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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.237 of 2010

Cuttack this the 14th day of September, 2017


Sri Gangadhar Mohanty.....Applicant

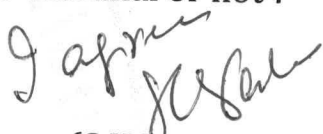
-VERSUS-

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 for being circulated to various Benches of the Tribunal or not ?


(DR.MRUTYUNJAY SARANGI)
MEMBER(A)


(S.K.PATTNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.237 of 2010

Cuttack this the 11th day of September, 2017

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HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Sri Gangadhar Mohanty, aged about 57 years, Office Supervisor,
O/o.Senior Superintendent of Post Offices, Cuttack City
Division, Cuttack

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant
Mr.N.M.Rout

-VERSUS-

Union of India represented through:

1. The Director General, Department of Posts, Ministry of Communication, Government of India, Dak Bhawan, New Delhi-110 001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Khurda-751 001.
3. Director of Postal Services (H.Qrs.) Office of the Chief Post Master General, Orissa Circle, Bhubaneswar-751 001

...Respondents

By the Advocate(s)-Mr.S.Behera

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

Applicant was working as Office Supervisor under the Senior Superintendent of Post Offices, Cuttack City Division at the time of filing of the Original Application. In this O.A., he has

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14 challenged the orders of punishment dated 25.10.2007(A/3) and the orders of the appellate authority dated 23.07.2009(A/5) upholding the punishment. He has prayed for quashing of the above said orders with consequential benefits.

2. Brief facts of the case as they appear from the O.A. are as follows:

A Charge Memo under Rule-16 of CCS(CCA) Rules, 1965 was issued to the applicant when he was working as Inspector RMS N 1st Sub Division, Cuttack. The said charge was dropped on a technical ground and subsequently, a fresh charge sheet under Rule-14 of CCS(CCA) Rules, 1965 was issued to the applicant by the Director of Postal Services, Office of the CPMG, Orissa Circle, Bhubaneswar vide Memo No.Vig./3-6/2000 dated 20.07.2004, with the following Articles of Charge.

Article-I

Shri Gangadhar Mohanty while working as SDI(P), Bhubaneswar South Sub Division during the period from 20.07.98 to 29.05.02 processed for recruitment of 20 GDS posts during February, 2002 without examining the feasibility for continuance of the aforesaid 20 posts and without obtaining permission of Dhenkanal Supdt. To fill up all above 20 posts deviating the instruction contained in DG Posts Letter No.41-313-87-PE-II dtd. 11.11.1988.

Thus Shri G.Mohanty by his above act failed to maintain absolute integrity and devotion to duty in contravention of provision contained in Rule-3(I)(1) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

Article-II

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Shri Gangadhar Mohanty while working as SDI(P), Bhubaneswar South Sub Division during the period from 20.07.98 to 29.05.02 processed for recruitment of 20 GDS posts but did not follow due procedure for reservation of the vacancies by 50% ceiling in Directorate letter No.19-11/97-ED & Trg. Dated 27.11.92.

Thus Shri G.Mohanty by his above act failed to maintain absolute integrity and devotion to duty in contravention of provision contained in Rule-3(I)(1) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

Article-III

Shri Gangadhar Mohanty while working as SDI(P), Bhubaneswar South Sub Division during the period from 20.07.98 to 29.05.02 recruited 4 (four) contingent workers in the vacancies caused against GDSMC, Rajas BO, GDSMC, Bhubaneswar-2, GDSMC, BJB Nagar SO, GDSMC, Itipur as contingent employees who are neither sponsored by Employment Exchange nor they are recruited as contingent employee in regular process as per GD(P) letter No.17-141/86-ED & Trg. Dtd. 17.09.90.

Thus Shri G.Mohanty by his above act failed to maintain absolute integrity and devotion to duty in contravention of provision contained in Rule-3(I)(1) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

Article-IV

Shri Gangadhar Mohanty while working as SDI(P), Bhubaneswar South Sub Division during the period from 20.07.98 to 29.05.02 processed for recruitment of the post of GDSMC, Dakhin Radas BO A/O Rench SO received 80 applications, GDS Bindha BO a/c. Pipili SO received 61 applications and GDS MD/MC Kamakantia BO a/c. with Bolanga SO received 104 applications but entered 16, 13 and 15 applications respectively in his check list of the respective files deviating the recruitment procedure.

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Thus Shri G.Mohanty by his above act failed to maintain integrity and devotion to duty in contravention of provision contained in Rule-3(I)(1) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

Article-V

Shri Gangadhar Mohanty while working as SDI(P), Bhubaneswar South Sub Division during the period from 20.07.98 to 29.05.02 recruited and appointed the post of GDS MC, Dakhini Radas BO a/w. Rench SO, GDS MD Bindha BO a/w. Pipili SO and GDS MD/MC Kamakantia BO a/w. Balanga SO without verification of genuineness of educational and caste certificates of candidates deviating instructions contained in C.O. letter No.Vig/11-3Bdk dated 11.09.87 and Vig/1-1/86 Corr. Dated. 30.03.1993 and Shri Mohanty failed to collect the attestation forms, health certificates and descriptive particulars of the above selected and appointed candidates at the time of appointment deviating instruction containing GDP&T letter No.43/66-Pen dtd. 17.10.96 and GIMP OM No.F 45(1)EV/54 dtd. 14.03.1954.

Thus Shri G.Mohanty by his above act failed to maintain absolute integrity and devotion to duty in contravention of provision contained in Rule-3(I)(1) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

The I.O. submitted his report on 19.12.2006 to the Disciplinary Authority holding Articles of Charge No. II and III as proved, I and V partially proved and IV not proved. However, the Disciplinary Authority, dissenting with the findings of the I.O. in respect of Articles of Charge No. I and IV, issued a disagreement notice vide Memo No.Vig/3-6/2000 dated 16.4.2007 asking the applicant to submit his representation, if any, within 15 days from the date of receipt of

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the notice. After receiving the applicant's reply, the Disciplinary Authority passed orders on 25.10.2007 imposing the punishment of reduction of pay by five stages from Rs.8500/- to Rs.7600/- in the time scale of Pay of Rs.6500-10500/- for a period of four (4) years with immediate effect. The Disciplinary Authority further ordered that applicant will not earn increments of pay during the period of reduction and on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. Against this order of punishment, applicant preferred an appeal to the Appellate Authority (Respondent No.2) on 6.12.2007 and the Appellate Authority rejected the said appeal of the applicant in his order dated 23.7.2009. Aggrieved with this, applicant has filed the present Original Application.

3. The grounds on which the applicant has based his prayer are as follows:

- i) The charges framed against the applicant vide A/1 do not ex facie show any misconduct within the meaning of Rule-3(1)(i) and Rule-3(1)(ii) of CCS(Conduct) Rules, 1964.
- ii) The punishment imposed by the Disciplinary Authority and the rejection of appeal by the Appellate Authority are bad in law.
- iii) Although the applicant had processed the recruitment of 20 nos. GDS posts during February,

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2002 on the basis of the instructions issued by the Divisional Head, the I.O. partially proved the charge against the applicant by holding that he is not found guilty of the charges against 14 GDS candidates from Sl.No.1 to 14 of the list, but the charge in respect of post from Sl.No.15 to 20 was held to be proved. The I.O. should have held whether the charge is proved or not proved, but he cannot hold the charge as partially proved.

- iv) The Head of the Division had issued instructions to the applicant to fill up all the vacant posts of GDS as early as possible and therefore, the applicant had completed the selection process of all 20 GDS posts including the 6 posts which fell vacant after 26.11.2001.
- v) The applicant has not violated any instruction with respect to reservation of vacancy by 50% ceiling year-wise. Since the applicant had reserved 10 posts out of total number of 20 posts of GDS for which the recruitment process was undertaken in the year 2002, it cannot be said that applicant has violated the instructions as contained in Directorate's letter No.19-11/97 & Trg. dated 27.11.1992.

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- vi) The I.O. proved Article of Charge No.II on the basis of instructions issued by the CPMG in his letter dated 20/26.8.1999, but the said letter has neither been supplied to the applicant nor exhibited as listed document by the prosecution during the inquiry.
- vii) Although Article of Charge No.III has been held as proved, there is no mention in the charge memo that the applicant had violated any instruction or rule. The applicant has recruited four contingent workers on the basis of judicial pronouncement of various Courts/Tribunals and hence, Article of Charge-III is not proved. To that extent the order of the Disciplinary Authority is illegal.
- viii) So far as Article of Charge No.IV is concerned, there is no allegation against the applicant that he has ignored any candidate who has secured more marks or is more meritorious than the selected candidates. Therefore, the I.O. has rightly held the charge as not proved and the order of the Disciplinary Authority with respect to this is illegal.
- ix) The Disciplinary Authority had agreed with the findings of the I.O. on the Article of Charge No.V. However, holding the Charge No.V as partially proved in respect of non-verification of caste

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certificate is illegal since the applicant had acted as per the circular dated 30.3.1993, which stipulates that where immediate verification is not feasible or is likely to take a long period, appointment order can be issued. Moreover, the applicant has also followed the instructions of the DOP&T OM dated 10.5.1995 while giving appointment to 3 OBC candidates.

- x) Punishment imposed on the applicant by the Disciplinary Authority as upheld by the Appellate authority is too harsh and is not commensurate with the gravity of offence.
- xi) Order of the Disciplinary Authority has been passed without applying its mind and the Appellate Authority's order is cryptic and does not deal with the points raised in the appeal by the applicant.

4. Respondents in their reply filed on 29.10.2010 have contested the claim of the applicant. It is their contention that the applicant issued an advertisement for filling up 20 GDS posts without assessing the feasibility of continuation of the said posts and without the approval of the competent authority for filling up of the said posts. He also did not adhere to the principles of reservation quota offering ceiling of 50% in the relevant year of vacancy. He had appointed four contingent workers to the post of GDS without following a regular process

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of selection and without sponsoring of the names by the Employment Exchange. He did not maintain a proper list of all the applicants who had applied for the posts while recruiting 3 B.Os nor did he carry out a verification of genuineness of castes, educational certificates etc. submitted by the selected candidates before appointing them. He also failed to collect attestation forms, health certificates and other particulars at the time of appointment in contravention of Government instructions.

5. The respondents have strongly argued that due procedure has been followed in the disciplinary proceedings and the punishment has been rightly imposed by the Disciplinary Authority and upheld by the Appellate Authority. Respondents have contested the claim of the applicant that he is not guilty of misconduct. It is their contention that misconduct, according to Webster Dictionary is - dereliction, impropriety, mismanagement, transgression and wrong doing. They have submitted that the applicant is guilty of all the above deficiencies and therefore, all charges are sustainable. The respondents have also claimed that the punishment imposed on the applicant is proportionate to his delinquency.

6. We have heard the learned counsels for both the sides on 4.9.2017. There are two issues involved in this O.A. The first relates to legality and sustainability of the disciplinary

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proceedings against the applicant and the second is about the proportionality of punishment imposed on him.

7. From a detailed perusal of the pleadings of both the parties and the documents submitted by them, we find that the charges against the applicant have been framed under Rule-14 of CCS(CCA) Rules, 1965 and due procedure has been followed while conducting the disciplinary proceedings. The applicant has been given ample opportunity to defend himself. The I.O's report as well as the Disciplinary Authority's dissenting note have been communicated to the applicant and the Disciplinary Authority imposed the punishment after taking into consideration the reply submitted by the applicant on the report of the I.O. The Disciplinary Authority is well within his powers to differ from the findings of the I.O. In coming to this conclusion, we are guided by judgment in *In Bank of India vs. Degala Suryanarayana (1999) 5 SCC 762*, in which the Hon'ble Supreme Court has observed as follows.

"The law is well settled that the disciplinary authority on receiving the report of the enquiry officer may or may not agree with the findings recorded by the latter. In case of disagreement, the disciplinary has to record the reasons for disagreement and then to record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry and report".

The Disciplinary Authority has communicated his observations to the applicant as per rule and has imposed the punishment after considering the reply of the applicant. The

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order of the Disciplinary Authority is a reasoned and detailed order covering all the relevant aspects of the submissions made by the applicant. Similarly, the order of the Appellate Authority is also a detailed and reasoned order after due application of mind. We find no reason to interfere with these orders on the ground of deficiency in procedure.

8. Coming to the grievance of the applicant and his claim that the punishment has been imposed without any valid reason, we find from the documents submitted by him and the respondents that the applicant has acted illegally while making appointment to six additional posts of GDS without any authorization and without following the due procedure. Similarly, applicant has also acted illegally while appointing four contingent workers without sponsorship from the Employment Exchange and by following arbitrary procedure. This is in violation of DG Posts letter No.17-141/88-ED & Trg. Dated 17.9.1990. Without any legal authority he has also deviated from the reservation rules by reserving five vacancies out of eight for the year 2001 and 3 out 5 for the year 2002. This is against the instructions issued in the Directorate's letter No.19-11/97 ED&TRG dated 27.11.1997. Similarly, the appointment of the selected persons without due verification of their documents is another gross irregularity and illegality and this action of the applicant being in contravention of the instructions issued by the Postal Directorate vide letter

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Nos.Vig/11-3EDK dated 11.9.1987, followed by the circular issued by the CPMG, Orissa Circle dated 30.3.1993, the applicant cannot justify the transgression under any circumstances.

9. Applicant has made an attempt to justify his illegal and irregular action on the ground of instructions issued by the higher authorities for filling up of the posts expeditiously. Similarly, he has also pleaded that although he did not conduct a verification of documents, in none of the cases there was any discrepancy noticed later. This attempt by the applicant fails the scrutiny of law. In the hallowed portal of governance no illegality or irregularity can be justified on the ground of expeditious disposal or ex post facto validation. In the present case, the applicant ought to have followed the due procedure and ought not to have deviated from the laid down procedure, the rules in force and the instructions of the Government issued from time to time. We, therefore, find no reason to interfere with the orders of the Disciplinary Authority and the Appellate Authority on this count.

10. The Courts/Tribunals have a very limited scope of judicial review in the matter of disciplinary proceedings as laid down by the Hon'ble Supreme Court in a catena of judgments. It is appropriate to quote some of the observations of the Hon'ble Supreme Court in a few cases on the issue of scope of judicial review in the matter of disciplinary proceedings.

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In *Surender Kumar vs. Union of India (2010) 1 SCC 158*, the Hon'ble Supreme Court has clearly laid down that the only scope of judicial review is to examine the manner in which the departmental inquiry is conducted.

In *Union of India vs. Flight Cadet Ashish Rai (2006) 2 SCC 364*, the Hon'ble Supreme Court has held as under.

"Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision-making authority exceeded its powers; (c) committed an error of law; (d) committed breach of the rules of natural justice; and (e) reached a decision which no reasonable tribunal would have reached; or (f) abused its powers. Administration action is subject to control by judicial review in the following manner:

- (i) Illegality: this means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) Irrationality, namely, Wednesbury unreasonableness.
- (iii) Procedural impropriety.

In *Hombe Gowda Educational Trust vs. State of Karnataka (2006) 1 SCC*, the Hon'ble Supreme Court has laid down that the scope of judicial review is limited to the deficiency in decision-making process and not the decision.

Similarly, in *B.C.Chaturvedi vs. Union of India (1995) 6 SCC 749*, the Hon'ble Apex Court has congealed the extent of judicial review in a disciplinary proceedings as under:

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act or of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or whether the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mold the relief so as to make it appropriate to the facts of each case.

In *Union of India vs. G.Ganayutham* (1997) 7 SCC 463 the

Hon’ble Supreme Court has held:

“To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court

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would consider whether relevant matters has not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test”

11. Viewed in the context of judicial pronouncements in the above referred cases, we find that in the present O.A. there is no scope for interference in the orders of the Disciplinary Authority as well as the Appellate Authority, since there is no procedural impropriety or illegality in the orders passed by them.

12. Coming to the issue of proportionality of punishment, we have already referred to the Wednesbury test as enunciated in Ganayutham case (supra). In Paragraph-32 of the said judgment, the Hon'ble Supreme Court has observed as under.

“32.Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of ‘proportionality’. There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to ‘irrationality’, there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in ‘outrageous’ defiance of logic”.

The Hon' Supreme Court also observed in Ganatyutham case (supra) that it had interfered with the punishment in

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Ranjit Thakur case [(1987) 4 SCC 611] only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational and the court had felt that, on facts, *Wednesbury* and *CCSU* tests were satisfied.

In *Indian Oil Corporation Ltd. Vs. Ashok Kumar Arora* (1997) 3 SCC 72 the Hon'ble Apex Court had decided that it will not intervene unless the punishment is wholly disproportionate.

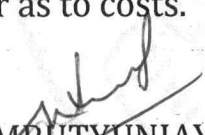
In Halsbury's Laws of England it has been laid down that it has become customary on the part of judicial dispensation to apply *Wednesbury* test. The grounds for judicial interference have been laid down in *Council of Civil Service Unions v. Minister for Civil Service*, 1985 AC 374 in which Lord Diplock proclaimed "one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second ground 'irrationality' and the third 'procedural impropriety'. This has effectively bestowed a degree of finality in deciding issues on proportionality.


13. The issue of applying the principle of proportionality has been examined by the Hon'ble Supreme Court also in *Union of India v. K.G.Soni* (2006) 6 SCC 794 and *Ramanuj Pandey v. State of M.P.* (2009) 7 SCC 248. The overriding trend of the judicial pronouncement on the issue of proportionality is that it is for

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the Disciplinary Authority or the Administrative Authority to decide the quantum of punishment in a case of misconduct and the role of the Court is only secondary. The Court/Tribunal can interfere with the quantum of punishment only if the punishment is outrageously disproportionate, illogical or shocking.

14. In the present O.A. we find that the applicant has unduly exceeded his authority and competence and committed gross irregularity and illegality which cannot be condoned or whose severity cannot be brushed aside. In view of the above, we have no hesitation in holding that the punishment imposed on the applicant brooks no interference by us. We, therefore, hold that the O.A. has no merit and it is accordingly dismissed with no order as to costs.


(DR.MRUTYUNJAY SARANGI)
MEMBER(A)


(S.K.PATTNAIK)
MEMBER(J)

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