

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH

9

Original Application No. 20 of 1988.

Date of decision : December 1, 1988.

Sri Ghanashyam Kabat, son of Narasingh Kabat,  
Ex. Extra Departmental Delivery Agent, Nuagaon B.O.  
At/P.O-Nuagaon, Via- Eram, Dist- Balasore.

... Applicant.

Versus

1. Union of India, represented by the Postmaster General  
Orissa Circle, Bhubaneswar, Dist- Puri.
2. Superintendent of Post Offices, Bhadrak Division,  
Bhadrak, Dist- Balasore.
3. Asst. Superintendent of Post Offices, I/c,  
Bhadrak Central Sub-Division,  
Bhadrak, Dist- Balasore.

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

JUDGMENT

K.P ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner challenge the order of removal contained in Annexure-3 passed against him by the competent authority resulting from a departmental proceeding.

2. Shortly stated, the case of the petitioner is that he is an Extra-Departmental Delivery Agent of Nuagaon Branch Office within the district of Balasore. Allegation was levelled against the petitioner that he was entrusted with a money order amounting to Rs.150/- payable to one Smt. Laxmi Pati and this entrustment took place on 18-6-1982. Though the petitioner had taken the money-order to be paid to Smt. Laxmi Pati, she not having been traceable the petitioner returned the money-order form along with the money to the Post Master on some dates and ultimately the petitioner took the money-order and the money in question on 22.6.1982 for delivering the same to Smt. Laxmi Pati and on the said date the petitioner stated that the money had been paid to Smt. Laxmi Pati and therefore neither the money nor the money-order form was returned to the Post Master. Further allegation of the prosecution is that the money was not paid by the petitioner to Smt. Laxmi Pati but the petitioner managed to obtain the thumb impression of some other person and stated that the money-order had been paid to Smt. Laxmi Pati. Crux of the allegation is that the petitioner had committed forgery in respect of the thumb impression affixed in the acknowledgment form of the money order and had mis-appropriated the amount. A regular inquiry was conducted and the Inquiring Officer found the petitioner

guilty of the charge and accordingly 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 which is under challenge.

3. In their counter, the Opposite Parties maintained that no illegality having been committed during the course of inquiry and principles of natural justice having been strictly followed, 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 Senior Standing Counsel for the Central Government at some length. Mr. Ramdas submitted that non-production of the acknowledgment receipt containing the L.T.I. of Smt. Laxmi Pati (which is the case of the present petitioner) has caused serious prejudice to the petitioner and it cannot be said that this is a case of full proof evidence establishing the charge against the petitioner with satisfactory evidence. It was next contended by Mr. Ramdas that the principles of natural justice have been violated because the petitioner was not given an opportunity to explain the circumstances appearing against him as contemplated under Rule 14 (sub-rule 18) of the C.C.S. (C.C.A.) Conduct Rules, 1965. Third contention of Mr. Ramdas was that the petitioner had prayed to allow him to be defended by one Bhagirathi Das of Balasore and the Inquiring Officer did not allow the prayer of the petitioner stating that some local officer should be suggested for acting as Defence Assistant and an Officer from Balasore could not be  
*✓N:*

requisitioned to act as Defence Assistant. Basing on these arguments Mr. Ramdas contended that the order of conviction is bad in law and is liable to be set aside .

5. Mr. A. B. Mishra, learned Sr. Standing Counsel vehemently opposed the aforesaid submissions of Mr. Ramdas stating that the acknowledgment voucher containing the alleged L.T.I. of Smt. Laxmi Pati not having been found, it was impossible on the part of the petitioner to produce and prove the same. In this connection Mr. Mishra invited our attention to para-2 of the counter wherein it is stated as follows :-

" xx xx xx

The concerned M.O. paid voucher though requisitioned from the Office of the Director of Accounts ( Postal) Calcutta, could not be procured".

From this, Mr. Mishra wants to make out a case that the document in question is not available. We are unable to agree with Mr. Mishra because there is no specific averment in the counter that the document is no longer available. The only meaning which can be deduced from the above quoted averment in the counter is that an attempt was made to bring the document and prove the same but it could not be proved as it could not be procured from the office of the Director of Accounts ( Postal) Calcutta. There is good deal of difference between non-availability of document and non-procurement of the document. It was further contended by Mr. Mishra that in view of the specific admission of the delinquent officer that he had managed to obtain the L.T.I. of another person to show payment to have been made to Smt. Laxmi Pati does not cast any onus on the prosecution to prove the document

because the principle " facts admitted need not be proved ", fully operates in the present case. we are unable to agree with Mr. Mishra because there is some infirmity in the alleged admission itself about which we do not want to express any opinion as we intend to remand the case for further inquiry. Even if there is an admission, in our opinion, it does not relieve the burden of the prosecution to prove the charge. That apart the alleged admission has not been put to the delinquent officer as it is an incriminating circumstance appearing against him. In this connection it is worth-while to quote the provisions contained CCS (CCA) Rules, under Rule 14 ( sub-rule 18) / It runs thus :-

" The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him ".

In view of the aforesaid provisions, it was incumbent upon the Inquiring Officer to place the incriminating circumstances appearing against the delinquent officer before the delinquent officer so that he could have had an opportunity to explain himself. This step has not been taken by the Inquiring Officer. In order to overcome this difficulty, learned Sr. Standing Counsel invited our attention to the contents of the ordersheet dated 20.12.86 ( vide Annexure-0) and the observations of the Inquiring Officer to the effect that the petitioner wilfully absented

himself from the inquiry and since the petitioner did not participate there was no scope for the Inquiring Officer to adhere to sub-rule 18. True it may be so but when this case involves a penalty of removal we feel in all fairness another opportunity should be given to the petitioner.

6. So far as the third contention of Mr. Ramdas is concerned, we also feel that depriving the petitioner of a Defence Assistant namely Sri Bhagirathi Das was not justified. In our opinion, fullest opportunity should be given to the delinquent officer as far as possible. Taking the over all facts and circumstances of the case, we are inclined to hold that another opportunity should be given to the petitioner to properly defend himself. Therefore, we remand this case for a further inquiry with a direction that the witnesses already examined in the presence of the petitioner should be made available to the petitioner for cross-examination by Sri Bhagirathi Das, the proposed Defence Assistant. Appropriate authority is directed to relieve Sri Bhagirathi Das to attend the inquiry on the date or dates to be fixed by the Inquiring Officer. We further direct that the paid voucher containing the alleged forged L.T.I. of Smt. Laxmi Pati should be obtained from the office of the Director of Accounts (Postal) Calcutta or from any other office where the document would be lying and the same should be proved if the document is available. If not available, law will take its own course. Witnesses required to prove the document should be examined by the prosecution and cross-examined by the delinquent officer or his Defence Assistant. Finally, we would say that all incriminating circumstances appearing against the delinquent

Officer must be placed before him and the provisions of sub-rule 18 of Rule 14 should be complied by the Inquiring Officer. Learned Sr. Standing Counsel vehemently pressed before us that the travelling expenses should be borne by the delinquent officer because there is an allegation of mis-appropriation against the petitioner. Learned Sr. Standing Counsel meant by this submission that the petitioner should be saddled with some financial burden because of the allegation levelled against him for having mis-appropriated the money. However, this is only an allegation- not yet proved. Despite the objection raised by the learned Sr. Standing Counsel regarding the fact that the petitioner should bear the expenses and travelling expenses of the Defence Assistant Bhagirathi Das, we would say that once upon a time Balasore and Bhadrak were within the same Postal Division and therefore in the peculiar facts and circumstances of the case we direct that the travelling allowance etc. of Sri Bhagirathi Das would be borne by the Government subject to the condition that the petitioner will not ask for any adjournment and in case he asks for any adjournment, for such a day the petitioner will bear the expenses and travelling allowance of Sri Bhagirathi Das. We further direct that the inquiry should be conducted day-today and all witnesses be who are to be examined and cross-examined must/finished preferably within a month from the date of institution of the inquiry. If the petitioner does not participate in the inquiry and tries to obtain adjournment, it will remain open to the Inquiring Officer to pass necessary orders according to law. The order of removal passed against

16

the petitioner is hereby set aside and the  
petitioner will continue to be on put off duty with  
effect from 28.12.1982.

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

Member (Judicial) 11/2/85

B.R. PATEL, VICE CHAIRMAN, 9 agree -

1.12.88  
Vice Chairman



Central Administrative Tribunal,  
Cuttack Bench.  
December 1, 1988/Roy, Sr. P.A.