

3

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 298 of 1987

Date of decision: February 22, 1989

1. N.Dharma Rao, S/o N.Chiranjeevulu,
At/P.O.Budaguda, Via. Rayagada,
Dist.Koraput. Applicant

-Versus-

1. Union of India, represented by the
Postmaster General, Orissa Circle,
Bhubaneswar-751001

2. Director, Postal Service,
Sambalpur Region,
Sambalpur-768001

3. Senior Superintendent of Post Offices,
Koraput Division, Jeypore(K) 764001
Dist.Koraput. Respondents

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

For the Respondents Mr.A.B.Misra, Senior Standing
Counsel(Central) &
Mr.T.Dalai, Addl.S.C.(Central)

C O R A M:

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN
&
THE HON'BLE MR.K.P.ACHARYA, MEMBER(JUDICIAL)

1. Whether reporters of local papers may be
allowed to see the judgement ? Yes

2. To be referred to the Reporters or not ?

3. Whether Their Lordships wish to see the fair
copy of the Judgement ? Yes.

.....

JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the order passed against him by the competent authority removing the applicant from service. vide Annexure-3 dated 18.5.1987.

2. Shortly stated, the case of the applicant is that while he was continuing as Extra-Departmental Branch Postmater, Budaguda Post Office within the district of Koraput, he was put off from duty on 2.5.1986 and on 9.10.1986 a departmental proceeding commenced against him on the following allegations.

- (i) The applicant is said to have received two money orders dated 26.3.1986 on 3.4.1986, each money order amounting to Rs.960/-, total being Rs.1920/-. The payee was one Mandika Kudunj. Further allegation against the applicant was that he paid Rs.400/- on 3.4.86 and paid Rs.1510/- to the payee on 4.4.86 after forging the signatures of the Extra-Departmental Delivery Agent, Shri S.C.Mohanty and another outsider, K.Lachman in the portion meant for witness's signature.
- (ii) The applicant is said to have received a money order for Rs.450/- on 30.10.1985 from the remitter but he took the same to the Branch Office account on 31.10.1985.
- (iii) The applicant is said to have received a money order of Rs.150/- from the remitter on 10.2.1986 and he credited the amount to the B.O.account on 11.2.1986

5
P

(iv) The applicant is said to have received a money order from the remitter on 13.2.1986 for a sum of Rs.88.20 and he is said to have credited the said amount to the B.O.account on 14.2.1986.

On these allegations, a full-fledged enquiry was held against the applicant and the enquiring officer found the applicant to be guilty of ~~xxx~~ the charge of forging the signatures of the Extra-Departmental Delivery Agent, Shri S.C.Mohanty and K.Lachman in the money order form so far as item No.1 of the charge is concerned and he also found the applicant to be guilty of charge Nos.2,3, and 4 as mentioned above. Accordingly, the enquiring Officer submitted his findings to the disciplinary authority who in his turn concurred with the findings of the enquiring officer and ordered removal of the applicant from service vide Annexure-3 which is under challenge. The appeal preferred by the applicant did not yield any fruitful result and hence this application with the aforesaid prayer.

3. In their counter, the respondents maintained that the case being of full-proof evidence and the applicant having forged the signatures of both the witnesses and having committed temporary misappropriation of the amount mentioned against Item Nos.2,3, and 4 of the charges even for a single day, brings the applicant within the mischief of misappropriation and hence, rightly the applicant was found to be guilty of the charges and removed from service. In a nut-shell, it is maintained by the respondents that the case being

devoid of merit is liable to be dismissed.

4. We have heard Mr.P.V.Ramdas, learned counsel for the applicant and Mr.Tahali Dalai, learned Additional Standing Counsel (Central) at some length. We propose to deal first with the charge regarding forgery about which the applicant has been found guilty. Even though the Extra-Departmental Delivery Agent says that he has not signed in the space meant for signature of the witness in the money order form, yet in our considered view it was incumbent upon the departmental authorities to get the admitted signature of the E.D.D.A., Shri S.C.Mohanty compared with the disputed signature which would have finally set at rest the dispute and there would have been no scope for the counsel for the applicant to argue and say that the prosecution has failed to establish its case against the applicant. We say so because the E.D.D.A. is a Postal employee. We think there is considerable force in the contention of Mr.Ramdas that the Extra-Departmental Delivery Agent might have acted according to the dictation of Sub-Divisional Inspector (P) who was vehemently interested for the prosecution. We particularly emphasise that an examination should have been taken by the handwriting expert because the money order in question having been admittedly received by the payee Mandika Kudunj and in order to give a final seal to the matter, the signature should have been compared by an expert. The departmental authorities not having done so, we feel reluctant to act

VII
7
G

on the uncorroborated testimony of the Extra-Departmental Delivery Agent who is an employee under the Postal Department.

5. Next, coming to the case of the prosecution regarding the forgery of the signature of K. Lachman we are surprised to find as to how an adverse inference could be drawn against the applicant even when K. Lachman has not been admittedly examined by the prosecution to bring home the charge against the applicant. The arguments advanced by the Enquiring Officer in holding that the signature of K. Lachman has been forged appears to us to be unreasonable and not according to law. The ground on which the enquiring officer holds the applicant to have forged the signature of K. Lachman is that K. Lachman had denied the fact that he had signed in the money order form before the S.D.I. (P) who had recorded the statement of K. Lachman to the above effect and the witness who had proved the previous statement of K. Lachman not having been examined by the applicant, according to the enquiring officer, the only irresistible conclusion which could be drawn is that the signature of K. Lachman has been forged by the applicant. This argument of the enquiring officer appears to us not only fantastic but against all cannons of law on the field. The previous statement cannot be treated as a substantive evidence, even though K. Lachman would have been examined. By virtue of non-examination of K. Lachman and in the absence of examination of the signature by an handwriting expert it cannot be said that the reasonings of the enquiring Officer

is sustainable. We are more surprised as to how the higher authority like the disciplinary authority could concur with the findings of the enquiring officer in regard to such illegal reasonings. However, in conclusion we would hold that there is no satisfactory evidence in this case to prove that the applicant had forged the signatures of the Extra-departmental Delivery Agent, Shri S.C.Mohanty and that of K.Lachman and therefore, the applicant is acquitted of the said charge.

6. Next, coming to the charge nos. 2, 3 and 4 we find that the amount has been taken to the Branch Office account just one day succeeding the day on which the money orders were received by the applicant from different remitters for being despatched. Several considerations could have come into play which might have ~~deferred~~ the applicant from despatching the money orders on the very same day of ~~his~~ ^{only} receipt. There has been a day's delay. It would amount to misappropriation and in addition to the same we would say that the Rules contemplate that on each day ~~amount~~ has to be credited to the B.O. account, yet there are several unforeseen circumstances beyond the control of a particular Branch Postmaster which might have stood on the way of the Postmaster to strictly comply with the said rules. In the present case, it has been stated by the applicant that he received the money orders at late hours and by then the mail bag had been despatched. This explanation by the applicant has not been negatived. Therefore, without least

9
11

hesitation in our mind we do accept the explanation offered by the applicant which amounts to strengthen the extenuating circumstance in favour of the applicant. In such circumstances, we hold that the applicant is not guilty of the charges levelled against him and hence, he is exonerated from all the charges, and he is acquitted therefrom. The order of removal contained in Annexure-3 is hereby set aside and it is directed that the applicant should be reinstated into service within two months from the date of receipt of a copy of this judgment. The applicant would ^{not} be entitled to any back wages.

7. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

Agreed
22.2.89
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.

22.2.89
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
February 22, 1989/S. Sarangi *

