

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9428 of 2010

Kapilendra Tripathy

....

Petitioner

-versus-

***Union of India, represented through its
Chief Postmaster General, Orissa
Circle, Bhubaneswar and others***

....

Opposite Parties

Appeared in this case:

For Petitioner

:

Mr. Dillip Kumar Mohanty,
Advocate

For Opposite Parties

:

Mr. Debasis Tripathy,
Central Government Counsel

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

JUDGMENT

04.03.2022

Dr. S. Muralidhar, CJ.

1. The Petitioner, a former Branch Post Master at the Haladia Branch Office of the Department of Posts, has filed this petition challenging an order dated 16th July 2008 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack (CAT) in O.A. No.637 of 2004.

2. By the impugned order, the CAT held that the penalty imposed on the Petitioner for removal from service by the Disciplinary Authority (DA) pursuant to a departmental proceeding was not tenable in law and was accordingly set aside. The Opposite Parties were directed to reinstate the Petitioner in service "with all service benefits, except

the financial benefits since the Applicant had not worked after his removal from service in pursuance to Annexure-A/11 order."

3. Aggrieved by the impugned order to the extent of denial of financial benefits pertaining to the period of his removal, the Petitioner has preferred the present petition.

4. This Court has heard the submissions of Mr. Dillip Kumar Mohanty, learned counsel for the Petitioner and Mr. Debasis Tripathy, learned Central Government Counsel (CGC) for the Opposite Parties.

5. The background facts are that the Petitioner joined as EDBPM/GDSBPM of Haladia Branch Post Office with Ghanteswar Sub-Office on 20th April, 1979. On 19th January 2000, the Petitioner was placed under suspension pending a departmental enquiry. By a letter dated 8th March 2000 issued by the Superintendent of Post Office, Bhadrak Division, proceedings were initiated against the Petitioner on the charge that while working as BPM, Haladia BO the Petitioner accepted Rs.6,000/- from Smt. Susmita Nayak for opening a TD account in her name. However, instead of doing so, the Petitioner accounted for only Rs.60/- on 23rd June 1999 under the item SB Deposit. A further allegation was that although the Petitioner prepared SB26, receipt No.13 for Rs.60/- on that date in the name of Jasmati Nayak, he did not grant the said receipt to the depositor. It is further stated that the Petitioner had manipulated the entry of the account of deposit from Rs.60/- to Rs.6,000/- by adding two zeros against the entry of deposit of Rs.60/- in the deposit column as well as the balance column written by the Accounts Office

in Page-2 of the passbook. He also manipulated the front cover page of the passbook by inserting the entry as 5 years TD and delivered a new passbook to the depositor at her home obtaining the signature of the depositor on the front cover page of the undetached PR 13.

6. An Inquiring Officer (IO) was appointed. The Presenting Officer (PO) on behalf of the department examined three witnesses on 29th April 2000 and two witnesses on 1st May, 2000. The deposition of Smt. JasmatiNayak was recorded as SW-1. The PO also examined one Sri BaidharPatraEDDA, Haladia as SW-2; Sri Sarat Chandra Muduli as SW-3; Sri SrikantaKar as SW-4 and Sri Biswanath Das, SPM Ghanteswar as SW-5. The Petitioner examined one Smt. SaraswatiPatra as DW-1 and Sri KalandiNayak as DW-2. The Petitioner was himself examined by IOin regard to the circumstances appearing against him. After conclusion of the examination of the witnesses, the Petitioner submitted a written brief on 20th June, 2000.

7. The IO submitted a report to the DA exonerating the Petitioner from the only charge leveled against him. After perusing the report as well as the Petitioner's representation, the DA by an order dated 29th November 2000 exonerated the Petitioner from the charge leveled against him. However, the period of suspension was treated as non-duty. The Petitioner was debarred from promotion for a period of 3 years. Meanwhile, he was directed to be reinstated.

8. The Petitioner then appealed to the CPMG, Orissa Circle, Bhubaneswar. The appellate authority remitted the matter to the DAfor de novo proceeding from the stage of supplying a copy of the report to the IO with the points of disagreement, if any.

9. Thereafter, the DA by a letter dated 27th February 2003, disagreed with the findings of the IO and held the Petitioner guilty of the charge on a preponderance of probabilities. The Petitioner was then called upon to make a representation as regards his punishment. The Petitioner claims that he was unable to submit a representation to the DA within time. On 30th May 2003, the DA passed the final orders removing the Petitioner from service.

10. According to the Petitioner, he soon lost his balance of mind and "being a chronic heart patient suffered from emotional stress" and took treatment from several doctors. On 19th March 2004, he submitted an appeal. Awaiting the decision on appeal, the Petitioner filed O.A. No.637 of 2004. In the impugned order, the CAT came to the following conclusion:

"....even though the appellate authority had narrated certain disagreements with the findings ended by the inquiry officer, it was without any basis as the disciplinary authority alone has got the power to disagree with the finding ended by the inquiry officer, especially when in the appeal the applicant had not challenged the finding ended either by the inquiry officer or by the disciplinary authority. The appellate authority cannot invoke the suomotu jurisdiction to set aside an order passed by the disciplinary authority in concurrence with the fact finding ended by the inquiry officer and even for such disagreement, we are of the view that the appellate authority had considered only the evidence collected by the departmental officer during preliminary inquiry."

11. The further finding of the CAT was as under:

"In the case in hand, at no point of time the applicant invited the appellate authority to consider the evidence collected against him. In this view of the

matter, the appellate authority had gone beyond its power to set aside the order of the disciplinary authority on disagreeing with the fact finding ended by the inquiry officer and therefore, the remand made by the appellate authority as per Annexure A/9 order for further consideration of the fact finding ended by the inquiry officer is without any legal basis and ab initio void. In this context, it has to be borne in mind that the appellate authority ought to have considered as to whether the penalty imposed on the applicant by the disciplinary authority, while agreeing with the finding ended by the inquiry officer, is correct or not or supported by any evidence. If the same is not based on any evidence, the appellate authority ought to have set aside that penalty alone. Therefore, on the remand of the matter the second order of penalty passed by the disciplinary authority, as at Annexure A/11, is not sustainable in law."

12. However, in the operative portion of the impugned order, the CAT ordered as under:

"In the above circumstances, on the basis of the findings ended by this Tribunal, it is declared that the penalty imposed on the applicant is not tenable in law and is thus set aside, the applicant is found not guilty of any charge leveled against him, and he is exonerated of the charge. Consequently, the respondents are directed to reinstate the applicant in service with all service benefits, except the financial benefits since the applicant had not worked after his removal from service in pursuance to Annexure A/11 order. The order of reinstatement of the applicant with all service benefits, as stated above, shall be issued within one month of receipt of copy of this order."

13. Mr. Mohanty, learned counsel for the Petitioner submitted that there was no basis for the CAT to have withheld the financial benefits once it was held that the order of removal from service was bad in law. He placed reliance on the decision dated 12th December

2007 in Civil Appeal No.5826 of 2007 (***General Manager, UCO Bank v. M. Venuranganath***) and the decision dated 31st July 2015 in Civil Appeal No.811 of 2007 (***Ramesh Kumar v. Union of India***). On the other hand, Mr. Tripathy, learned CGC appearing for the Opposite Parties placed reliance on the decision in ***Union of India v. Jaipal Singh (2004) 1 SCC 121***.

14. As far as the case of ***Ramesh Kumar (supra)*** is concerned, it deals with the effect of retrospective promotions and is not in the background of exoneration in disciplinary enquiry. The said decision is therefore distinguishable on facts. As regards the decision in ***General Manager, UCO Bank (supra)***, it appears to have turned on the specific wording of Regulation-15 of the United Commercial Bank (Conduct and Discipline and Appeal) Regulations, 1976 read with Clause-21 (9) and 22 (8) of the Manual on Disciplinary Action and Related Matters of UCO Bank. Since the entire decision turned on the specific wording of the said Regulations and provisions in the Manual, the said decision is again distinguishable on facts.

15. In ***Union of India v. Jaipal Singh (supra)***, it was observed that upon acquittal in a criminal case, the Department cannot be at fault for having kept the employee out of service, and therefore reinstatement without back wages would be justified.

16. In the present case, however, the Petitioner was placed under suspension only because of the action of the Department itself. Consequently, the Petitioner cannot be denied the financial benefits upon his reinstatement.

17. In that view of the matter, the impugned order of the CAT to the extent of denial of financial benefits during the period of suspension of the Petitioner awaiting completion of the disciplinary enquiry against him, is set aside. The Opposite Parties will issue consequential orders calculating and paying the amount due to the Petitioner within a period of eight weeks from today. The amount shall be paid together with simple interest @6% per annum from the date till the date of actual payment which should not be later than 1st June, 2022. If the above time schedule is not adhered to, the Opposite Parties will pay the Petitioner simple interest @9% per annum on the amount due for the period of delay.

18. The writ petition is allowed in the above terms with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

Judge

S.K. Guin/Sr. Stenographer

(R.K. Pattanaik)