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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No. 214 of 1987.

Date of decision : July 29, 1988.

Sri Narendra Panigrahi , aged about 56 years,
Son of late Nityananda Panigrahi, Sahi Gopinathpada,
Sambalpur. ... Applicant.

Versus

1. Union of India, represented by the Director
General of Posts, Dak Tar Bhawan, New Delhi-110 001.
2. Postmaster General, Orissa Circle,
Bhubaneswar- 751 001, Dist- Puri.
3. Director of Postal Services, Sambalpur Region,
Sambalpur- 768 001.

...

Respondents.

M/s P.V.Ramdas, & B.K. Panda,
Advocates ...

For Applicant.

Mr. A.B.Misra, Sr. Standing
Counsel (Central)...

For Respondents.

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN
A N D

THE HON'BLE MR. K.P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be permitted
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

K.P.ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the order of punishment imposed by the Director of Postal Services, Sambalpur Region ordering compulsory retirement of the petitioner from Government service with immediate effect contained in Annexure-3 is under challenge.

2. Shortly stated, the case of the petitioner is that while he was functioning as Superintendent of Post Offices, Phulbani Division, a disciplinary proceeding was initiated against him for having misconducted himself and five items of charges were framed and delivered to the petitioner. They are as follows :-

(1) The petitioner during the period 30.6.1982 to 20.9.1982 confirmed one Sri G.S.Kar, P.A. Phulbani in the cadre of P.A. on 29.3.1982 by short circuiting the very day the disciplinary action contemplated against the said G.S.Kar instead of following the provisions contained in Rule 156 of the P & T Manual, Vol. III.

(2) While the petitioner was functioning as such and during the above mentioned period, confirmed one Sri Keshab Nayak, Postal Assistant to one as Sub- Post Master, Tumudibandha on 23.8.1982 while a disciplinary case was pending against the said Sri K. Nayak which is on contravention of Rule 156 of the P & T Manual, Vol. III.

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- (3) While the petitioner was functioning as such during the above mentioned period issued to all the post offices a telegram on 9.9.1982 to observe holiday on 9.9.82 in memory of sad demise of Sheikh Abdulla, Chief Minister, Kashmir and this was in contravention of the provisions contained in D.G. P & T, New Delhi letter No. 35-4/72-C dated 2.6.1972.
- (4) That while the petitioner was functioning as such during the above mentioned period he had put one Sri Satyananda Dang, E.D. SPM, Jhadrajingi off duty from 19.8.1982 in contravention of the guide lines prescribed in D.G. P & T, New Delhi letter No. 104-11/77-Misc. II dt. 24.2.1979 and demanded and accepted gratification of Rs.500.00 from the said Sri Dang with assurance to reinstate him as E.D. SPM, Jhadragingi.
- (5) That while the petitioner was functioning as such during the aforesaid period transferred Sri B.N.Kanhar in September, 1982 from Contractorpada Post Office to Birnarasinghpur Post Office as S.P.M. the post from which the said Sri Kanhar was transferred during June, 1982 in contravention of the provisions contained in Rule 61-A and 62 of P & T Manual Vol. IV.

A full fledged inquiry was conducted

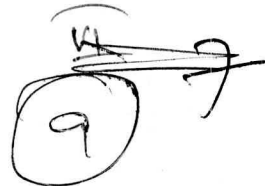


and the Inquiring Officer found the petitioner guilty of all the charges and accordingly submitted his findings to the disciplinary authority who in his turn concurred with the findings of the Inquiring Officer and ordered compulsory retirement of the petitioner with immediate effect. Appeal preferred by the petitioner did not yield any fruitful result and therefore, this application has been filed with the aforesaid prayer.

3. In their counter , the Opposite Parties maintain that no illegality/ irregularity having been committed by the Inquiring Officer and fullest opportunity having been given to the petitioner to adequately defend himself and principles of natural justice not having been violated in any manner whatsoever, the case is devoid of merit and is liable to be dismissed .

4. We have heard Mr. P.V.Ramdas, learned counsel for the petitioner and Mr. A.B.Misra, learned Sr. Standing Counsel for the Central Government at some length. For the sake of convenience, we propose to deal first with Item No.4 of the charge. Undoubtedly, the charge is of a very serious nature and if held to be proved , then we feel that continuance of the petitioner in Government service would be detrimental to the interest of Administration. In order to prove this charge, the prosecution relied upon the evidence of Sri satyananda Dan (P.W.5) and the jeep driver Sri Raghav Nayak (P.W.4). Satyananda Dan has stated in unequivocal terms that he was put off from duty and on a demand made by the petitioner he had given Rs.500.00 to the petitioner for

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reinstatement. We have carefully perused the evidence of Satyananda Dan (P.W.5) and we have no hesitation in our mind to hold that the evidence of P.W.5 in this regard has not been assailed in any manner whatsoever during cross-examination. The veracity of this witness has gone completely unimpeached. While attacking the evidence of P.W.5 Mr. Ramdas strenuously urged before us that P.W.5 being an accomplice his sole uncorroborated evidence should not be relied upon and should stand rejected. True it is, an accomplice is worthy of credit unless corroborated in material particulars . The corroboration may be either direct or indirect. In cases of this nature, preponderance of probabilities is also a matter which cannot but be taken into consideration. The prosecution intended to rely upon the evidence of the jeep driver(P.W.4) to lend corroboration to the statement of P.W.5 that Rs.500.00 had been paid to the petitioner by P.W.5. P.W.4 has gone back upon his previous statement and stated before the Inquiring Officer that his previous statement recorded by the Vigilance officer and the Inquiring Officer who had conducted the preliminary inquiry resulted from the pressure given by these two officers to falsely implicate the petitioner. The Inquiring Officer has relied ^{on} the previous statement which, in our opinion, is not a correct procedure. The witness should have been declared hostile and should have been cross-examined with preference to his previous statement which also does not form substantial evidence. Even if the evidence of P.W.4 is left out of consideration still the tale telling circumstance appearing against the petitioner in respect of this charge lends

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sufficient corroboration to the evidence of P.W.5, firstly presuming that P.W.5 having paid Rs.500.00 and in consequence thereof having been reinstated into service, he could not have any ^{troupe} ground against the petitioner to make a false statement. Had he not been reinstated, we might have taken the evidence of P.W.5 ^{with} that a pinch of salt holding that P.W. in order to feed fat his grudge might be making false statement against the petitioner. That apart, the tale telling circumstance is that the petitioner had ordered on 16.8.82 putting off P.W.5 from duty and surprisingly on 1.9.1982 he ordered putting off the petitioner was re-called, even though the petitioner had ordered that a disciplinary proceeding should be initiated against P.W.5 and charge memo should be delivered to him. Despite this strenuous argument advanced by Mr. Ramdas, no convincing reason was given to us indicating the circumstances which compelled the petitioner to re-call the order dated 16.8.1982 just after a lapse of only fifteen days. This is a grave incriminating circumstance lending adequate and substantial corroboration to the evidence of P.W.5 who might be an accomplice. Mr. Ramdas relied upon a judgment of ^a the learned Single Judge of Orissa High Court reported in 1985 (59) C.L.T. 510 (Sashibhusan Kar vrs. State of Orissa). In this case, the appellant before His Lordship had been convicted under section 52(2) read with 5(1) of the Prevention of Corruption Act, 1947 and Section 161 of the Indian Penal Code. Mr. Ramdas relied upon the observations of His Lordship at para- 12 which runs thus :-

" Being accomplices to the commission

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of crime, because of of their statements of payments of bribe moneys to the appellant for three months, the evidence of these two self condemned persons, who, on their own showing, had thrown moral scruples and sense of honesty, if they had any, to the winds for which instead of refusing to meet the demand of the appellant, they had willingly paid bribe amounts for three months, would be unworthy of credit without corroboration in material particulars and through reliable sources. "

Mr. Ramdas next relied upon the observations made at para 14 of the judgment which runs thus :

" There are various kinds of bribe givers. There is the unblushing giver who pays the bribe and gets the advantage and subsequently gives evidence for some ulterior purpose. Such a person is an accomplice of the darkest hue. There may be a person, who, from the very beginning, had no intention of giving a bribe, but makes a show of doing it as to bring the dishonest public servant to book. Such a person, far from being an accomplice, is a worthy citizen who is to be respected and encouraged. "

We have no dispute with the proposition of law finding place in the aforesaid judgment. There are plethora of judicial pronouncements from the highest court of the land that a bribe giver is an accomplice but should be corroborated in material particulars. At the cost of repetition, we may say that the corroboration may be direct or indirect. In

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our opinion, the tale telling circumstance indicated above goes a long way to prove the case of prosecution by substantially and adequately lending corroboration to the statement of P.W.5 and therefore we have no hesitation in our mind to accept the evidence of P.W.5^{to} ~~be~~ worthy of credit and we further hold that the petitioner had demanded Rs.500.00 from P.W.5 and it was paid by P.W.5 to the petitioner as an illegal gratification and hence the charge is proved.

5. Next ^{reverting} ~~about~~ to the other charges, we have carefully gone through the evidence ~~and~~ perused the relevant documents and we have given our anxious consideration to the arguments advanced at the Bar in respect of these charges. We are of opinion that there is no escape from the conclusion that all other charges have been proved to the hilt. Mr. Ramdas relied upon a judgment reported in A.I.R. 1979 S.C. 1022 (Union of India and others vrs. J.Ahemed). In the said case, Their Lordships were pleased to observe as follows :-

" A look at the charges framed against the respondent affirmatively showed that the charge inter alia alleged failure to take any effective preventive measures meaning thereby error in judgment in evaluating developing situation. Similarly, failure to visit the scenes of disturbance was another failure to perform the duty in a certain manner. Other charges indicated the shortcomings in the personal capacity

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of degree of efficiency of the respondent. It was alleged that respondent showed complete lack of leadership when disturbances broke out and he disclosed complete inaptitude, lack of foresight, lack of firmness and capacity to take firm decision.

Held that these were personal qualities which a man holding a post of Deputy Commissioner would be expected to possess. They might be relevant considerations on the question of retaining him in the post or for promotion, but such lack of personal quality could not constitute misconduct for the purpose of disciplinary proceedings. Therefore, it could not be said that an inquiry on a charge of misconduct was being held against the respondent and sub-rule (2) of Rule 16 would be attracted and he would be deemed to have been retained in service till the inquiry was concluded. To retain him in service beyond the period of his normal retirement with a view to punishing him was wholly unjustified. The High Court was, therefore, right in coming to the conclusion that the respondent was no longer in service on the date on which an order removing him from service was made and, therefore, the order was illegal and void *.

The facts of the case are clearly distinguishable. In the present case, the personal qualities and the personal short ^{comings} ~~payments~~ of the petitioner are not under consideration. The crucial question that needs determination

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in this case is whether the cumulative effect of each of the charges is that while discharging the duty of a Government servant whether the petitioner has misconducted himself in not adhering to the instructions contained in the Post & Telegraph Manual and thereby having violated the same ? The answer to this question would be nothing but affirmative . Thus, we hold that all the charges stand proved against the petitioner. We might have taken a lenient view in regard to imposition of penalty in respect of all the charges except Charge No.4 but charge No.4 being of very grave and incriminating nature, we repeat and say that the continuance of the petitioner in Government service would be detrimental to the interest of Administration. Hence, we are of opinion that the disciplinary authority has rightly imposed a punishment of compulsory retirement which, in our opinion, is the minimum ^{which can be} penalty imposed - rather the disciplinary authority has been kind to the petitioner. Hence we find no merit in this case which stands dismissed leaving the parties to bear their own costs.

6. Before we part with this case, we would record a word of appreciation for the Inquiring Officer who has taken all pains in scrutinising evidence with utmost care and caution and has summarised the evidence with a judicial approach.

We shall fail in our duty if we do not indicate an infirmity which is appearing in almost all the departmental proceedings and we hope the Post Master General would issue adequate instructions to the presenting officer and the Inquiring Officer. In most of the cases including the

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present case, we find that evidence of ^awitnesses is not being redorded by the Inquiring Officer in extenso. The Presenting Officer and the Inquiring Officer remain satisfied by asking a question to the witness as to whether he had made a previous statement implicating the delinquent officer and the answer of the witness in affirmative is recorded. This is not a correct procedure. This practice should be dis-couraged and we hope and trust the Post Master General would issue appropriate directions/ instructions to the concerned officers.

[Signature]
 29.7.88
 Member (Judicial)

B.R. PATEL, VICE CHAIRMAN,

I agree.



[Signature]
 29.7.88
 Vice Chairman.

Central Administrative Tribunal,
 Cuttack Bench.
 July 29, 1988/Roy, Sr.P.A.