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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.537/2009

Cuttack this the 20th day of December, 2011

Manmohan MajhiApplicant

VERSUS

Union of India & Ors.Respondents.

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

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(A.K.PATNAIK)
MEMBER (JUDICIAL)

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

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.
ORIGINAL APPLICATION NO.537/2009**

Cuttack this the 20th day of December, 2011

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

Manmohan Majhi,
Village Post Baragad,
Via : Kirmi,
Dist : Sundargarh ...Applicant
(By Advocate P.K.Padhi)

vs.

1. Union of India, represented
Through its Chief Post Master General,
Orissa Circle,
At/Post: Bhubaneswar,
Dist: Khurda – 751001.
2. Sr.Superintendent of Post Offices,
Sundargarh division,
At/Post/Dist: Sundargarh,
Orissa, - 770001.
3. Director of Postal Services,
Sambalpur Region,
At/Post/Dist – Sambalpur.Respondents.

(By Advocate Shri S.B.Jena, ASC)

ORDER

{C.R.MOHAPATRA, MEMBER (A)}

By filing this OA on 14th October, 2009 the Applicant has sought to quash the order under Annexure-A/5 dated 16.11.2001

under which he was removed from the post of EDBPM of Baragada Branch Post Office in account with Kirai Sub Post Office by way of disciplinary proceedings initiated against him under Rule 10 of the GDS (Conduct and Employment) Rules, 2001. By filing MA No.550 of 2009 under section 5 of the Limitation Act, he has prayed to condone the delay in approaching this Tribunal belatedly. According to the Applicant, on the self same allegation Departmental, as well as, Criminal case was instituted against him. In the Disciplinary Proceedings he was removed from service vide Annexure-A/5 dated 16.11.2001 whereas in the criminal case he was acquitted on 15.10.2008. According to the applicant due to pendency of criminal case and his ill health he could not prefer any appeal against the order of removal but after his acquittal in criminal case he has represented to his authority on 30.1.2009 seeking his reinstatement and that as the Respondents did not pay any heed to his representation submitted under Annexure-A/6 he has approached this Tribunal.

2. The matter was listed on 11.02.2010 and considering all aspects of the matter this Tribunal issued the notice to the Respondents both on the OA so also on the MA.

3. Respondents have filed their counter objecting to the stand taken by the Applicant in his Original Application on merit. By placing reliance on the letter under Annexure-R/3 dated 10.9.2001 it has been stated by the Respondents that pursuant to

the charge sheet under Annexure-A/1 dated 4.7.2001 the matter was duly enquired into. During the enquiry by submitting letter under Annexure-R/3 the applicant admitted his guilt and prayed to excuse. After following due procedure of rules and complying with the principles of natural justice, the applicant was removed from service vide order under Annexure-A/5 dated 16.11.2001. The applicant did not prefer any appeal. After long lapse of time he has come up in this OA to quash the order of punishment which is not maintainable both on merits so also on the law of limitation. Accordingly, the Respondents have prayed to dismiss this OA. Despite receipt of copy of the counter, the Applicant failed to file rejoinder contradicting the stand taken by the Respondents in their counter or by placing material in support of his illness as a ground taken in the MA seeking condonation of delay. However, he has filed a written note of argument.

4. In view of the provisions made in Sec.21 of the A.T. Act, 1985 and law laid down by Their Lordships of the Hon'ble Apex Court in Special Leave to Appeal (Civil) No.7956 of 2011 disposed of on 11.3.2011 (D.C.S.Negi v. Union of India & Ors) and Special Leave to Appeal (Civil) Nos.16576 of 2011 disposed of on 29.7.2011 (Satish Kumar Gajbhiye, IPS V Union of India & Ors.), before considering the merit of the matter, it is necessary to consider on the question of limitation. However, while giving consideration on the law of limitation we have also considered the

merit of the matter. Learned Counsel for the Applicant has contended that due to ill health and pendency of the Criminal case on the self same allegation, the applicant had neither availed of the opportunity of preferring appeal nor approached this Tribunal for setting aside the order of removal which according to him was based on no evidence, without following due procedure laid down in the Rules and non-compliance of principles of natural justice. This was strongly objected to by Learned Counsel appearing for the Respondents who stated that the applicant has taken the plea of illness without any corroborative evidence and that it is completely a myth that the applicant has been imposed with the punishment of removal without following due procedure of rules and without complying with the principles of natural justice. By placing reliance on the admission of the applicant of guilt at Annexure-R/3, Learned ASC appearing for the Respondents prayed for dismissal of this OA being devoid on merit both on the ground of limitation so also on merit.

5. Having heard the contentions of the respective parties, perused the materials placed on record. We are in complete agreement with the contention of the Respondents' Counsel that except bald statement no document has been filed by the applicant in support of his illness. The contention of the Applicant's counsel is that due to pendency of the criminal case on the self same allegation he did not prefer the appeal. It is seen that the order of

punishment is dated 16.11.2001. The applicant was acquitted in the criminal case on 15.10.2008. Though the order is dated 15.10.2008 he made representation before the authority seeking reinstatement only on 30.1.2009 without any explanation for the delay. Copy of the order acquitting him in criminal case has also not been filed along with the OA or in course of hearing. While the representation for reinstatement was made on 20.1.2009, the applicant has approached this Tribunal on 14th October, 2009 which is much after six months as provided in the Act, 1985. In the light of the discussions made above, and in view of the specific provision of Section 21 of the Act, 1985 and the law laid down by Their Lordships of the Hon'ble Apex Court in the cases of D.C.S. Negi (supra) & Satish Kumar Gajbhiye (supra), this OA stands dismissed being hit by Section 21 of the Administrative Tribunals Act, 1985.

6. Besides, the Applicant cannot be granted the relief as admittedly, he was imposed with the punishment order dated 16.11.2001 whereas the order of acquittal is dated 15.10.2008. 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 about eight years on the ground that subsequently the criminal court has acquitted him.

7. in the result, this OA stands dismissed. There shall be
no order as to costs.

A. K. Patnaik
(A.K.PATNAIK)
MEMBER (JUDICIAL)

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