IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No. 396 of 1987.

Date of decision : September 8,1988.

Sri Laxman Pradhan, aged about 36 years,
son of Jogeswar Pradhan, vill/P.O-Sulsulia,
Via- Bhatli, Dist- Sambalpur.

.... Applicant.

Versus

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

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

3. Senior Superintendent of Post Offices, Sambalpur Division, Sambalpur-768001, Dist- Sambalpur.

.... Respondents.

Mr. P.V.Ramdas, Advocate .... For Applicant.

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

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)

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1. Whether reporters of local papers may bepermitted to see the judgment ? Yes .

2. To be referred to the Repotters or not ? Yes

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

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JUDGMENT

K.P.ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order of punishment passed against the petitioner removing him from service.

2. Shortly stated, the case of the petitioner is that he was appointed as Extra- Departmental Branch Post Master, Sulsulia within the district of Sambalpur on 5.10.1975 and he was put off from duty on 20.11.1983 on a contemplated proceeding and ultimately the proceeding was initiated on 7.5.1984 on an allegation that the money order received in the said Post Office payable to one Smt. Tara Bhosagar of Latipalli though received on 3.10.1983 was not paid till 11.11.1983. Hence it was alleged that the petitioner had committed temporary misappropriation. A regular inquiry was conducted and the Inquiring Officer found the petitioner guilty of the charge and submitted his findings to the disciplinary authority who in his turn concurred with the findings of the Inquiring Officer and ordered removal of the petitioner from service. Hence, this application claiming the aforesaid relief.

2. In their counter, the Opposite Parties maintained thatno illegality/ irregularity having been committed during the course of inquiry and principles of natural justice having been strictly observed, no prejudice was caused to the petitioner and the case being one of full proof evidence, the order of the disciplinary authority should not be unsettled.

3. 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. Though Mr. Ramdas vehemently urged for an acquittal of the petitioner in respect of the charge framed against him on questions of fact, yet we donot propose to express any opinion on the merits of the case lest we may emparass the appellate authority because of theorder we propose to pass. Questions of fact are kept open to be considered by the appellate authority.

4. Question of law advanced by Mr. Ramdas is that copy of the inquiry report not having been supplied to the petitioner either before or after the disciplinary authority had passed an order imposing penalty over the petitioner, serious prejudice hasbeen caused to the petitioner and there has been a clear violation of theprinciples of natural justice and therefore, thepetitioner is entitled to anacquittal. Inorder to substantiate his contention, Mr. Ramdas relied upon a judgment of the Central Administrative Tribunal, Ahmedabad Bench reported in A.T.R. 1988 (1) CAT 308(K.Gopal Rao vrs. Union of India & others). In the said case the Hon'ble Judges of the Tribunal held that serious prejudice has been caused to the petitioner in the said case and the entire proceeding was liable to be quashed because of non-supply of the copy of the inquiry report before an appeal was preferred by the delinquest officer. Hence, the Hon'ble Judges quashed the proceeding and so also the punishment imposed on the petitioner. In another judgment of the Madras Bench reported in A.T.R. 1986 (2) CAT 226 (V.Shanmugam vrs. The Union of India & others),

the Hon'ble Judges had also quashed the punishment on the self same ground. Mr. Ramdas urged before us that the view of the Madras Bench and that of Ahmedabad Bench should be followed by this Bench. In the past we have decided some cases of this nature and we have sent the cases back on remand to the appellate authority for reconsideration and we have directed the departmental authorities to furnish a copy of the inquiry report enabling the delinquent officer to attack the finding of the Inquiring Officer (concurred by the disciplinary authority) before the appellate authority. Ofcourse we might have thought of reconsidering our views in the light of the judgment pronounced by the Ahmedabad Bench and that of the Madras Bench but we find that the Supreme Court has also not been able to express a positive view on matters of this nature and the Hon'ble Judges of the Supreme Court in a judgment reported in A.I.R. 1988 S.C. 1000 (Union of India and others v. E. Bashyan) have been pleased to refer this issue to a larger Bench for decision and Their Lordships have directed in the said judgment that the matter be placed before the Hon'ble Chief Justice of India for constituting a special bench to decide this issue. In the said judgment, Their Lordships have distinguished the cases which were decided by the Supreme Court earlier saying that the inquiry report had to be furnished before a punishment is imposed because the delinquent officer must be given an opportunity to show cause as to why a major punishment should not be imposed. By virtue of the forty-second Amendment of the Constitution, such a requirement being no longer necessary, yet supply of copy of the inquiry report may be

necessary toenable the delinquent officer to attack the findings before the disciplinary authority .Their Lordships have been pleased to refer this issue for a decision by a larger Bench. For better appreciation , observations of Their Lordships are quoted hereunder.

> " It is no doubt that when Constitution Bench rendered the aforesaid decision in H.C.Goel's case (AIR 1964 SC 364) Art. 311 (2) had not yet been amended. However, that makes little difference, by virtue of the amendment what has been dispensed with is merely the notice in the context of the measure of penalty proposed to be imposed.The opportunity required to be given to a delinquent which must be reasonable opportunity compatible with principles of Natural justice has not been dispensed with by virtue of the said amendment. Therefore the view taken in the context of the contention that the Disciplinary Authority need not afford an opportunity to the delinquent in regard to the measure of the punishment will not hold good in the context of the present argument in the background of the non-supply of the report of the Enquiry Officer. In the event of the failure to furnish the report of the Enquiry Officer the delinquent is deprived of crucial and critical material which is taken into account by the real authority who holds him guilty namely; the Disciplinary Authority.He is the real authority because the Enquiry Officer does no more than act as a delegate and furnishes the relevant material including his own assessment regarding the guilt to assist the Disciplinary Authority who also records the effective finding in the sense that the findings recorded by the Enquiry officer standing by themselves are lacking in force and effectiveness. Non-supply of the report would therefore constitute violation of principles of Natural Justice and accordingly will be tentamount to denial of reasonable opportunity within the meaning of Art.311(2) of the Constitution.
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> The question arising in this matter is not with regard to the giving

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ofnotice limited to the questionof what penalty should be imposed. The question is whether it is the right of the delinquent to persuade the Authority which makes up its mind as regards the guilt of the delinquent that such a finding is not warranted in the light of the Report of the Enquiry Officer. The decision on this point will affect milionsof employees in service today as also those who may enter Government service hereafter for times to come. The matter thus needs careful consideration in depth, and if necessary at length. As this Bench is comprised of two Judges, we donot considerit proper on our part to pass any order in regard to the present petition though prima facie we are not inclined to grant leave in view of the two recent decisions cited before us. In any view of the matter we do not think that it is proper on our part to pass any order notwithstanding the fact that it appears to us that this question wasnot directly in issue and has neither been presented nor discussed in all its ramifications in the aforesaid two matters.

In fact this proposition has not been discussed at all in these judgments. It is therefore futile on the part of the petitioners to contend that the point is covered and concluded in their favour. Even so we prefer to be guided by considerations of proprity and refer the matter to a larger Bench. We also wish to place on record that merely granting leave in a matter like this will serve no better purpose than prolonging the misery of all concerned. It may be that after ten years the appeal is dismissed. It may happen that the employee may die meanwhile. It may also happen that the order of reinstatement may be confirmed after ten years. In that event the public exchequer will have spent lakhs of rupees without taking any work from the employee. With the pendency of an appeal on this point hundreds of allied matters may have to be admitted and tagged on to the present matter . The point therefore deserves to be settled at this stage itself by a larger Bench ".

In view of the fact that this issue has been referred to a larger Bench and in view of the fact that there being no direct decision of the Hon'ble Supreme Court on this point, we would refrain ourselves from taking a view other than what has been taken by this Bench in the past. Therefore, we would remand this case for further hearing by the appellate authority and we would direct that a copy of the inquiry report be furnished to the petitioner within three weeks from the date of receipt of a copy of this judgment and within three weeks therefrom the petitioner would be at liberty to prefer an appeal to the appellate authority if so advised and the appellate authority would again hear the appeal and dispose of the matter according to law. In case the petitioner still feels aggrieved by the order of the appellate authority, it is open to him to approach this Bench.

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

8.9.88.

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Member (Judicial)

B.R. PATEL, VICE CHAIRMAN, I agree.

8.9.88

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Vice Chairman.

Central Administrative Tribunal,
Cuttack Bench.
September 8,1988/Roy,Sr.P.A.