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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 147 of 1987.

Date of decision : February, 19, 1991

P.K.Panda ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.Devanand Misra,
Deepak Misra,
R.N.Naik, S.S.Hota,
Anil Deo, Advocates.

For the respondents ... Mr.Tahali Dalai,
Addl. Standing Counsel (Central)

C O R A M:

THE HONOURABLE MR. B.R.PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
 2. To be referred to the Reporters or not ? *yes*
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
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J U D G M E N T


N. SENGUPTA, MEMBER (J)

The applicant was working as a Sub-Postmaster of Modipara Sub Post Office in the town of Sambalpur in the year 1973. During his incumbency as such Sub Postmaster some V.P. articles were received in that Post Office and they were delivered to the addressees. But the amounts payable by the addressees were neither credited to the Post Office accounts nor sent to the senders of the articles. Against the two clerks/assistants who were connected with receipt of registered and V.P. articles and the applicant

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an F.I.R. was lodged with the Sadar Police-station, Sambalpur on 16.8.1973. In usual course investigation by the Police was made and ultimately the Police declined to place a chargesheet against the applicant though they chargesheeted the other two who faced the trial, were convicted in the trial court but ultimately acquitted in the High Court. A disciplinary proceeding was initiated in the year 1985 and a notice under Rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 with a statement of imputations of misconduct was issued on 19.3.1985. In the statement of imputations it was mentioned that the applicant did not take the care that was expected of him in checking the entries in the different registers maintained in the Sub Post Office of which he was the Sub-Postmaster. Therefore, he lacked devotion to duty and was negligent. Six items were mentioned in the statement of imputations and all those were of dates between February, 1973 to June, 1973. The applicant's case is that he made an application for permission to peruse and take extracts of 12 documents listed in that application but he was not given adequate opportunity to peruse or take extracts. The Senior Superintendent of Post Offices, Sambalpur Division, the Disciplinary authority, by his order dated 14.7.1986 inflicted the penalty of recovery of Rs.3500/- in 20 monthly instalments of Rs.175/- ^{each}. Against this order of punishment he (the applicant) preferred an appeal to the Director of Postal Services, Sambalpur Region, but the said Director without applying his mind properly, rejected the appeal on 31.3.1987 and for this reason he has been compelled to file the present application.

2. The respondents in their written reply have stated that

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the applicant was given the opportunity to peruse the documents and take extracts of the same but he did not properly utilise those opportunities and as such cannot make a grievance that there was a denial of reasonable opportunity. They have maintained in the counter that the applicant asked for production of some documents which were not quite relevant to the imputations to be proved and some of the documents the applicant had perhaps not made over to his successors on his transfer from the post of Sub Postmaster of Modipara for which reason the Department could not produce the documents for the perusal of the applicant. They have further alleged that the applicant instead of taking extracts began copying one of the documents which ran into several pages and could not complete the copying of the documents which cannot amount to denial of opportunity to peruse the document or to take extract of the same. The applicant did not appear in the proceeding, so it had to proceed ex parte.

3. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents. One of the main thrusts of arguments advanced by Mr. Misra is that by the long delay in initiation of the disciplinary proceeding, the applicant was prejudiced and as such, the order of punishment is to be quashed. This argument of Mr. Misra carries considerable force. In their reply the respondents have not assigned reasons for such long delay of about 12 years in the initiation of the disciplinary proceeding. By lapse of time some evidence is bound to vanish and as time passes by

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memories of incidents and occurrences get blurred. On a perusal of the copy of orders passed by the disciplinary and the appellate authorities it would be found that negligence on the part of the applicant was inferred from omissions of entries relating to the V.P. Articles mentioned in the statement of imputations after a few days of the receipt of those articles. The applicant appears to have taken the stand that on those dates when the V.P. articles were entrusted to the Postmen for delivery, he might not have been present in the Sub-Post Office either having been on leave or away to attend some union meetings. The applicant asked for production of the Attendance Register for the relevant periods. From the papers it cannot be said that infact the Attendance Register was made available to the applicant for his perusal. Both the disciplinary and the appellate authorities stated that the applicant was allowed to peruse all available documents but there is no indication in the annexures as to whether the Attendance Register was made available to the applicant for his perusal. We need not further discuss the contentions of Mr. Misra regarding making available to the applicant the documents asked for by him because on another ground the application ^{can} be disposed of.

4. It has already been stated above that by lapse of time recollection of an event becomes difficult and memory about an incident ^{- fades -} ~~falls~~. In a recent case the Hon'ble Supreme Court had to deal with the question of initiation of a disciplinary proceeding after the long delay, interestingly also about 12 years after the alleged act was committed.

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The only distinguishing feature so far as that Supreme Court decision reported in AIR 1990 SC 1308 (State of Madhya-Pradesh v. Bani Singh and another) ^{is concerned} is that in the reported case the disciplinary proceeding had not been concluded but the present application relates to a concluded disciplinary proceeding but this distinction does not make much difference. The Hon'ble Supreme Court found that it was not the case of the Department that they were unaware of the irregularities and came to know only in 1987 and the alleged irregularities were during the period from 1975 to 1977. They also found that there was no such satisfactory explanation for inordinate delay in issuing the charge memo. On these facts it was observed that it was unfair to permit a departmental enquiry to be proceeded with. As we have indicated a little above, the pendency or conclusion of enquiry does not make any difference about the fairness or otherwise of a charge memo or a notice under ~~xxxx~~ ^{Rule} 16 of the Central Civil Services (Classification, Control & Appeal) Rules after a delay of about 12 years. We would accordingly agree with the contention of Mr. Deepak Misra and hold that inordinate delay in commencing a proceeding against the applicant caused prejudice to him and accordingly the order of punishment cannot be sustained and is quashed.

5. This application is accordingly disposed of. No costs.

[Signature] 19.2.91
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Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack,
February 19, 1991/S. Sarangi.



[Signature] 19.2.91
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Member (Judicial)