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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No.593 of 2009
Cuttack this the 23rd day of April, 2012

B.Rao Applicant
Versus
Union of India & Ors. Respondents

ORDER DATED.....
FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? HON'BLE MR. C. R. MOHAPATRA, MEMBER (A)
2. Whether it be circulated to all the Benches of the Tribunal or not? Y AND HON'BLE MR. A. K. PATNAIK, MEMBER (J)

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

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No.593 of 2009
Cuttack this the 28th day of April, 2012

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

...

Shri Bhaskar Rao, aged about 49 years, Son of Late
B.Lachhmaya, At-Brahma Street, PS-Jeypore, Dist.Koraput.

...Applicant

By the Advocates:M/s.D.P.Dhalsamant, N.M.Rout, Counsel.

-VERSUS-

1. Union of India represented through its Director General, Department of Posts, Ministry of Communication, Government of India, Dak Bhawan, New Delhi-110 001.
2. Member (D), Postal Service Board, Dak Bhawan, New Delhi-110 001.
3. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist. Khurda.
4. Director of Postal Service, Office of the Postmaster General, Berhampur Region, Berhampur-760 001.
5. Senior Superintendent of Post Offices, Koraput Division, Jeypore (K), Dist. Koraput-764 001.

...Respondents

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

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O R D E R

A.K.PATNAIK, MEMBER (JUDL):

Applicant who was a Postal Assistant in the Head Post Office of Koraput Division, after imposition of punishment of Compulsory Retirement in a departmental proceedings drawn up against him under Rule 14 of CCS (CC&A) Rules, 1965 vide Memo No.F/M-4/91 dated 07.01.1993 issued by the SSPO's Koraput Division, preferred an Appeal dated 23.01.2004 which was rejected vide

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letter dated 28.02.2005 issued to the applicant. Challenging the aforesaid order of punishment as well as the order of rejection of his appeal, he preferred Original Application No.09 of 2006 with a prayer to quash the above two impugned orders with a further direction to the Respondents to reinstate him in service with all consequential benefits. During the pendency of the said OA No. 9 of 2006, the Applicant also preferred a revision petition to the Chief Postmaster General, Orissa Circle on 03-04-2007. Thereafter by filing MA No. No.278/2007, the Applicant prayed for a direction by this Tribunal to the Respondents to consider and dispose of the said revision petition preferred by him. This Tribunal In order dated 20.04.2007 directed as under:

".....in view of the fact that the Applicant is no more in service, without expressing any opinion on the merit of the OA as well as MA, the Respondents 2 and 3 are hereby directed that in case any such Revision Petition has been received and the same is pending till date, then they may take a final decision on the same as per the Rules and Law within a period of 45 days from the date of receipt of copies of this order.....".

In compliance of the order passed by this Tribunal on 20.04.2007, the Respondents considered and rejected the revision petition on the ground of limitation and communicated the same to the applicant in letter dated 12.07.2007 without considering the same on merit. Thereafter the Applicant challenged the said order of rejection of the Revisional authority in the pending OA No. 9 of 2006. After hearing both the parties, this Tribunal disposed of the said OA No. 9 of 2006 on 14th July, 2009. Relevant portion of the order is quoted herein below:

7. The above being the view taken by this Tribunal in earlier Original Applications filed in this Tribunal, we find no justifiable reason for deviation from the same. In view of the above, without going into the merit of the matter, we quash the impugned order under Annexure-A/17 and direct the Respondent No.3 to consider and dispose of the revision petition of the Applicant afresh without being influenced by the contentions raised in the

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~~de Counter Filed~~ **in this case on merit within a period of 45 days from the date of receipt of this order and communicate the result to the applicant within the said period. There shall be no order as to costs."**

Thereafter, the Revisional Authority considered the Revision Petition of the applicant on merit but was not inclined to interfere in the order of punishment imposed by the Disciplinary Authority. Hence by filing this Original Application, the applicant prayed for the following reliefs:

- "8.1. That the order of punishment dated 29.12.2003 (Annexure-A/13) and the order of appellate authority dated 28.2.2005 (Annexure-A/14) and order dated 09.09.2009 of the respondent No.3 (Annexure-A/16) be quashed;**
- 8.2. That direction be issued to the respondents to reinstate the applicant into service with all consequential benefits;**
- 8.3. Any further order be passed to give complete relief to the applicant as deemed fit and proper."**

In their counter the Respondents in a nutshell have taken the stand that there has been substantial compliance of the Rules and during the enquiry, the applicant was provided with adequate opportunity to defend his case & hence the punishment imposed by the Disciplinary Authority was rightly upheld by the Appellate Authority. It has further been contended by the Respondents that as per the law, any interference in the order of punishment in disciplinary proceedings is warranted only where glaring injustice is seen to have been caused in the decision making process. Since there has been no injustice in the decision making process of imposing the punishment and rejection of the appeal, this OA is liable to be dismissed being devoid of any merit.

Applicant filed rejoinder in which it has been stated that the Member (D) Postal Services Board has accepted the plea of the applicant for which the matter was remitted to the Disciplinary Authority to conduct de novo inquiry from the stage of issuance of order of appointment of the Inquiry Officer. He has further

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averred that the Inquiry Officer with a mala fide intention without giving an opportunity to the applicant examined the prosecution witness and concluded the enquiry which is nothing but a clear violation of natural justice. So also the Applicant has made specific averment that the charges against the applicant cannot be said to have been proved when the delinquent official was not allowed to cross examine the material witness in spite of his representation to give him an opportunity for the same

To sum up, it is the case of the applicant that on the basis of the order of the Member (D) Postal Services Board dated 13th August, 1999 the enquiry was held on 29.7.2002. The Applicant attended the enquiry with his AGS. The next sitting of the enquiry was fixed to 29.11.2002. But he could not attend the enquiry on 29.11.2002 due to sudden demise of his father-in-law on the previous day i.e. 28.11.2002 and intimated the same to the Inquiry Officer through the telegram vide No. A-12 dated 28.11.2002 with a prayer to shift the enquiry to any other day. But despite such intimation, the Inquiry Officer held the inquiry, considered the Xerox copies of records, examined the witness in his absence and also concluded the enquiry holding the charge proved based on which the Disciplinary Authority imposed the punishment which was upheld by the Appellate Authority and subsequently by the Revisional Authority. It is also the case of the applicant that his allegation of bias against the Inquiry Officer did not yield any result. Hence, it has been contended that the applicant was denied the reasonable opportunity to defend himself and on this ground itself, the punishment imposed on the applicant is liable to be set aside. On the other hand, relying on the stand taken in the counter, it was contended by the Respondents that despite reasonable opportunity, neither the applicant nor his AGS attended the enquiry. However, the Inquiry Officer proved the charges basing on the materials available on record. Although the charge against

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the applicant was serious in nature, the Disciplinary Authority after going through the materials available on record and the period of service rendered by the applicant imposed a lenient punishment of compulsory retirement in a well reasoned order which was also upheld by the Appellate Authority and in compliance of the order of this Tribunal the Revisional Authority considered all the points raised by the Applicant and finally upheld the order of the DA which needs no interference by this Tribunal.

We have considered the rival submissions of the parties and perused the materials placed on record.

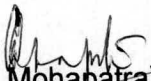
Law is well settled that fairness is a rule to ensure that the power vested with the authority is not abused but properly exercised. Fairness is also a principle to ensure that statutory authority arrives at a just decision after granting full opportunity to the delinquent in the enquiry. In a plethora of judicial pronouncements it has been held by the Hon'ble Apex Court that justice should not only be done but be seen to have been done. Enquiry held should not be an empty formality. It is seen that the applicant attended the enquiry held on 29.7.2002 but according to him could not attend the enquiry on 29.11.2002 due to sudden demise of his father in law on the previous day for which he has sent a telegram which was not denied by the Respondents either in the counter or in any of the orders impugned in this OA. When the enquiry was opened/held by the order of the higher authority, the Inquiry Officer on a single sitting, could not have examined the Xerox copies of the records, examined the witnesses and closed the enquiry behind the back of the applicant. In view of this we feel that justice would be met if we remit the matter back to the Disciplinary Authority for conducting the enquiry from the stage where it was

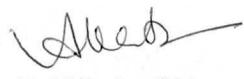
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closed by the IO, i.e., on 29.11.2002 and thereafter proceed in the matter in accordance with Rules. Ordered accordingly. The applicant is to cooperate with the enquiry and should not seek adjournments without any valid reason.

With the aforesaid observation and direction the orders of the Disciplinary Authority, Appellate Authority and Revisional Authority are quashed and the OA is allowed to the extent stated above. Consequently, the applicant will be relegated to the position he was holding prior to the date of compulsory retirement. The interregnum period between the date of compulsory retirement and relegation to the position by the applicant shall be decided by the D.A. on conclusion of the proceedings as directed above. No costs.


(C.R. Mohapatra)
Member (Admn.)


(A.K. Patnaik)
Member (Judl.)

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