

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 83/2002.....

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet. O.A-83/2002.....Pg..... 1 to 2.....
2. Judgment/Order dtd. 30/04/2002.....Pg. No separate order allowed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A. 83/2002.....Pg..... 1 to 13.....
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
7. W.S.....Pg.....to.....
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.
GUWAHATI.

ORDER SHEET

Original No. 83 / 2002
Misc. Petition No. /
Contempt Petition No. /
Review Application No. /

Applicant(s) J. Chakraborty

Respondent(s) 601205

Advocate for Applicant(s) Mr J. L. Sarkar Mrs S. Deka
Mr A. Chakrabarti

Advocate for Respondent(s) CASE

Notes of the Registry	Date	ORDER OF THE TRIBUNAL
<p>This is application in form C. F. for Rs. 50/- deposited vide 192/01 79...54.7.976 Dated: 7.3.2002 NS. 11/3/02 Dy. Registrar</p> <p>No steps - 18/3/02</p> <p>Slips received. Notice referred and sent to IS for mms. The respondent No. 1 to 2 vs Regd A/D 2/4/02 D/No 1004 to 1005 Add 21/4/02</p> <p>Service report are still awaited. 24/4/02</p>	<p>13.3.02</p> <p>mb</p> <p>11.4.92</p> <p>mb</p>	<p>Heard Mr. J.L. Sarkar, learned counsel for the applicant.</p> <p>The application is admitted. Call for the records.</p> <p>List on 11.4.2002 for order.</p> <p>11/4/02 Member</p> <p>11/4/02 Vice-Chairman</p> <p>List on 30/4/2002 to enable the Respondents to file written statement. This case is connected with O.A. No. 308/2001.</p> <p>11/4/02 Member</p> <p>11/4/02 Vice-Chairman</p>

30.4.2002 Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is allowed. No order as to costs.

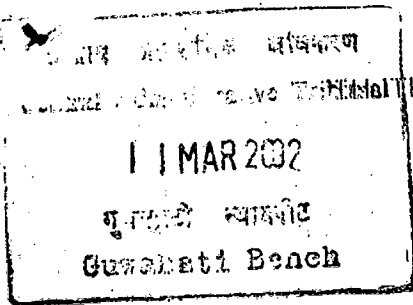
Member

Vice-Chairman

nkml

13/3/02

4



THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

Title of the case

:: O.A. No. :: 83 /2002

Sri J. Chakraborty

Applicant

versus

Union of India & ors.

Respondents

I N D E X

Sl.No.	Annexure	Particulars of Documents	Page No.
1.	-	Application	1 - 6
2.	-	Verification	7
3.	A	Order dated 23.10.2001	8-13

Filed by

(A. Chakraborty)

Advocate

Jyoti Chakraborty

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

O.A. No. 83 /2002

BETWEEN

Sri Jyotirmay Chakraborty,
Son of Sri S.R. Chakraborty,
Resident of Dharmanagarh,
North Tripura.

Applicant

AND

1. Union of India represented by the
Secretary, Govt. Of India, Ministry
of Communication, Department of
Post, New Delhi.
2. The Director of the Postal
Services, Office of the Chief Post
Master General, N.E. Circle,
Shillong

Respondents

Details of the Application :

1. Particulars of the order against which the
application is made :

The application is made against the Memo No.
Staff/109-9/2001 dated 23.10.2001

Jyotirmay Chakraborty

Filed with applicant
through A. Chakraborty
11/3/02

2. Jurisdiction:

The applicant declares that the subject matter of the application is within the jurisdiction of the Hon'ble tribunal.

3. Limitation:

The applicant declares that the application is within the period of limitation under section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case:

4.1 That the applicant is a citizen of India and as such is entitled to the rights and privileges guaranteed by the constitution of India.

4.2 That the applicant was promoted as LSG Accountant in the Department of Post w.e.f. 3.6.1989 and was officiating as Complaint Inspector, Dharmanagar Division w.e.f. 26.4.1996. The applicant, while officiating as Complaint Inspector, was placed under suspension w.e.f. 31.10.1996 which was later on revoked w.e.f. 20.01.1997.

4.3 That the applicant was charge sheeted with three articles of charges. It is stated that the charges leveled against the applicant are vague and abstract. The applicant submitted reply to the said charges denying the same. An Inquiry Officer was appointed to conduct the enquiry. The applicant brought allegation of biasness against the Inquiry Officer. The respondents changed the Inquiry Officer (for short IO) and Sri Narayan Das was appointed as IO. The applicant submitted application dated 16.2.2000 and 5.5.2000

6
by attorney -
Chandrasekhar

to the Superintendent of Post Offices, Dharmanagr alleging biasness against Sri Narayan Das, IO for his irregular appointment. He (IO) was appointed on the proposal of the Chief Post Master General, N.E. Circle, Shillong. It was also directed to IO in his appointment that he shall complete the enquiry within 2 months. But the IO did not complete the enquiry within 2 months and continued for a further period. The inquiry as such became bias.

4.4 That the inquiry report dated 12.11.2000 is not based on evidence brought on record and was prepared without looking the daily order sheets of the enquiry. The IO failed to record his reasoned conclusions. The IO failed to assess in the right manner the evidence enclosed as defence document along with the written statement of defence of the applicant. The findings of the IO as "owing to direct or indirect admission of the charged official, I hold that all the three charges against Sri Jyotirmay Chakraborty are proved" is vague and can not be said to be proved beyond reasonable doubt.

4.5 That the disciplinary authority by order dated 3.4.2001 imposed the penalty of 'Compulsory Retirement' upon the applicant. Being aggrieved by the said order dated 3.4.2001 the applicant filed an original application before this Hon'ble Tribunal which has been registered and numbered as OA. No. 308/2001. The said OA is pending for disposal.

4.6 That the applicant preferred an appeal dated 27.4.2001 against the said order dated 3.4.2001. The

X
Jyotirmay Chakraborty

respondent No.2 by a Memo No.Staff/109-9/2001 dated 23.10.2001 settled the appeal by upholding the punishment of compulsory retirement imposed by the disciplinary authority. The applicant craves for the liberty to refer to the appeal dated 27.4.2001 at the time of hearing this OA.

Copy of the Memo dated 23.10.2001 is enclosed as Annexure-A.

4.7 That the appellate authority has passed the order mechanically and non-application of mind is explicit in the order. It is mentioned that the points raised in the appeal petition dated 27.4.2001 were not ~~summarised~~ ^{dealt with} in the disposal of appeal by the appellate authority. The ^{appellate} authority has solely relied upon the order passed by the disciplinary authority without going through the evidence and without justifying the order of the disciplinary authority with reasons. The appellate order is as such perverse.

4.8 That the applicant prays for the analogous hearing of this application with the OA.No.308/2001.

5. Grounds for reliefs with legal provisions :

5.1 For that the findings of the IO are vague and not based on materials on records. The Disciplinary and the Appellate authority erred in relying upon the said Inquiry report and hence the impugned order is liable to be set aside and quashed.

5.2 For that the charges framed against the applicant are vague and not specific.

2

Typist may Check

5.3 For that both the disciplinary and the appellate authority has committed an error in law as well as in facts in passing the impugned orders.

5.4 For that the appellate authority failed to appreciate the argument and points placed by the applicant in his appeal dated 27.4.2001.

5.5 For that the appellate authority passed the order mechanically and without application of mind.

5.6 For that in any view of the matter the impugned order is bad and not tenable in law.

6. Details of remedies exhausted:

That the applicant has exhausted remedy.

7. Matters not previously filed or pending before any other Court:

The applicant declares that he has not filed any other case in any tribunal or court against the impugned order dated 23.10.2001. The applicant also declares that he has filed an OA. No. 308/2001 before this Hon'ble Tribunal against the order of the disciplinary authority, which is pending for disposal.

8. Reliefs sought for :

Under the facts and circumstances of the case, the applicant prays for the following reliefs :

9
Dy. Secy (Law)

8.1 The order dated 23.10.2001 issued by the respondent No.2 be set aside and quashed.

8.2 The applicant be paid all service benefit including monetary benefits during the he has been kept out of employment.

8.3 Any other relief/reliefs the Hon'ble tribunal may deem fit and proper.

The above reliefs are prayed for on the grounds stated in para 5 above.

9. Interim relief prayed for :

None

10. This application has been filed through Advocate.

11. Particulars of Postal Order :

- i) I.P.O. No. :
- ii) Date of issue :
- iii) Issued from :
- iv) Payable at :

12. Particulars of Enclosures :

As stated in the index.

Verification.....

Tyoti Chandra

11
:: 7 ::

Verification

I, Jyotirmay Chakraborty, Son of Sri S.
R. Chakraborty, resident of Dharmanagar, Tripura, aged
about 51 years do hereby verify that the statements made in
para 1,4,6 to 12 are true my personal knowledge and those
made in para 2,3 and 5 are true to my legal advice and that
I have not suppressed any material facts.

And I, sign this verification on this
28th day of February, 2002.

Jyotirmay Chakraborty

298

Anwar - A

✓

REG-1000
2000-01
DEPARTMENT OF POST
OFFICE OF THE CHIEF POSTMASTER GENERAL, N.E. CIRCLE, SHILONG

Memo No. Staff/109-9/2001

Dated at Shillong 23-10-2001

This is regarding the two appeals of Shri Jyotirmoy Chakraborty, the then SPM (designate), Salema Sub-Postoffice under Dharmanagar Division dtd 9-4-01 and 27-4-01, against the order of punishment of compulsory Retirement issued by Supdt. Of Post Offices, Dharmanagar Division under his memo No. B-333/PT.III dtd 3-4-01. Shri Chakraborty submitted two separate appeals (i) on 9-4-01 and another one 27-4-01 against the same order of punishment. Hence both the appeals have been tagged together and treated as one appeal and considered accordingly.

2. Brief history of the case is that Shri Jyotirmoy Chakraborty, while officiating as Complaint Inspector, was placed under suspension w.e.f 31-10-96 under SPOs Dharmanagar's memo no. B333/Pt.II dtd 31-10-96. The suspension order was revoked on 20-1-97 vide SPOs dharmanagar's memo no. B333/Pt.II dtd 20-1-97 and Shri Chakraborty was ordered to join as Sub-Postmaster Salema under the same memo of order. Shri Chakraborty received that order on 22-1-97. Shri Chakraborty did not join the post as ordered. Shri Chakraborty submitted an application dtd nil praying for 40 days medical leave w.e.f 23-1-97 to 03-03-97, which was received at the office of Supdt. of Postoffices, dharmanagar on 26-2-97. Subsequently vide SPOs Dharmanagar's memo no B333/Pt.II dtd 4-7-97 Shri Chakraborty was directed to appear before the RGM Hospital Kailashahar, on 8-7-97 for 2nd medical opinion. But he did not appear for the 2nd medical opinion as was directed. He did not join as SPM Salema either. Thus Shri Chakraborty was neither on authorized leave nor on duty w.e.f the date of revocation of his suspension. Therefore, SPOs. Dharmanagar initiated disciplinary action against him vide his memo of order number B-333/Pt.II dtd 12-8-98 under Rule-14 of CCS(cca)Rules- 1965. On finalization of the inquiry, the Supdt. Of Post offices, Dharmanagar imposed a punishment of compulsory retirement from service on Shri Jyotirmoy Chakraborty vide his Memo no. B-333/Pt.III dtd 3-4-2001. Shri Chakraborty has appealed against that order of punishment.

3. The following are the main points raised by Shri Chakraborty in his appeal against the order of the punishment.

- i. That the I.O. carried out the inquiry w.r.to two different memo of charges other than the memo no. B-333/Pt.II dtd 12-8-98 under which the Supdt of Post offices issued the memo of charges.

ii. While the IO submitted his inquiry report w.r.to SPOS memo no B-333/Pt.II dtd 12-8-98, the PC submitted his brief w.r.to SPOs No. B333/Pt.III dtd 17-9-98.

Photo Gpy
attached
Sushil
12/11/01
(SUSHIL K. NAMASUDRA
Asst. Headmaster, H. O. & D. O.
B. B. Institution, Dharmanagar
North Tripura, Tripura.

Attested
Principal
Shilong

- iii. That his application dtd 8-11-99 alleging biasness of IO was considered and the IO was changed, But other points mentioned in his application were not considered.
- iv. That Chief PMG being the revising authority cannot propose a particular person to be the IO.
- v. That the I.O. did not complete the inquiry within stipulated two months time as per direction of Circle office.
- vi. That the charges were not based on fact as he was not under suspension but was on leave from 1-10-96 to 30-10-96
- vii. That he was a qualified PO&RMS accountant and was LSG accountant w.e.f 30-6-89 as per Dtes no 31-26/83-PE-I dtd 17-12-83 and his appointment as accountant was final as per Dtes. No 9/7/84-SPB-II dtd 26/9/84 and is not re-optable as per Dtes. No 43-15/84-PE dtd 16-3-88
- viii. That the Dtes. No. 44-60/95-SPB dtd 24-9-96 is for protection of seniority of some official in Gradation list and does not abolish the two lines viz. General line and Accountants line. Otherwise, Directorate would not have directed CPMG shillong, to consider his posting to accounts line on conclusion of Disciplinary case vide No. 9-3/97-SPB-II dtd 1-6-98.
- ix. That the order of the SPOs dharmanagar disposing his representation dtd 29-1-97 against the order posting him as SPM Saslema (alleged illegal order) was not in conformity with Rules. More over, his refusal to accept the promotion as APM A/C Tura in 1991 does not change his standing in the service line. Because his option for accounts line in accordance with Dtes no 43-15/84-PE.I dtd 16-3-88 was final.
- x. That his suspension period was regularized as on duty following finalization of the related Rule-14 case by imposition of minor penalty of stoppage of one increment for three years without cumulative effect. As such his transfer on revocation of suspension stands irregular. More over CPMG vide his letter no Staff/110-1/97 dtd 12/14-1-2000 disposed of his application dtd 19-2-97 for reconsideration of his transfer order saying that "the modification of transfer and posting does not appear to be appropriate at this stage". This means that after attaining certain stage, the transfer order will be modified.

Now, the issues to be decided are

- a. Whether the order of transfer and posting of Shri J.Chakraborty was in order or not.
- b. Whether the inquiry was carried out properly or not and whether the official was given proper opportunity to defend himself or not.
- c. Whether, the charges brought against the official for non-obedience of official orders and remaining unauthorizedly absent from duty are proved or not

Photocopy
affixed

(SUSHIL K. NAMJODRA
Asst. Headmaster, H. O. & D. D. O
B. B. Institution, Dharmanagar
North Tripura, Tripura.

— 10 —

5. I have gone through the appeal of Shri Jyotirmay Chakraborty, parawise comments of the Supdt. Of Post Dharmanagar, the inquiry report, and all other records placed before me thoroughly. My findings are as below.

- i. The official insisted in his argument that he was a qualified accountant and therefore, he has to be posted as accountant only. He insisted on the Directorate's order No.9/7/84-SPB-II dtd. 26-9-84 and 43-15/84-PE dtd 16-3-88. He also quoted Dte's no. 9-3/97-SPB-II dtd 1-6-98.

There is no separate cadre of accountant in the Post offices. The recruitment is made in PA cadre. A PO&RMS Accountant is basically a Postal Assistant, qualified in PO & RMS Accountant exam, with certain special allowance, with no separate scale of pay and separate cadre. All benefits are accrued based on his recruitment as PA only. They are given TBOP/BCR on completion of required service length from the date of their recruitment as Postal Asstt and not from the date of qualifying in PO&RMS Accountants exam. Even on qualifying, their posting in accountant posts is subject to seniority cum availability of posts.

Para 2 of Dte's letter No. 9/7/84-SPB-II dtd 26-9-84 says that if an official opts for the Accounts line he may be allowed to hold the post of accountant in the LSG scale of pay i.e 425/640 but without special pay which was being drawn hitherto. Thus it is clear that even if one opts for account line, he may be or may not be allowed to continue as Accountant. It is not a must and his posting will be decided in the interest of service.

Thirdly, on introduction of BCR promotion, it was categorically clarified vide Directorate's No. 44-60/95-SPB-II dtd 24-9-96 that there is no distinction between accountants line and general line except for the functional necessity. Thus posting of an official irrespective of whether he is qualified in accountants exam or not may be made according to the functional necessity of the Department. Moreover, Para iii of Directorate's letter no.9-3-94-SPB dtd 13-2-95 provides that if the administration feels transfer of an official is necessary the provision of P&T Man. Vol IV can be invoked.

Fourthly Shri Chakraborty mentioned that, Directorate vide, their No.9-3/97-SPB dtd 1-6-98 would not have directed CPMG to consider his reposting in accounts line unless two lines were not there. In the said letter while the Directorate upheld the Supdt. of Post offices, Dharmanagar's order posting Shri Chakraborty as SPM Salema, directed Chief PMG to re-examine his reposting in accounts line subject to the out come of the concerned Disciplinary case against him. Thus the discretion of consideration was with the Chief PMG and was not with any provision of rules. Out come of that disciplinary proceedings was imposition of a punishment of stoppage of one increment for 3 years. (Not his acquittal from the charges) Besides, re-posting could be considered only on his joining the post. It was therefore not found appropriate to change the transfer orders when he represented for its cancellation vide his application dtd 10-2-97.

*Not a copy
attested
10/11*

(SUSHIL K. NAMASUDHAR)
Asstt. Headmaster, H. O. P. O. D.
B. B. Institution, Dharmanagar,
North Tripura, Tripura.

Thus the orders of his transfer and posting as SPM Salema was valid as per rules.

ii. On receipt of the transfer order, the official applied for 40 days commuted leave on medical ground. It was not granted as a reference was made for 2nd medical opinion. As the records as well as the appeal of Shri Chakraborty show, he neither appeared for the 2nd medical opinion, nor submitted any further application for leave. Nevertheless he did not join the post where he stands posted i.e. SPM Salema. He was therefore, charged under Rule-14 of CCS(CCA) Rules-1965 vide SPOs Dharmanagar's Memo No B-333/Pt-II dtd 12-8-98. SPOs appointed Shri R.K. Das the then ASPOs, Dharmanagar as I.O. and Shri Subrata Das SDI Telemura as P.O. vide his No. B333/Pt-III dtd 17-9-98. While the proceeding was in progress, Shri Chakraborty brought allegation of biasness against the I.O. His request was considered and Change of IO was made by appointing Shri Narayan Das ASPOs Agartala, i.e. from outside Division, to ensure fairness of the inquiry. The appellant stated that the IO in his order sheet dated 10-11-98 has mentioned the date of memo of charges brought against him as 17-9-98 where as no such memo was actually issued. It can be seen that the SPOs appointed the IO vide his order dtd 17-9-98 which was shown correctly at para 2 of the order sheet on preliminary hearing. Mention of chargesheet dtd 17-9-98 in para-3 of the order sheet might have been a mistake. But it did not change the content of charges read out to him. More over, he did not raise any objection to that while he put his signature on it. Hence it can be concluded that the charges were read out to him correctly and inquiry was conducted on those charges only. The 2nd I.O. who completed the inquiry, submitted his inquiry report having a reference to SPOs Dharmanagar's memo No. B-333/Pt-III dtd 17-12-99 with clear indication that he enquired into the charges brought against the appellant vide SPOs Dharmanagar's No. B-333/PT II dtd 12-8-98. As such there was no omission /mistake on his part. I also find that the inquiry was held in proper manner and the appellant got sufficient scope to defend his case. As such there is no reason to term the inquiry as invalid /irregular.

iii. The official finally state that the charges brought against him were false. As he stated, the charges brought against him was not correct as he was on leave from 1-10-96 to 30-10-96 and not holding the post of Complaint inspector. But since he proceeded on leave while officiating as C.I. and since it was duly certified in the leave memo that he would have continued to officiate in the post but for his leave, the period of his work as CI from 27-4-96 to 31-10-96 was correctly shown in the memo of charges. He did not deny the receipt of order posting him as SPM Salema on revocation of his suspension vide SPOs Dharmanagar Memo No B-333/Pt III dtd 20-1-97.

Photo copy
attached
12/11
(SUSHIL K. NAKASUDKA
Asst. Headmaster, H. O. & D. D. O
B. B. Institution, Dharmanagar
North Tripura, Tripura)

— 12 —

He received this order on 22-1-97. Hence it was incumbent on him to carry out the order and join the Post. Even if it is considered that he applied for 40 days leave, it does not justify his non-joining the post even after expiry of 40 days for which he applied for leave. He was posted vide order dtd 20-1-97. Charges under Rule-14 were brought against him vide memo dtd 12-8-98 i.e after waiting for about 20 months for his compliance of orders. He him self has stated that in disposing his representation for change of posting order, the Chief IMG decided that such modification was not found appropriate at that stage. But still the official continued to remain absent. As I find even after the Charges for unauthorized absence were brought against him, there was no restriction for the official to join the post as ordered for. The order of his posting as SPM Salema was standing till final order on the case was issued by the Supdt of Post offices, Dharmanagar vide his memo no B-333/Pt.III dtd 3-4-01. All the arguments he put forward do not justify non compliance of lawful orders issued by the controlling authority and for continuation of such long absence from duty. He could have asked for consideration of his reposting as accountant Dharmanagar even after joining the Post instead of remaining absent. I therefore, find that the appellant willfully disobeyed the order of his controlling authority and remained absent from duty w.e.f 23-1-97 i.e the date, following the date of receipt of the transfer order on 22-1-97, unauthorisedly.

Considering all the facts and circumstances, I find that the appellant deserves more stringent & exemplary punishment as to maintain discipline in the Department and maintain the smooth service to the member of public. But considering the length of service he put, the Supdt of Post offices awarded a lenient punishment of compulsory retirement.

I, therefore, settle this appeal case by upholding the punishment of compulsory retirement imposed by the disciplinary authority.


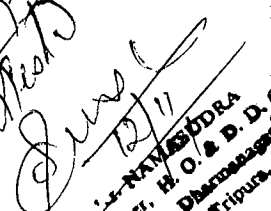

 (Lalhluna)
 DPS (HQ)

Photo copy
 attached

 (GUSHIL) S. N. N. S. D. R.
 Asst. Head, H. O. & D. D. O.
 B. B. Insurrection, Dharmanagar
 North Tripura, Tripura.

Copy to:-

1. The Supt. of Postoffices, Dharmanagar Division, Dharmanagar for information and necessary action.
2. Shri Jyotirmoy Chakraborty through the Supdt. of Post offices, Dharmanagar.
3. Spare.

photo copy
attested

12/11/01
(SUSIL K. NAMASUDRA
Asst. Headmaster, H. & D. D. O
B. B. Insulation, Dharmanagar
North Tripura, Tripura)