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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

Original Application No.44 of 2010
Cuttack this the 20th day of April, 2012

Shri Biswaranjan Sahu ...Applicant
-Vs.-

Chief Postmaster General & Ors.... Respondents
FOR INSTRUCTIONS

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


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER

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CUTTACK BENCH, CUTTACK**

Original Application No.44 of 2010
Cuttack this the 20th day of April, 2012

CORAM:

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

...
**Shri Biswaranjan Sahu, aged about 54 years, Son of Narasingha Sahu,
At-Bijayramchandrapur, W.No.19, PS-Bripada, Dist. Mayurbhanj,
Ex-GDS SPM, Baghra Road EDSO (Baripada HQ), At/Po.Baripada, Dist.
Mayurbhanj.**

...Applicant

By the Advocates: M/s. S.K.Ojha, A.K.Biswal, P.K.Rout, Counsel.

-VERSUS-

1. Chief Postmaster General, Orissa Circle, Bhubaneswar, At/Po.Bhubaneswar, Dist. Khurda.
2. Director, Postal Services (HQ), Office of Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices, Mayurbhanj Division, At/Po.Baripada, Dist. Mayurbhanj.

...Respondents

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

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ORDER

A.K.PATNAIK, MEMBER (JUDL):

The prayer of the Applicant is to quash the order of the Respondent No.3 [Superintendent of Post Offices, Mayurbhanj Division, Mayurbhanj] dated 30-12-2004, order of the Respondent No.2 [Director, Postal Services (HQ), Office of Chief Postmaster General, Orissa Circle, Bhubaneswar] dated 30.12.2005 and the order of the Respondent No.1 [Chief Postmaster General, Orissa Circle, Bhubaneswar] dated 30.11.2009 and to direct the Respondents to reinstate him into service with all consequential benefits.

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2. According to Applicant, the IO held the charges proved without examining the material witnesses. The Respondent Nos.1&2 upheld the order of punishment of Respondent No.3 dated 30-12-2004 without taking note of the order dated 30.09.2005 of the Learned CJM, Mayurbhanj, in the Criminal Case, instituted against the applicant on the same cause of action which was also the subject matter of the Disciplinary Proceedings for which he had approached this Tribunal earlier in OA No. 891 of 2006. This Tribunal disposed of the said OA No. 891 of 2006 on 14.09.2008 in which the applicant was granted liberty to make representation in the form of revision enclosing thereto copy of the order of his acquittal in criminal case to the Respondent No.1 and Respondent No.1 was directed to consider the said representation keeping in mind the order of the Learned CJM, Mayurbhanj and the case of the G M Tank -Vs- State of Gujarat and another 2006 (4) SLR 10 and communicate the result thereof to the applicant. But Respondent No.1 rejected the revision petition without considering the order of the Learned CJM, Myurbhanj dated 30.09.2005 and the law decided by the Hon'ble Apex Court in the case of G M Tank(supra) in its proper spirit.

3. Respondents filed their counter in which they have stated that even after the admission of the guilty by the applicant, the matter was duly enquired into. During the enquiry the applicant was afforded reasonable opportunity to defend. However, after taking into consideration the materials available on record, the IO held the charges proved. Copy of the report of the IO was supplied to the applicant. The applicant submitted written statement of defence and after taking into consideration all the materials the Disciplinary Authority imposed the punishment which was upheld by the Appellate Authority. However, the representation submitted by the Applicant was duly considered by the Revisional Authority keeping in mind of

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the order of the Learned CJM and that of the case of the G M Tank(supra). But the Respondent No.1 for the reasons recorded in the order did not like to interfere in the order imposed by the Disciplinary Authority especially when the applicant by his action contravened Rule 33 (5), 31(2)(ii) of POSB Manual Vol.1 and Rule 98 of Postal Manual Vol.VI (PartIII). Accordingly, it has been stated by the Respondents that this being a case of no merit is liable to be dismissed. However, despite opportunity no rejoinder has been filed by the Applicant thereby admitting or controverting the stand taken by the Respondents in their counter.

4. Besides the stand taken in the pleadings, Mr. S.K.Ojha, Learned Counsel appearing for the Applicant contended that the Respondent No.1 rejected the revision petition without taking into consideration of the order passed by the Learned CJM, Mayurbhanj as well as the judgment rendered in case of the GM Tank. Mr. Ojha, further submitted that on same set of charge both the departmental as well as the criminal case were started against the Applicant. When the applicant was acquitted in the criminal case, the order passed in disciplinary proceedings which was on the basis of the charge established on preponderance of probability is not sustainable in the eye of law. But the RespondentNo.1 rejected the revision petition without appreciating this aspect of the matter and as such, the order of the Disciplinary Authority, Appellate Authority & Revisional Authority are liable to be set aside. This was strongly opposed by Mr. U.B.Mohapatra, Learned SSC appearing for the Respondents. His contention was that the IO, after giving reasonable opportunity held the charge to be proved. Thereafter the Disciplinary Authority after giving due opportunity to the applicant has imposed the order of punishment which was also upheld by the Appellate Authority. However, in compliance of the order of this Tribunal, the Revisional Authority/Respondent No.1 considered the representation

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submitted by the applicant and with a well reasoned order has refrained from interfering in the order of the Disciplinary Authority / Appellate Authority which needs no interference by this Tribunal.

5. We have considered the rival submissions of the parties and perused the materials placed on record. We find that the Applicant all through admitted his fault for which he was charge sheeted but prayed for taking lenient view in the matter. Besides admission, the charges leveled against the applicant were held to have been proved after granting due opportunity to the applicant by the Inquiry Officer during the proceeding.

6. In the case of Himachal Pradesh Road Transport Corporation and another -Vrs- Hukam Chand, reported in (2009) 2 SCC (L&S) 615 it has been decided that when there is employee's own admission of misconduct, enquiry in such an eventuality, held not necessary. However, we find that in compliance with principles of natural justice the matter was duly enquired into again irrespective of the admission of misconduct by the applicant. The findings recorded by IO against delinquent is also justified. The applicant was charged with misappropriation of Government money and based on the report of the IO the applicant was imposed with the punishment.


7. The law is well settled that the power of judicial review is not directed against the decision but is confined to the decision making process. The court does not sit in judgment on merits of the decision. It is not open to the Tribunal to re-appreciate and re-appraise the evidence led before the IO and examine the findings recorded by the IO as a court of appeal and reach its own conclusions.


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8. A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. Where there are some relevant materials which the authority has accepted and the same may reasonably support the conclusion that the officer is guilty, it is not the function of the Tribunal so as to review the materials and to arrive at an independent finding on the materials.

9. It is seen that the Revisional Authority after taking into consideration the order of the Learned CJM, Mayurbhanj and keeping in mind the case of G M Tank(supra) upheld the order of the Disciplinary Authority in view of the applicant's own admission. In view of the above, we find no irregularity/illegality in the order of punishment subsequently upheld by both the Appellate Authority and Revisional Authority. Hence for the discussions made above we find no merit in this OA. This OA is accordingly dismissed by leaving the parties to bear their own costs.


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


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