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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 163 of 2010
Cuttack, this the 29th day of February, 2012

Pranab Kumar Jena Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? Y,
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? Y,


(A.K.PATNAIK)
Member(Judl)


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

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

.....
Pranab Kumar Jena, aged about 40 years, Son of Late
Abhinas Ch. Jena, At/Po-Katisahi, Via-Kamarda, Dist.
Balasore, Ex-EDBPM/GDSBPM of Katisahi BO in
account with Kamarda SO under Jaleswar Head Post
Office.

....Applicant

By legal Practitioner :Mr.D.K.Mohanty, Counsel
-Versus-

1. Union of India represented through its Director General
of Posts, Government of India, Ministry of
Communications Department of Posts, Dak Tar Bhawan,
New Delhi.
2. The Chief Postmaster General, Orissa Circle,
Bhubaneswar, Dist. Khurda, PIN-751 001.
3. The Director of Postal Services, Office of the CPMG,
Orissa Circle, Bhubaneswar.
4. Superintendent of Post Offices, Balasore Division,
At/Po/Dist. Balasore.

....Respondents

By legal Practitioner:Mr.U.B.Mohapatra,SSC

.....
O R D E R

C.R.MOHAPATRA, MEMBER(ADMN.)

The Applicant, in this Original Application filed

U/s.19 of the Administrative Tribunals Act, 1985 challenges the
order passed by the Disciplinary Authority vide Memo

(L)

No.F/Misc-1/01-02 dated 24-02-2003 removing the Applicant from service, the order No. ST/48-07/03 dated 23.01.2004 of the Appellate Authority and the order No. ST/53-14/06 dated 17/18-06-2009 of the CPMG, Orissa Circle, Bhubaneswar upholding the order of the Disciplinary Authority on the ground that the same are illegal, arbitrary, disproportionate, without taking into consideration the materials placed on record and based on no evidence.

2. Respondents filed their counter in which it has been stated that the applicant was working as GDS Branch Postmaster, Katisahi Branch Post Office in account with Kamarda Sub Post Office under Jaleswar Head Post Office. While working as such, he received Acquittance Roll with an amount of Rs.126/- towards the arrears DA to be paid to GDS Mail Delivery Agent of the said post Office. The Applicant had returned the A Roll forging the signature of the GDSMD showing that the amount had been paid to the payee. On receipt of complaint of non-payment of the arrear DA, the matter was enquired into and prima facie evidence having been found the applicant was proceeded against under Rule 10 of the GDS (Conduct & Employment) Rules, 2001 vide Memo dated 15.10.2001. On denial of the charge by the Applicant,

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the matter was duly enquired into. The IO held the charge proved, copy of which was supplied to the applicant giving him opportunity to submit his defence. Applicant submitted his defence. The Disciplinary Authority after going through report of the IO vis-à-vis the materials available on record and the defence submitted by the Applicant imposed the punishment of 'removal' from service of the applicant with immediate effect vide order under Annexure-R/4 dated 24.02.2003. Applicant preferred appeal and before disposal of the appeal, he has approached this Tribunal in OA No. 500 of 2003 which was disposed on 04-09-2003 with direction to the Respondent Nos. 2&3 to dispose of the appeal of the Applicant. The Appellate Authority considered the Appeal but did not find any ground to interfere with the order of punishment imposed by the Disciplinary Authority. The reason of rejection was communicated by the Appellate Authority to the Applicant in letter dated 23.1.2004. Thereafter, the Applicant filed another OA No. 949 of 2004 but later, by filing Memo, he requested to withdraw the OA so as to remedy his grievance by preferring Revision before the Competent Authority. Accordingly, vide order dated 27.4.2005 this Tribunal dismissed the OA No. 949 of 2004 as withdrawn. The Applicant

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preferred Revision dated 23.3.2006 which was rejected by the Revisionary Authority being barred by time and communicated the same to the Applicant in letter dated 28.3.2006. Thereafter, he preferred mercy petition dated 10.5.2006 to the Chief Postmaster General, Orissa Circle, Bhubaneswar seeking direction for consideration of his Revision on merit. In absence of any provision for preferring mercy petition, the request of the applicant was rejected and communicated to the Applicant. In the above circumstances, it has been submitted by the Respondents that since the punishment was imposed on the applicant after following due procedure of Rules and natural justice, there is hardly any scope for this Tribunal to interfere in the matter. Hence, it was prayed by the Respondents that this OA being devoid of any merit is liable to be dismissed.

3. It was contended by the Learned Counsel for the Applicant that the punishment imposed by the Disciplinary Authority and upheld by the Appellate Authority and subsequently, rejection of his Revision on the ground of being barred by limitation and mercy petition on the ground of absence of Rules are not sustainable in the eyes of law as the IO reached the conclusion on conjecture and surmises without



taking into consideration the vital material produced by the Applicant and that the DA so also AA came to the conclusion without taking into consideration the affidavit which he had produced in support of payment of Rs.126/- to the wife of the EDDA so as to return the A. Roll on the same day as per Rules. He has contended that it is settled law that 'removal' & 'dismissal' being the harsh punishment it can only be imposed for gross misconduct. But the DA imposed such harsh punishment of removal without any such finding of gross misconduct on the part of the applicant. To prove that the report of the IO is based on conjecture, surmises and on no evidence it was contended by Applicant's Counsel that without verifying the authenticity of the affidavit obtained and produced from the wife of the complainant in support of the payment of Rs.126/- and/or without examining the wife of the complainant, the IO reached the conclusion of misappropriation based on which the DA imposed the harsh punishment of removal from service on the applicant. By drawing our attention to the last part of the order of the DA, it was contended by the Learned Counsel for the Applicant that since the DA imposed the punishment by taking into consideration extraneous material which did not form the

subject matter of charge sheet nor the applicant had ever been confronted with the same, the order of the DA is liable to be set aside being violative of principles of natural justice/ Articles 14 and 16 of the Constitution of India. Applicant's Counsel further contends that the applicant was visited with the harsh punishment of removal on the basis of the report of the IO which was done by the IO in a perfunctory manner and without examining the vital/all the witnesses cited in the charge Memo. Further contention of the Applicant's Counsel is that no loss was caused to the Department and there was no finding of gross misconduct, IO conducted the enquiry in a perfunctory manner. All the same the DA imposed the harsh punishment of removal from service on extraneous material/evidence, Revision Petition was rejected being barred by limitation, mercy petition was not considered on the ground of there is no provision, no personal hearing was afforded by the DA, AA or RA and in the above circumstances, imposition of harsh punishment of 'removal' being disproportionately shocking to the judicial conscience, the same is liable to be set aside and the applicant is entitled to be reinstated with all consequential service and financial benefits retrospectively.

On the other hand, it was contended by the Learned Counsel appearing for the Respondents that it is completely a myth to state that the allegation of misappropriation of Rs.126/- payable to Sri Ratan Kumar Pradhan, GDS DA of the same office was not correct or proved by the IO without any material. The IO held the charge proved on the basis of the depositions and materials during the enquiry in which the applicant was allowed all the opportunities to prove his innocence. He has also denied the allegation that the punishment imposed by the DA was based on extraneous materials. The observation made by the DA that '*one who can cheat the fellow employee for Rs.126/- cannot be relied upon and I feel that the deposits of rural people in various securities of the Department of Posts like SB/RD/TD are not safe with such a person*' cannot be brushed aside as extraneous. The punishment was imposed on the Applicant based on the report of the IO and materials available on record. It was contended that since enquiry was conducted in accordance with Rules and during enquiry the applicant was allowed all opportunities to defend and ultimately the DA imposed the punishment of removal after taking into consideration all aspects of the matter in a well reasoned order and subsequently the appeal preferred by the

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Applicant was duly considered and in a well reasoned order the same was rejected and intimated to the applicant there is hardly any scope for this Tribunal to interfere in the matter. In this regard, Learned Counsel appearing for the Respondents reiterated the decisions relied on in the counter in the case of **State Bank of India and Others Vs Samarendra Kishore Endow and Others** [Civil Appeal No.392 of 1984 - disposed of on -18-01-2004] & **Union of India Vs Upendra Singh** [Civil Appeal No.7484 of 1993 - date of judgment- 17.02.1994]. On the above grounds, Respondents' Counsel sincerely prayed for dismissal of this OA.

4. We have considered the rival submissions of the parties with reference to the materials placed on record and decisions relied in support thereof.

5. The charge against the Applicant under Annexure-A/1 was as under:

"Shri Pranab Kumar Jena, GDS BPM, Katisahi BO in account with Kanarda SO under Jaleswar HO while working as such on 12.10.2000 received Jaleswar HO. Acquittance Roll No.637 dated 10.10.2000 in which arrear Dearness Allowance amounting Rs.126/- was payable to Sri Ratan Kumar Pradhan, GDS MD (EDDA) of Katisahi BO was shown for payment. Sri Pranab Kumar Jena did not pay the amount to Sri Ratan Kumar Pradhan but showed payment of the amount on 12.10.2000 forging the signature of Ratan Kumar Pradhan in the Acquittance Roll and thereby infringed the provisions of rule 180 (2) of Rules for Branch Offices (6th Edition corrected upto 31st March, 1981).

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Thus by his above acts the said Sri Pranab Kumar Jena failed to maintain absolute integrity and devotion to duty as required of him under Rule 21 of GDS (Conduct & Employment) Rules, 2001."

6. The matter was enquired into, the IO submitted its report at Annexure-A/2 held that the charge is proved beyond any doubt. Though the Applicant did not enclose copy of the defence which he had submitted to the report of the IO before the DA, from the order of the DA at Annexure-A/4 it appears that the DA took note of the affidavit of the wife of the complainant obtained and submitted by the Applicant. As it reveals from the order, the Applicant in his statement dated 30.4.2001 stated that he himself put the signature of EDDA on the A Roll, paid the amount of Rs.126/- to the EDDA on the next day but in his defence representation dated 28.10.2001 the applicant has admitted that he signed on the A Roll for the EDDA but paid the amount to him on 12.10.2000 and again in his representation he has stated that he wrote the name of the EDDA and paid the amount to his wife on the same day evening. The signature appearing on the A Roll was sent to the GEQD who in clear term opined that the signature on the A. Roll is not of the EDDA. It is seen that the charge sheet was dated 15.10.2001; the report of the IO was dated 27-01-2003, the

DA order is dated 24.2.2003 and the order of the AA is dated 23.01.20004 whereas it appears that the affidavit was sworn in by Smt. Sabita Rani Pradhan on 22.08.2006. In the affidavit it has been stated as under:

“That Sri Pranab Kumar Jena the then BPM Katisahi BO (under which he was working) made payment of Rs.126/- (Rupees one hundred twenty six) only in evening to me but I forgot to pay it to my husband.”

7. It is seen that the charge has been proved and punishment imposed after following due procedure of law. We have also considered the report of the GEQD which confirms the forged signature of the payee. We are, therefore, of the opinion that the quantum of amount i.e. whether Rs.126/- or Rs.1/- cannot determine the quantum of punishment. Hence, imposition of punishment of removal from service cannot be said to be in any manner harsh or disproportionate. In view of the above, we find no force in any of the arguments advanced by the Learned Counsel for the Applicant. Hence this OA being devoid of merit stands dismissed by leaving the parties to bear their own costs.


(A.K.PATNAIK)
Member(Judicial)


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