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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.354 OF 2010

Cuttack this the 7th day of February, 2010

2010

2012

Corresponding vide
order dt 26.09.12

Bankanidhi Champati, Applicant

Vs

Union of India & Ors. Respondents

FOR INSTRUCTIONS

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

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

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

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ORIGINAL APPLICATION NO.354 OF 2010

Cuttack this the 7th day of February, 2010

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corrected vide order
at 26.09.12

CORAM:

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

...

Bankanidhi Champati, aged about 51 years, Son of late Khetrabasi
Champati At/PO-Harirajpur, PS-Delanga, Dist-Puri, Orissa, Ex-
EDB;M/GDSBM, Harirajpur

...Applicant

By the Advocates: M/s.J.M.Patnaik, C.Panigrahi & D.K.Mallick
-VERSUS-

1. Union of India represented through its Director General of Posts, Government of India, Ministry of Communications, Department of posts, Dak Bhawan, New Delhi-110 001
2. The Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda, PIN-751 001
3. The Director of Postal Services (H'Q), O/O the Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda, PIN-753 001
4. The Senior Superintendent of Post Offices, Puri Division, At/P/Dist-Puri

...Respondents

By the Advocates: Mr.D.K.Behera, ASC

...

ORDER

A.K.PATNAIK, MEMBER(J):

An F.I.R was lodged against the applicant, while he was working as Gramin Dak Sevak Branch Post Master (in short GDSBPM), Harirajpur Branch Office, on the allegation of misappropriation of Government money to the tune of Rs.31,787/- which formed the subject matter of G.R. Case No.1677 of 1995/TR No.357 of 2000 before the Judicial Magistrate First Class, Pipili. Concurrently, on the self same allegation a departmental proceeding was drawn up against him under Rule -8 of EDAs (Conduct & Service) Rules, 1964 and charge sheet was issued vide Annexure-A/1 dated 26.11.1997 directing him to submit his written statement of defence within 10 days from the receipt of the charge sheet. No written statement having been received, the Respondent-Department conducted the inquiry *ex parte* and imposed the punishment

of removal from service vide Annexure-A/2 dated 31.3.2000. The Applicant preferred an appeal dated 27.4.2000. While the appeal was pending, the applicant was acquitted by the Trial Court vide order dated 22.9.2001. So he submitted another representation dated 13.11.2001 bringing this fact to the notice of the Respondents. Since the applicant did not receive any response, he filed O.A.No.77 of 2002 which was disposed of by this Tribunal, vide order dated 22.2.2002 at the stage of admission with direction to the Respondents to consider and dispose of the appeal within a stipulated period. After receipt of the order passed by this Bench of the Tribunal the Respondent No.2 issued order dated 19.4.2006 confirming the order of the Disciplinary Authority vide Annexure-A/5. The applicant submitted a representation to the D.G.Posts (Respondent No.1) for direction to the Revisional Authority for reviewing the matter after providing him reasonable opportunity vide Annexure-A/7 & simultaneously, moved this Tribunal by filing the present Original Application, seeking the following relief.

- i) To quash the order under Annexure-A/2 dated 31.03.2000 and the order under Annexure-A/5 dated 19.4.2006.
- ii) To direct the Respondents to take back the applicant to service forthwith and grant him all service and financial benefits retrospectively.
- iii) To pass any other order/orders as deemed fit and proper.

2. The Respondent-Department by filing their counter opposed the prayer of the applicant on the ground that despite repeated notification the applicant did not attend inquiry for which no option was left to the I.O. but to conduct the inquiry ex parte. Further the Respondents in their counter stated the difference between a departmental proceeding & a criminal proceeding. According to them, there being no bar for conducting departmental proceedings simultaneously with the criminal proceedings

and that there being compliance of the principles of natural justice at every stage of the proceedings, the punishment imposed is justified. With these submissions, the Respondents have opposed the prayer of the applicant and prayed for dismissal of the O.A.

3. Heard Mr.J.M.Patnaik, learned counsel for the applicant and Mr.D.K.Bhera, learned Addl. Standing Counsel appearing on behalf of the Respondents and perused the materials on record. We have also taken note of rejoinder and written note of submission filed by the applicant.

4. Mr.J.M.Patnaik, learned counsel for the applicant submitted that the charges, the documents relied upon and the witness examined in the departmental proceedings drawn up against the applicant as well as the criminal proceedings which was continuing against the applicant being one and the same, the authorities should not have proceeded with the departmental proceeding till the conclusion of the criminal proceeding as both the proceedings have identical charge, same set of witness & involved a common complicated question of law & fact. So also Mr.Patnaik strenuously argued that after the applicant's acquittal in the criminal case against which no appeal has been preferred, the punishment of removal as imposed by the Respondent-Department is bad in law inasmuch as by such acquittal, the disciplinary proceeding meets its end. It is the further contention that before imposing the punishment of removal no opportunity to the applicant to have his say in the matter had been given and therefore, the punishment so imposed suffers from the violation of the principles of natural justice.

5. In response Mr.D.K.Bhera, the learned A.S.C vehemently opposed the prayer of the Applicant by submitting that despite adequate

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repeated opportunity the applicant did not attend the inquiry for which the I.O. conducted the inquiry ex parte. He also tried to justify the continuance of both the proceedings by submitting that in the departmental proceedings, violation of departmental rules and conduct rules are involved whereas in a criminal proceeding the criminal breach of trust is under scrutiny and as such, acquittal of the applicant in the criminal case does not ipso facto makes him entitled of his exoneration in the departmental proceedings. According to him, there being no bar for conducting departmental proceedings simultaneously with the criminal proceedings and that there being compliance of the principles of natural justice at every stage of the proceedings, the punishment imposed is justified. With these submissions, he prayed for the dismissal of the O.A.

6. The reason behind initiation of departmental proceedings under four articles of charge against the applicant, as revealed from the records, is that although the sum deposited by various account holders in their Savings Bank Accounts on different dates were entered in their pass books on the respective dates and authenticated the transactions by the Applicant by putting his initial and date stamp of the office, yet he did not incorporate the said sums into Government account either on the said dates or any other subsequent dates and thereby failed to maintain absolute integrity and devotion to duty as required of him under Rule 17 of P & T EDS (C&S) Rules, 1964. From the above, ^{at} prima facie, it appears that the charges leveled against the applicant is unconnected with the criminal charge of which he has been acquitted by the Trial Court. To make the matter more conspicuous, we had gone through the order of the Trial Court (Annexure-A/3). The relevant observations of the Trial Court as recorded at Page-16 reads as under:

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“...In the instant case the informant has not filed and proved the documents regaining the manner in which the accused misappropriated government money, when it is specifically alleged in the F.I.R. that accused Bankanidhi Champati had accepted cash from the depositors and noted the transactions in the pass books but he did not record these transactions in Branch Office SB/RD Journal, B.O., Journal, B.O. Daily Account and B.O. Account Book. To substantiate the allegation, prosecution has not examined a single depositor to that effect. Similarly, neither the informant nor the I.O. has produced the Branch Office SB/RD Journal, B.O.Journal, B.L.Daily Account and B.O. Account book and deposit forms”.

7. From the above, it is clear that the vital documents based on which the Respondent-Department have initiated the departmental proceedings against the applicant were not the subject matter of judicial scrutiny by the Trial Court. In this view of the matter, it would be far fetched to hold that on the self same documents which were examined by the Trial Court the Respondent-Department have initiated disciplinary proceedings against the applicant.

8. To the next point urged by the applicant that before passing the final order, no opportunity was provided to him, it is to be noted that from the state of issuance of Charge sheet at Annexure-A/1, the applicant has abstained himself till final order was issued. Although he had filed an appeal against the order of punishment, in order to facilitate the Tribunal to take a wider view over the matter as to whether such a point he had urged or otherwise at the time of filing appeal to the Appellate Authority, the applicant has not annexed to the O.A. copy of such appeal. Similarly, for the reasons best known, he has also not annexed to the O.A. copy of petition dated 8.11.2002 which has been disposed of by the Revisional Authority vide Annexure-A/5 in compliance with the direction of this Tribunal in O.A.No.77/2002.

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9. However, since the applicant has been punished based on the enquiry conducted by the I.O. ex parte notwithstanding the fact that notices issued to him from time to time had been returned undelivered on some ground or the other in which event the Respondent-Department had also not substantiated the service of notice on the applicant by alternative source of service known to law, in our considered view, the ends of justice would be met if the matter is remitted back to the Disciplinary Authority to take further follow up action from the stage after the applicant filed his written statement of defence to the charge sheet at Annexure-A/1. Accordingly, applicant is directed to file his written note of submission pursuant to Charge sheet at Annexure-A/1 within a period of thirty days from the date of receipt of this order, where after the Disciplinary Authority is at liberty to proceed with the matter in accordance with law. In any case, the further proceedings shall be completed within a period of four months from the date of submission of written statement of defence to the Charge sheet by the applicant and the applicant is further directed to cooperate with the inquiry without fail.

10. For the purpose of technicality, we quash Annexure- A/2 dated 31.03.2000 and the order under Annexure-A/5 dated 19.4.2006. The applicant will be relegated to the position he was holding prior to his order of punishment. The period from the date of punishment will be decided by the Competent Authority after conclusion of the proceedings as directed above.

11. With the above observation and direction, this O.A. is disposed of.

No costs.


C.R.MOHAPATRA
ADMINISTRATIVE MEMBER


(A.K.PATNAIK)
JUDICIAL MEMBER