

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK BENCH

ORIGINAL APPLICATION NO.290 OF 2010

Cuttack this the ~~07th~~ day of April, 2011

CORAM:

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

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Sri Fakir Charan Sahoo, aged 62 years, S/o. late Nilamani Sahoo, resident of Vill-
Pikola, Post-Bondamundai, PS-Salipur, District-Cuttack

...Applicant

By the Advocates:M/s.P.K.Padhi, M.P.J.Ray & Mrs.J.Misra

-VERSUS-

1. Union of India represented through it's Secretary cum Director General of Posts, Dak Bhawawn, New Delhi-110 001
2. Chief Post Master General, Orissa Circle, At/PO-Bhubaneswsar, Dist-Khurda-751001
3. Accountant General, Orissa, Bhubaneswar, Dist-Khurda
4. Director of Postal Services (Hqrs), O/O. Chief Post Master General, Orissa, At/PO-Bhubanesswar, Dist-Khurda-751001
5. Superintendent of Post Offices, Cuttack North Division, At-P.K.Parija Marg, PO-Cuttack GPO, Dist-Cuttack-753001
6. Mrutunjaya Bera, I.O. cum-Inspector of Posts, Dharmasala, At/PO-Dharmasala, Dist-Jajpur

...Respondents

By the Advocates:Mr.P.R.J.Dash,ASC

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ORDER

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:

1. In this Original Application, the applicant has called in question the very initiation of disciplinary proceedings against him vide Annexure-A/4 dated 15.2.2010 on the ground that the same having been initiated after 27 years suffers from laches and limitations.

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2. The brief facts leading to filing this O.A. are that, the applicant having been convicted in a criminal proceedings initiated against him vide G.R. Case No. 123/83, preferred appeal before the District & Sessions Judge, Cuttack, which was allowed on 14.9.1989, in effect, setting aside the order of conviction passed by the learned J.M.F.C., Salipur in the aforesaid G.R. Case. The order of the District & Sessions Judge, Cuttack, on being appealed, was upheld by the Hon'ble High Court in Govt. Appeal No. 02/1990 on 06.4.2007. This being the background, the applicant has been issued with charge sheet dated 15.2.2010 containing two articles of charge. The representation submitted by the applicant for dropping the charges having not yielded any fruitful result and in effect, the I.O. having been appointed to enquire into the charge and the applicant having been asked to nominate his A.G.S. the present O.A. has been filed for quashing the charge sheet at Annexure-A/4.

3. Respondent-Department have filed their counter opposing the prayer of the applicant. According to Respondents, after the conclusion of Government Appeal No. 2/90 by the Hon'ble High Court, efforts were made to collect the papers from the said Hon'ble Court. According to them, Hon'ble High Court has also given liberty to realize the money by approaching proper Civil Court. So the delay is bona fide. With these submissions, the Respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

4. We have heard Shri P.K. Padhi, learned counsel for the applicant and Shri P.R.J. Dash, learned Addl. Standing Counsel for the Respondents and perused the materials on record, including the rejoinder as well as the decisions relied upon by the applicant.

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5. The sole point needs to be determined in this O.A. ^{whether} ~~the~~ Respondents are within their rights to initiate disciplinary proceedings against the applicant at a belated stage.

6. It is an admitted fact that the ongoing criminal proceedings ended before the Hon'ble High Court of Orissa on 6.4.2007. It reveals from the record that after the disposal of criminal proceedings on 6.4.2007, the applicant for the reasons best known, was not reinstated to service by the Respondent-Department, he having been put of duty since 1983 on the score of criminal proceedings. In the above background, the applicant approached this Tribunal in O.A.No.47/2010 on 1.2.2010 for quashing the put off duty order dated 25.2.1983 and notice was directed to be issued on 9.2.2010. Just within a week of the date of admission, the applicant was issued with charge sheet dated 15.2.2010. This shows that the Respondents were not bent upon to issue charge sheet to the applicant but for approaching the Tribunal in O.A.No.47/2010. Be that as it may, there is no legal bar or embargo to issue charge sheet upon a delinquent on conclusion of the criminal proceedings as laid down by the Hon'ble Supreme Court in AIR 1992(SC)1981 (Nelson Motis v. UOI), (2006) 2 SCC 584 (South Bengal State Transport Corpn v. Sapan Kumar Mitra) and AIR 2008(SC) 1126 (West Bokaro Colliery v. Ram Pravesh Singh). At the same time, it is to be noted that the Hon'ble Apex Court in Union of India vs. Naman Singh Shekhawat reported in 2008(4) SCC 1 has laid down that initiation of departmental inquiry after acquittal in a criminal case is permissible under law, but such power has to be exercised bona fide, fairly and reasonably.

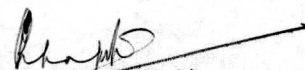
7. As indicated above, the Respondent-Department were in a state of tranquility after the criminal proceedings culminated by the Hon'ble High Court on 6.4.2007 and rose to the occasion on 15.2.2010 in issuing charge sheet to the applicant when the

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 applicant approached this Tribunal in O.A.No.47/2010 praying for quashing the put off duty order with consequential service benefits. This apart, delay in initiating disciplinary proceedings in between 6.4.2007, i.e., the date of disposal of criminal proceedings by the Hon'ble High Court and 14.2.2010, in our considered view, is inexplicable inasmuch as procurement of records from Hon'ble High Court and proceeding against the applicant in civil suit etc. has no reasonable nexus in the matter of issuing charge sheet to the applicant in a departmental proceedings and therefore, whatever explanation the Respondents have offered in this regard being not corroborated with the material evidence, we are not inclined to be swayed away with the bland assertion of the Respondents on the aforesaid reasonings that had stood in the way in issuing the charge sheet to the applicant soon after the criminal proceedings ended before the Hon'ble High Court on 6.4.2007. At the same time, we cannot lose sight of the fact of initiating disciplinary proceedings against the applicant in a hasty manner soon after the applicant had approached this Tribunal in O.A. 47/2010 and in this regard malicious intent of the Respondent-Department cannot be ruled out. Also in view of the decision of the Hon'ble Apex Court in Union of India vs. Naman Singh Shekhawat (supra), we are unable to hold that the Respondent-Department have exercised powers bonafide, fairly and reasonably in the instant case in initiating disciplinary proceeding against the applicant. In the circumstances, we answer the sole point in issue that the Respondents are not within their rights to initiate disciplinary proceedings against the applicant at a belated stage. Therefore, it is a fit case, where the intervention of the Tribunal is warranted.

8. For the reasons discussed above, we quash the charge sheet issued to the applicant vide Annexure-A/4, so also the consequential instructions/letters issued to him in that behalf.

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In the result, the O.A. stands allowed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER

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(A.K. PATNAIK)
JUDICIAL MEMBER