

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, : CUTTACK.

ORIGINAL APPLICATION NO: 240 OF 1988.

Date of decision : January 19, 1990.

Haribash Mallik, E.D.B.P.M.,
Saudi B.O., in account with
Langaleswar S.O., Balasore
Division, Dist-Balasore.

.... Applicant

VERSUS

1. Union of India,
represented by its Secretary,
Department of Posts,
Dak Bhavan, New Delhi.
2. Additional Postmaster General,
Orissa Circle, At, P.O. Bhubaneswar,
District-Puri.
3. Superintendent of Post Offices,
Balasore Division, P.O. & Dist-
Balasore.

.... Respondents.

For the Applicant : M/s. Deepak Misra, A. Deo,
R.N. Naik, Advocate.

For the Respondents : Mr. Tahali Dalai, Additional
Standing Counsel (Central)

C O R A M :

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

AND

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

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N. SENGUPTA, MEMBER (J) The applicant who was the E.D. B.P.M of Saudi Branch Post Office in the district of Balasore was inflicted the punishment of removal from service in a Departmental Proceeding initiated against him.

2. The facts, stated in brief, are that one Manimala Behera had a Recurring Deposit Account in Saudi B.P.O., this matured and the maturity value was Rs. 815.70P. On 11.7.1983 that R.D. Account was closed. The Postal authorities got a complaint from the depositor Manimala that out of the maturity amount she made over Rs. 600/- to the Post Master i.e. the applicant for opening a Term Deposit (T.D.) Account in her name, the applicant made over the counterfoil of a pay-in-slip signed by him(applicant) but as no pass Book was givent to her she became suspicious. Thereafter there was a preliminary enquiry or investigation by the local Postal authorities and the applicant was served with notice of initiation of a Departmental Proceeding for major penalty for not accounting for Rs. 600/- received by him. The case of the applicant in the Departmental proceeding was that no doubt he gave the counterfoil of the pay-in-slip signed by him but that was given to the husband of the depositor Manimala who was to come, on the next day after getting the counterfoil signed by Manimala, the husband of Manimala did not turn up nor did he or Manimala pay Rs. 600/- for the proposed Term Deposit. In this application the case of the applicant is that though the Inquiry Officer found the payment of Rs. 600/- to him (applicant) not proved, the

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Disciplinary Authority differed from that conclusion of the Inquiry Officer on surmises and referring to facts not placed during the enquiry. His case further is that the Additional Post Master General, who disposed of the appeal preferred by him, did not apply his mind and did not follow the rules of natural justice.

3. The respondents in their counter have stated that the applicant paid Rs. 215.70 to Ramkrushna Behera the husband of Manimala and retained Rs. 600/- for opening a T.D. Account in the name of Manimala Behera, that was on 11.7.1983. On that day the applicant gave some forms to Ramkrushna to get them signed by Manimala and on 13.7.83 Ramkrushna presented those forms after obtaining the signatures of his wife. The applicant gave the counterfoil of the pay in slip signed by him, to Ramkrushna but did not credit the amount to the account of the Post Office nor did he make any entry in any of the relevant registers. After receipt of complaint from the depositor, a preliminary enquiry was made and then the D.P. was started in which after an enquiry the applicant was found guilty of the charge levelled against him.

4. We have heard Mr. Deepak Misra for the applicant and Mr. Tahali Dalai, the learned Additional Standing Counsel for the respondents. Mr. Misra has raised the following contentions. (i) that the Disciplinary Authority made use of a supposed material which was not brought on record of the Departmental Proceeding (ii) the

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Disciplinary Authority failed to appreciate the fact that the evidence adduced in Departmental Proceeding was so inconsistent that it was no evidence in the eye of law (iii) neither the Disciplinary Authority nor the Appellate Authority heard the applicant before imposing the penalty dismissing the appeal. Each of these contentions merits serious consideration.

5. As has been indicated above the Inquiry Officer arrived at the finding that the fact of Manimala paying Rs. 600/- to the present applicant was not proved, while differring from this finding of the Inquiry Officer, the Disciplinary Authority stated:

" It appears from this Office records that the S.P.S., Shri Haribas Mallick had credited a sum of Rs. 684/- (Rupees six hundred and eighty four) only towards the defrauded amount with penal interest at Saudi B.O. under 'unclassified Receipts' on 16.7.1984. This fact appears not to have been brought to the notice of the I.O. during inquiry".

From what has been quoted above it can safely be said that a material which was not brought on record of the Departmental Proceeding was utilised by the Disciplinary Authority. A disciplinary proceeding is quasi criminal in nature, if no evidence about the existence of a particular fact is adduced during the course of the enquiry, that cannot be utilised against the charged officer. The reason for this is that had there been evidence about the fact, the charged officer might have offered an explanation. Thus, it is to be found that there is considerable force in the contention of Mr. Misra that the Disciplinary

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Authority went beyond the record of the Proceeding.

6. The contention of Mr. Misra about there being really no credible evidence in support of the charge may be examined. The charge framed may be extracted for a proper appreciation.

" STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST
SHRI HARIBASH MALLIK, EDBPM SAUDI B.O. IN ACCOUNT
WITH NANGALESWAR S.O. UNDER JALESWAR H.O.

Article-1

Sri Haribash Mallik EDBPM of Saudi B.O. received an amount of Rs. 600/- (Rupees six hundred) only on 13.7.1983 from one Smt. Manimala Behera for opening a new T.D.A./C Sri Mallik did not grant the S.B. Preliminary receipt therefor but granted to the depositor the counter-foil of pay-in-slip in the prescribed form of SB-103 (C) duly filled in and signed by him without affixing thereon the office date stamp".

The charge stated that it was Manimala who paid a sum of Rs. 600/- to the applicant for a T.D. Account but the Disciplinary Authority found that it was Ramkrushna, the husband of Manimala, who actually paid the amount, this by itself is sufficient to say that the evidence did not prove the charge as levelled. There can be no doubt that the most important persons were Manimala and her husband Ramkrusna Behera and their evidence was most material. During the enquiry Manimala and Ramkrusna were examined as witness nos. 1 and 2 respectively for the department. Manimala no doubt while being, examined by the presenting Officer stated to have made a complaint that she received no communication from the applicant with regard to Rs. 600/- paid by her but in her cross-examination by the applicant she stated that it was not she but her husband who had been to the Branch Post Office to receive the money and her husband kept Rs. 600/-

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this can only mean that the allegation in her complaint that it was she who paid the money was not true . She also made prevaricating statements regarding the date when her husband went again with the money for opening a T.D. Account. Ramkrusna's evidence on re-examination by the presenting officer would show that he had not given Rs.600/- to the applicant. All these are stated not by way of reassessment of evidence but to find if there was any evidence which a prudent man could have accepted. No other person stated that there was payment of Rs. 600/- to the applicant . Therefore, the contention of Mr. Misra that there was no evidence in support of the charge has to be accepted.

7. From the record it can be found that no copy of the enquiry report was supplied to the applicant. No doubt no second show cause notice need be served on the applicant for any proposed major penalty but that does not mean that the Disciplinary Authority would not give an opportunity to the charged officer to show that there are flaws in the enquiry report if it is against or make submissions in support of the report if it is favourable to him. In this connection reference may be made the case Premnath K.Sharma reported in 1938 (II) A.T.C. 904. It is an elementary principle of natural justice that no adverse order can be passed against a person without hearing him, in the instant case there is no indication of the appellate authority to have heard the applicant. For this reason the the appellate order is also vulnerable (see A.T.R. 1936(2) 262- Ramchandra Vs. Union of India).

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8. To sumup, the evidence adduced in the DP was so discrepant that it amounted to no evidence, the Disciplinary Authority relied on a fact not brought on record of the D.P. and there were procedural irregularities amounting to violation of principles of natural justice. For these reasons, the order of removal of the applicant from service cannot be sustained and accordingly it is quashed. The application is allowed and necessary consequences according to the rules applicable would follow. The parties to bear their respective costs.

PJH
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Member (Admn.)



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Member (Judicial)