

**ORISSA HIGH COURT
CUTTACK**

OJC NO.13587 OF 2000

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Shri Batakrushna Nayak	Petitioner
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Versus

Union of India and others	Opposite Parties
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For Petitioner - M/s D.P. Dhalsamanta and
G.S. Namtoar.

For Opp.Parties - Mr. P.K. Parhi,
Central Government Standing
Counsel.

PRESENT :-

**THE HON'BLE MR. JUSTICE I.M. QUDDUSI
AND
THE HON'BLE MR. JUSTICE PRADIP MOHANTY**

Date of hearing : 25.07.2005 :: Date of judgment : 25.07.2005

I.M.QUDDUSI, J. This writ petition has been filed against the judgment and order dated 9th February, 2000 passed by the Central Administrative Tribunal, Cuttack Bench dismissing O.A. No.420 of 1992.

2. The brief facts of the case are that while the petitioner was serving as E.D.D.A. at Jayapur Branch Office, a disciplinary proceeding was initiated against him. Consequently, charge-sheet was served upon him in which three charges were levelled, which are as under:

“**Article-I.** That Sri Bata Krishna Nayak while working as EDDA Jaypur EDBO in a/c with

Guamal S.O. on 21.9.88 showed payment of Dasnagar M.O. No.3379 dtd. 16.9.88 for Rs.200/- p/t Smt. Sandhayarani Samal, At-Mandarmal, P.O. Jeypore on obtaining forged L.T.I. of the payee Smt. Sandhyarani Samal and the bogus signature of Sri Laxmidhar Samal and Sri Anadi Charan Nayak of Mandarmal on the M.O. paid voucher on 21.9.88 as identifier/witness respectively and thereby committed grave misconduct.

Article-II. That Sri Batakrisna Nayak while working as EDDA-Jaypur B.O. on 9.9.88 showed payment of Saradana Road M.O.No.1480 dtd. 5.9.88 for Rs.50/- p/t Smt. Basanti Swain, C/o Mahendra Swain, At-Dhali bazaar, P.O. Jaypur, Via-Guamal obtaining forged signature of the payee Smt. Basanti Swain and thereby committed grave misconduct.

Article-III. That Sri Batakrisna Nayak while working as EDDA- Jaypur BO on 24.9.88 showed payment of Sadhana Ausodhalaya MO No.3503 dtd. 20.9.88 for Rs.100/- p/t Sri Mayadhar Bhoi vill-Itagari, P.O. Jaypur an illeterate payee obtaining forged signature of the payee on the MO paid voucher and bogus signature of Sri Krushna Chandra Raut as witness thereon and thereby committed grave misconduct.”

After conclusion of the departmental proceeding, the petitioner was awarded punishment of removal from service vide impugned order dated 30.11.1991 passed by the Sub-Divisional Inspector (Postal), Bhadrak East Sub-Division, Bhadrak. Thereafter, he preferred a departmental appeal on 3.1.1992 to the Superintendent of Post Offices, Bhadrak Division, Bhadrak. When the appeal was not disposed of even after expiry of six months, he filed the Original Application before the Tribunal on 12.08.1992 with a prayer for quashing the memo of charges and the order of punishment passed by the disciplinary authority, and for his consequential reinstatement with service benefits. During the pendency of the O.A., the appellate authority, i.e., the Superintendent of Post Offices, considered the matter and passed orders to the effect that after going

through all the relevant records, findings of the I.O. and of the Disciplinary Authority, he was not in agreement with the said findings. The Disciplinary Authority was directed to initiate de novo proceedings from the stage of examination of those S.Ws. who were not examined in respect of Article of Charge No.I and also to collect the opinion of G.E.Q.D. in respect of Article of Charge Nos.II and III. In pursuance of that order, the Disciplinary Authority vide order dated 10.02.1994 ordered that a de novo proceeding would be conducted from the stage mentioned above in respect of Charge Nos. I and II only. It was informed to the petitioner that no further enquiry would be held in respect of Article of Charge No. III as the main witness of that charge, who was Sadhana Aushdhalaya, was reported to be dead. But, as his O.A. was already pending before the Tribunal, the petitioner did not participate in the de novo enquiry, resulting which the Disciplinary Authority, vide order dated 27.01.2000 imposed punishment of dismissal from service. The Tribunal dismissed the O.A. of the petitioner, inter alia, with the observation that the order of the appellate authority has no legal consequence because, under section 19(4) of the Administrative Tribunals Act, order on the appeal, if any, passed by the appellate authority abates. Further, the Tribunal considered the initial order of punishment of removal from service dated 30.11.1991 and held that charge No.I was established against the petitioner, and even if it is presumed that charge Nos. II and III could not be proved, the imposition of punishment of removal from service is in no way disproportionate to the gravity of charge No.I.

4. Before proceeding further, it is necessary to peruse the provisions of section 19(4) of the Administrative Tribunals Act, 1985. For convenience, the said provisions are reproduced hereunder:-

“19. Applications to Tribunals.

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(4) Where an application has been admitted under Sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of		

such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.”

5. No doubt, in view of the above-quoted provisions, all proceedings pending with the departmental authority stand abated after the admission of the Original Application by the Tribunal, which was admitted on 28.01.1992 and notice was also issued. But, if the higher authority had passed an order directing de novo enquiry for certain reasons disagreeing with the proceeding and punishment order, the same should have been treated as part of the pleadings of the opposite parties, and in such circumstances the Tribunal should have treated it as admission of the opposite parties regarding lacuna in disciplinary proceedings, as it was binding upon them. The Superintendent of Post Offices in the said order dated 11.11.1992 had pointed out that in respect of Charge of Article No.I, specimen L.T.Is. (Ext.S-4) were sent for opinion to the G.E.Q.D. with the disputed document, i.e., L.T.Is. But, the person whose L.T.Is. were obtained and marked as Ext.S-4 was not examined to prove his L.T.I. Ext.S-4 neither bore any identification nor witnessed by any one. The document (Ext.S-4) was attested by a person who was working under the Investigating Officer and thus was a part and parcel of the investigating team. Further, he did not know the name of the husband of the payee nor the name and village of her father. He was also not a resident of the village of the payee nor was the village of the payee within the delivery jurisdiction of the branch office of that person. When Ext.S-4 itself was disputed, how could it be treated as admitted without getting it proved? Therefore, it could not have been said that the Charge of Article No.I was proved beyond doubt. More so, when the opposite parties in their counter affidavit have stated that it is a fact that the payee whose L.T.Is. were taken in Ext.S-4 did not attend the enquiry. The order of the appellate authority was also mentioned in paragraph-6 of the counter affidavit wherein it has been stated that the appellate authority was not convinced with the

findings of the I.O., and, therefore, de novo proceedings were ordered. It has also been stated that since de novo proceedings were ordered by the appellate authority, the case would be decided by the Disciplinary Authority on completion of the de novo proceedings on its merit. Therefore, the Tribunal had no occasion to consider the merits of the case vis-a-vis the impugned order of punishment of removal from service in view of the admission of the opposite parties that the matter required de novo enquiry. Further, since the Superintendent of Post Offices admitted the lacuna in the enquiry proceedings and decided to hold de novo enquiry, the impugned order of removal from service was liable to be set aside. During the pendency of the O.A. before the Tribunal, the opposite parties could not have started de novo proceedings. Therefore, the de novo proceedings started and decided ex parte and the order passed on that basis is null and void in view of section 19(4) of the Administrative Tribunals Act.

6. In view of the above-mentioned facts and circumstances, the impugned judgment and order passed by the Tribunal is not sustainable in the eye of law and the same is quashed. The order of punishment of removal from service dated 30.11.1991 as well as the order of dismissal from service passed on 27.01.2000 after holding de novo ex parte enquiry during the pendency of the O.A. before the Tribunal, is also quashed. It will be open for the opposite parties to initiate fresh disciplinary proceedings against the petitioner, if so advised.

7. In the result, the writ petition is allowed. There will be no order as to costs.

PRADIP MOHANTY,J.

I agree.

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I.M.QUDDUSI,J.

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PRADIP MOHANTY,J.

High Court of Orissa, Cuttack,
July 25, 2005/*Samal*

