February, 2005 communicated the reason of upholding the order of the Disciplinary Authority and rejecting the representation/appeal of the applicant dated 12.8.2002.

8. Applicant challenged the order of this Tribunal in No.1170/2002 & R.A.No.2/2004 before the Hon'ble High Court of Orissa in W.P.(C) No.6144 of 2004. The Hon'ble High Court while dismissing the aforesaid Writ Petition in order dated 21.4.2009 observed as under:

"Heard Mr.Mohanty, learned counsel for the petitioner and the learned Central Government counsel for the Opp.Parties.

In this Writ application, challenge has been made to an order dated 13.4.2004 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A.No.1170/2002 and

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the subsequent order dated 16.4.2004 passed in Review petitioner No.2 of 2004.

It appears that while dismissing the Original Application, the Tribunal has granted substantial relief to the petitioner by directing the appellate authority to treat the petitioner's memorandum as an appeal against the order passed by the Disciplinary Authority and dispose of the same on its own merit. During the pendency of this writ application, it appears that the appellate authority has complied with the order of the Tribunal and rejected the appeal by its order dated 24.2.2005 under Annexure-17. Now the petitioner has filed an application for amendment of the writ petition in order to challenge the order of the appellate authority. Since the order of the appellate authority is to be challenged before the Tribunal, the prayer for amendment is refused.

In view of the above, the writ petition is dismissed. However, liberty is granted to the petitioner to approach the Tribunal, if so advised, to challenge the order of the appellate authority. Since the appellate order was passed on 24.2.2005 and the period of filing the application before the Tribunal has already expired, we direct that if such an application is filed within a period of four weeks from to-day, the same shall be entertained and dealt with on its own merit without insisting upon the question of limitation".

9. Hence this OA with the following relief:-

- i) Admit this O.A.
- ii) Issue notice to the Respondents
- iii) Call for the relevant records; and
- iv) After hearing the counsel for the parties be further pleased to quash the order of dismissal passed by the disciplinary authority under Annexure-A/4 and the order of the Appellate Authority confirming the same under Annexure-A/17 with a direction to reinstate the applicant in the post of E.D.B.P.M. with all service benefits; and/or
- iv) Pass such or such other order/orders as may be deemed just and proper in the facts and circumstances of the case."

10. The main thrust of the challenge made by the applicant to the order of the Disciplinary Authority as well as the Appellate Authority is that the criminal case having been based

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on the same set of facts and almost on same evidence and the applicant having been acquitted in the criminal case, he is entitled to the relief claimed in this OA. In support of the relief, the learned counsel for the Applicant has relied on the decision of the Hon'ble Apex Court in the case of Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd. reported in AIR 1999 SC 1416.

11. On the other hand, the respondents strongly objected to the prayers made in this OA. The grounds for rejection as mentioned by the Respondents in their counter are that the request of change of I.O was duly considered and rejected as it was found devoid of merit. According to the Respondents, the applicant has been acquitted of the criminal proceedings since the prosecution failed to establish its case under Section 409 IPC against him. Appeal has been filed in the higher court against the judgment of JMFC, Patrapur. They further contended that Criminal proceedings & Departmental proceedings were not based on identical charges. In the criminal proceedings charges like misappropriation of Rs.16,000/- and forgery of records were drawn up whereas the departmental proceedings was on the basis of charge like fraudulent withdrawal of Rs.16,000/-, depositing in the pass book without the knowledge of the depositor and irregular issue of SB 28 receipts and thus violating departmental rules. It has been submitted that although the applicant has been acquitted of the criminal case, but his misconduct has been proved in the departmental inquiry. In the judgment of JMFC, Patrapur (Gm), no direction having been issued to reinstate the applicant, the claim of the applicant in this regard is baseless. With these

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submissions, the Respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

12. We have heard Shri S.P.Mohanty, learned counsel for the applicant and Shri U.B.Mohapatra, learned Senior Standing Counsel appearing for the Respondent-Department and perused the materials on record. We have also gone through the orders of the Appellate Authority vide Annexure-A/17. Be that as it may, we find that the order of the disciplinary authority removing the applicant from service in the disciplinary proceedings is under Annexure-A/4 dated 11.10.1999 where as the applicant was acquitted in the criminal case by the order under Annexure-A/8 dated 04.09.2001 and the representation/appeal of the applicant was rejected under Annexure-A/17 dated 24th February, 2005. As such, the findings of 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 now estopped to challenge the said decision in disciplinary proceedings after several years on the ground that subsequently the criminal court has acquitted him. This view gains support by the decision of the Hon'ble Apex Court in the case of **State Bank of Bikaner & Jaipur v Nemi Chand Nalwaya**, reported in (2011) 4 SLR 458. Further the law is well settled that mere acquittal in criminal case may not annul departmental action as in the instant case in which even after acquittal in criminal case the other allegation of omission and

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commission (unbecoming on the part of the Applicant) mentioned in the charge sheet still remains. Therefore, the decision relied on by the Applicant in support of the relief as claimed in this OA i.e. Capt.M.Paul Anthony (supra) is of no help being different and distinct to the present one. Rather this case is covered by the decision of this Tribunal in similar matter filed by one Shri Kantheswar Kanhar -V- Union of India and others (OA No. 112 of 2009 disposed of on 25th.October, 2011). Relevant portion of the order of this Tribunal is quoted herein below:

“8. It is worth mentioning that this matter 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 V 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 which was not attended to 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 on 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 imposed 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. Applicant was acquitted in the Criminal case by the Learned District and Sessions Judge,

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Phulbani dated 08-08-2005. As stated by submitted 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 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 the 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 does not appeal to the conscience to entertain this OA by condonation the delay occasioned in approached this Tribunal.

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 the delay is condoned, the applicant cannot be granted the relief as admittedly, the applicant was imposed with the punishment in order dated 16.6.99 whereas the order of acquittal was dated 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 non challenge and, therefore, he is estopped to challenge the decision in disciplinary proceedings after several years on the ground that subsequently the criminal court has acquitted him. Hence applicant is not entitled to the relief claimed in this. This view gains support by the decision of the Hon'ble Apex Court in the case of **State Bank of Bikaner & Jaipur v Nemi Chand Nalwaya**, 2011 (4) SLR 458.

11. This apart, the plea that appointment a retired person to act as IO is not sustainable is not substantiated as this 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 v 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 submission 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

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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 submission 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. The cases cited by the Learned Counsel for the Applicant do not have any relevance as the facts of the said case is quite different and distinct to the present OA.

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 law is well settled mere acquittal in criminal case may not annul departmental action as in the instant case in which even after acquittal in criminal case the other allegation 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 part of 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."

13. The Law is well settled that the decision of the co-ordinate Bench is binding on another Bench; unless, on disagreement, matter is referred to a Larger Bench for proper adjudication. We find no reason especially in view of the law laid down by the Hon'ble Apex Court in the case of **State Bank of Bikaner & Jaipur v Nemi Chand Nalwaya**, 2011 (4) SLR 458 to interfere with the order of punishment which has been set at rest long since. Hence this OA is held to be without any merit

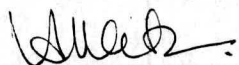
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and is accordingly dismissed. There shall be no order as to costs.


(C.R. MOHAPTRA)
ADMINISTRATIVE MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER

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