

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

Original Application No.117 of 1988.

Date of decision : February 19, 1990.

Garish Kumar Lauria ...

Applicant.

Versus

Union of India and others ...

Respondents.

For the applicant ...

M/s. Deepak Misra,
A. Deo, R. N. Naik,
R. N. Hota, Advocates.

For the respondents ...

Mr. Tahali Dalai,
Addl. Standing Counsel (Central)

C O R A M:

THE HON'BLE MR.P.S.HABEEB MOHD., MEMBER (ADMN)

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 ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

N.SENGUPTA, MEMBER (J) The applicant herein was serving as an Extra-Departmental Branch Postmaster in Dhalpur Branch Post Office in account with Purunakatak Sub Office in the district of Phulbani. The applicant was proceeded against on 14 articles of charge which substantially were misappropriation and non-performance of duties. The enquiring officer found the applicant guilty of most of the

charges and with the findings of the enquiring officer the Disciplinary authority agreed. The disciplinary authority thereafter passed an order of removal from service on 14.4.1987. A copy of the order of removal from service is Annexure-1 to the application. Against this order of removal from service the applicant filed an appeal to the Director of Postal Services, Sambalpur Region. The Director of Postal Services, Sambalpur Region by his order dated 29.1.1988 (copy at Annexure-3) expressed his opinion that there was no justification to interfere with the decision of the Disciplinary authority and accordingly ^{rejected} the appeal preferred by the applicant. The applicant has prayed for quashing the orders at Annexures-1 and 3, to declare that he should be deemed to be continuing in service and other reliefs to which he may be found entitled. The grounds alleged in the application are mostly confined to the impropriety of the decisions of the Enquiring Officer and the Disciplinary authority as their decisions were based on no credible evidence.

2. The respondents in their counter have stated that infact the applicant admitted misappropriation, may be for a temporary period, of Government money and that proper procedures were followed in the enquiry. Their further case is that infact the applicant has been shown some leniency by removing him from service and not dismissing him.

3. During the course of arguments Mr. Anil Deo, learned

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counsel for the applicant has contended that as no copy of the enquiry report was supplied to the applicant before imposing the punishment of removal and as the applicant was denied the opportunity of recalling some witnesses for cross-examination, the entire proceeding was vitiated. He has further contended that the appellate authority did not grant him a hearing. Therefore, the appellate order is also equally vulnerable.

4. We have heard Mr. Anil Deo, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents. Mr. Deo has tried to impress upon us that there is no material to come to a conclusion that in fact the applicant misappropriated any money and in this connection he has drawn our attention to the fact that prior to the drawing up of the articles of charge, the entire money which the Postal Department claimed to have been misappropriated was deposited by the applicant in the Sub Office. Therefore, there was no material to come to the finding that the applicant really misappropriated any amount. We are unable to countenance this contention of Mr. Deo. The fact that the applicant later deposited the amount with interest, furnishes some evidence, by no means insignificant, of the applicant not having deposited in time the amounts received by him. Therefore, it cannot be said that there was absolutely no material before the Enquiring Officer or the Disciplinary authority to infer atleast temporary misappropriation. Misappropriation, as is understood under

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law, may also be for a temporary period. But however as this Tribunal is not to act as an appellate forum, we do not feel it advisable to enter into a detailed discussion as to whether the materials on records were sufficient to come to a conclusion of temporary misappropriation of amounts by the applicant.

5. It has next been urged on behalf of the applicant that he was not allowed adequate opportunity to defend himself but except the fact that no copy of the report being supplied prior to the imposition of the penalty of removal, nothing has been placed before us to show that there was a denial of opportunity prior to that stage. As has been held in the case of Premnath K.Sharma v. Union of India and others reported in 1988(3) SLJ 449(CAT), non-supply of a copy of the enquiry report before the disciplinary authority imposes a penalty, amounts to denial of reasonable opportunity, we feel no necessity to dilate further in the matter. On this ground alone, the impugned order of removal becomes unsustainable.

6. Since we come to this conclusion, we do not feel inclined to discuss in detail as to whether before the appeal is disposed of, the applicant should be given a personal hearing or not. However we would only express that this Bench of the Tribunal relying on a decision of the Supreme Court and relying on the principles of *audi alteram partem* held that even if a personal hearing ^{might} not have been asked for, yet an opportunity for such a hearing should be given to the appellant.

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7. In the result, the impugned order of removal is set aside and the disciplinary authority is to recommence the enquiry from the stage of submission of enquiry report. Since the applicant has already been supplied with a copy of the enquiry report, he may make a representation before the disciplinary authority if he feels necessary and thereafter the Disciplinary authority should dispose of the matter within a period of two months. Representation if any, to be made by the applicant should be within a period of two months. There would be no order as to costs.

.....15/2/1990.....
Member (Administrative)

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Member (Judicial)

