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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

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Original Application No.278 of 1987.

Date of decision : November 10 ,1989.

Shri Kalicharan Barik, aged about 36 years,
son of Anirudha Barik, At/P.O.Baikala,
via-Jhumpura, District-Keonjhar.

...

Applicant.

Versus

1. Union of India, represented by its
Postmaster General, Orissa, Bhubaneswar.
2. Director of Postal Services,
Sambalpur Division, Sambalpur.
3. Superintendent of Post Offices,
Keonjhar Division, Keonjhar.

...

Respondents.

For the applicant ... M/s.P.V.Ramdas,
B.K.Panda, Advocates.

For the respondents ... Mr.Ganeswar Rath,
Sr.Standing Counsel (Central)

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C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE 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 in this case was working as Extra-Departmental Branch Postmaster, in Raikala Branch Post Office in the district of Keonjhar. In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant has sought quashing of the order of removal from service as per Annexure-3 dated 30.4.1986.

2. The facts of the case, stated briefly, are that the Assistant Superintendent of Post Offices, Keonjhar, inspected the Raikala Branch Post Office on 30.4.1985 and on that date, according to the applicant, he had kept a part of the cash balance in his residence as he was not provided with an iron safe. Even though he requested the Inspecting Officer i.e. the Assistant Superintendent of Post Offices to allow him to go to his residence to bring the cash, he was not allowed and thereafter a departmental proceeding was started against him making the allegations of converting to his own use the balance that was found short but later in the day paid, insulting to the Inspecting Officer and production of a fake school leaving certificate at the time of his appointment. With regard to the charge of insult to the Inspecting Officer, his case was before the departmental authorities that he did not really insult and the same case has been reiterated in the present petition. As regards the charge regarding the production of a fake certificate by him, the case of the applicant is that he did not file any fake certificate and that he was not given an opportunity to prove his case in the disciplinary proceeding and that denial was by refusal of his prayer through the defence

*Member Secy
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assistant for production of some documents and summoning of witnesses. In short, the grounds urged in the petition for quashing Annexure-3 are that there was really no shortage inasmuch as under the Postal Rules, he was entitled to keep a part of the cash at his own risk as he was not provided with an iron safe, there was really no insult to the Assistant Superintendent of Post Offices and further that the disciplinary proceeding regarding the charge relating to production of fake certificate by him was vitiated by denial of opportunity to prove the contrary. The applicant preferred an appeal which was not disposed of till the filing of this application.

3. The case of the respondents has been that the applicant at the time of earlier inspection was unable to reconcile the accounts and that is why the Asst. Superintendent of Post Offices paid a visit to that Branch Post Office on 30.4.1985 and found shortage of cash. This cash was really not kept by the applicant in his residence but he had spent it which he made good by borrowing from a person examined as Witness No.2 for the Department in the departmental proceeding. As regards the case of the applicant relating to the insult, their case is that infact the applicant had insulted the Assistant Superintendent of Post Offices which was against official discipline and as such the charge was properly made and it was proved by evidence adduced in the departmental proceeding. With regard to the production of a fake certificate by the applicant, it is the case of the respondents that adequate opportunity had been given to the applicant and there was no denial of any opportunity and further that the enquiring officer recorded evidence and his findings were perused and

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examined by the disciplinary authority who inflicted the punishment. With regard to the averments in the petition regarding preferring an appeal against the order passed by the disciplinary authority in paragraph 14 of the counter, it has been stated that no such appeal has been received.

4. The High Court, whose successor the present Tribunal is, does not possess any power as if it were an appellate authority to go into the merits of the decision, therefore, the Tribunal has to confine itself to see if the order passed by the disciplinary authority was based on materials which were wholly irrelevant or was based on no evidence. Only if the evidence adduced in the departmental proceeding was wholly insufficient and was such that no prudent man would by any stretch of imagination come to hold the charges to have been (See 1976 (2) S.L.R 260 - K.L. Swidhe vs. State of Mysore and (1) 1989 ATL 468) proved, can the Tribunal interfere, otherwise not. Keeping these in view it may now be seen whether the departmental proceeding was in any way vitiated either by denial of natural justice or by want of relevant materials. On a perusal of the copy of the enquiry report (Annexure-2) and the copy of the order passed by the disciplinary authority, it would be found that the enquiry officer passed a fairly detailed and lengthy order noticing all the evidence that was adduced before him. Therefore, further discussion by this Tribunal is really not called for nor permissible, at least so far as the charges relating to shortage of cash and insult to the inspecting officer are concerned.

5. Mr. P.V. Ramdas, learned counsel for the applicant has stated that there was denial of natural justice inasmuch as the enquiring Officer refused to call for the documents or give

Memorandum
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opportunity to summon the relevant documents and also did not summon some of the witnesses cited by the applicant in the departmental proceeding. Therefore, the entire proceeding was vitiated. In this regard, Mr. Ramdas has sought reliance on a decision of the Hon'ble Supreme Court. In that case, Their Lordships of the Supreme Court held that where the charged officer was not supplied with the copies of the statements of witnesses examined at the stage of preliminary enquiry and copies of the documents relied on by the disciplinary authority in support of his charges, the enquiry would be vitiated. In this connection, learned counsel for the applicant has drawn our attention to the Annexure-A/5. In that document it was stated that some documents at Sl.Nos.1 to 4 and another application filed on 24.12.1985 and some records at Sl.Nos.5,6 and 7 in the application dated 24.12.1985 were not made available to the applicant for his perusal and in that regard his prayer was rejected on the ground of public interest and that handicapped the applicant in his defence. What those documents were have not been stated in the present original application nor is there any indication in Annexure-5 about the nature of the documents. It is not the law that each and every document that a charged officer wants to peruse or call for would be made available to him or called for. But what is really required is that when a refusal is made by the Department, it must assign reasons for such refusal. As would be found from Annexure-5, in fact the Department assigned the ground of public interest. Without any other materials it would not be possible for this Tribunal to say that by refusing the prayer of the applicant in the

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application dated 24.12.1985, there was denial of opportunity to him to make out his defence adequately. In Annexure-5 on 5.4.1986 the applicant made a prayer for permitting him to file school leaving certificate from Ukhunda High School where he alleged he was a regular student and had not really brought any fake certificate from the Raisuan High School. In view of a recent decision rendered by the Bangalore Bench of this Tribunal reported in A.T.R.1988(2)C.A.T.582 (Smt.P.K.Rohini Kutty v. Union of India and others), we do not feel it necessary to dialate further. The applicant was appointed as Extra-Departmental Branch Postmaster in 1972 and the inspection was made in 1985 long 13 years after the applicant entered into the service. After such a long lapse of time it would not be proper to go into the question whether the applicant was reading in Raisuan High School or Ukhunda High School and the certificate said to have been produced by the applicant at the time of his appointment was a genuine or a fake one, we would, therefore, hold that the third charge should not have been framed. Though in paragraph 9 of the application it has been mentioned that the third charge that is the one relating to production of fake school leaving certificate was vague, we do not find much substance in it since in the imputations, ~~of~~ material facts were stated, but not much turns on it for what has been stated just above.

6. As has been observed above, the Enquiry Officer dealt with the charge relating to shortage of cash in detail and no infirmity in the procedure adopted in the enquiry can be found, it has to be stated that the charge has been proved. In a recent

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 decision the Supreme Court (1989 (3) S.L.J. 1 (Pyarelal Sharma v. Managing Director and others)) has ruled that if proof of any one of the charges can entail the punishment ~~is~~ inflicted in the departmental proceeding, the courts can not interfere. In the rules relating to conditions of service of E.D. Agents only two punishments viz. removal and dismissal are provided, so the penalty is not one not provided for under the Rules. In this connection also a reference to AIR 1989 SC 1185 (Parma Nanda v. State of Haryana and others) may be made.

7. In these circumstances, we are not inclined to interfere and as such the application stands dismissed but, however, without costs.

[Signature]
 10.11.89
 Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.



Central Administrative Tribunal,
 Cuttack Bench, Cuttack.
 November 10, 1989./Sarangi.

[Signature]
 10.11.89
 Vice-Chairman