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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No.265 of 1988

Date of decision : May 31, 1990

1. Binod Bihari Thakur,
aged about 51 years,
son of late Dhoba Thakur,
S.D.I. (P) Titilagarh Sub-
Division, Dist. Bolangir. Applicant

-Vs-

1. Union of India represented by
its Secretary, Posts
Dak Bhavan, New Delhi

2. Director, Postal Services,
Sambalpur Region, P.O./Dist.
Sambalpur.

3. Superintendent of Post Offices,
Bolangir Division, P.O./District
Bolangir. Respondents

For the applicant M/s. Devanand Misra
Deepak Misra, R. N. Naik
& A. Deo.

For the Respondents. Standing Counsel
(Central) and
Mr. T. Dalei, Addl. S.C.
(Central)

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN
A N D
THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

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

2. To referred to the Reporters or not ? Yes

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

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:- JUDGEMENT :-

N. SENGUPTA, MEMBER (JUDICIAL) The applicant in this case has sought for quashing of the orders passed by the Superintendent of Post Offices Bolangir & of the Director of Postal services Sambalpur, the Disciplinary & Appellate Authorities respectively.

2. The undisputed facts are that the applicant was O.S.Mails of Sindhekelaline in the district of Bolangir. In March, 1983 he was put in additional charge of O.S.Mails Kantabanjiline. At Turekela there was an E.D.Post Office and that was in Kantabanji line. There is no dispute that the Postmaster of Turekela misappropriated an amount of Rs. 49429.70 paise. A Disciplinary proceeding for minor penalty was started against the applicant and in January, 1988 he was asked to make such representation as he liked against the proposed action. The applicant made a representation whereafter respondent no.3 passed an order for recovery of Rs. 3000/- in 30 monthly instalments of Rs. 100/- each. Against this order of punishment, the applicant preferred an appeal to Respondent No.2 who rejected the same on 30.6.88, vide Annexure-5, holding that the applicant violated Rule 344(2) of the P.T.Mannual.

3. The applicant has in the application stated that the Disciplinary Authority had no justification for imposing the penalty as in fact there was ^{no} violation of Rule 344(2) of the P.T.Mannual and the order of the appellate authority is not sustainable in as much as he has not dealt with the grounds urged in the petition of appeal.

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4. In the Counter filed by the Respondents it has been alleged that the applicant had an obligation as O.S.Mails Kantabanji to inspect Turekela E.D.S.O. and for failure of the applicant to visit the said sub-Office, the S.P.M. of that Post Office got opportunity to misappropriate and the defalcation remained undetected. As regards the order passed by Respondent No.2 in appeal, the case of the Respondents is that after due consideration of the petition of appeal and the materials on record, the order of rejection of appeal was passed.

5. We have heard Mr. Deepak Misra for the applicant and Mr. T. Dalai for the Respondents. Mr. Misra during the arguments has urged the following ^{contentions} ~~contentions~~ viz (i) that though under the C.C.S. (C.C.A.) Rules, in case of minor penalty, the disciplinary authority has jurisdiction to decide to impose a minor penalty on representation made by the charged Officer, yet for not ordering an enquiry he should have assigned reasons, (ii) the Disciplinary authority as well as the authority should have given the applicant an opportunity of personal hearing and (iii) as admittedly the applicant did not misappropriate any amount, the order of recovery could not have been passed.

6. The first contention is one relating to assigning reasons for not holding an enquiry may be considered first. There is no dispute that the disciplinary authority acted under Rule 16 of C.C.S (C.C.A) Rules, therefore the provisions of that Rule would be the guiding factor. The relevant portion of that Rule may, for the sake of convenience, be quoted.

Mr. Deepak Misra
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"(1) Subject to the provisions of Sub-rule(3) of Rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of Rule-11 shall be made except after-

(a) informing the Government servant in writing of the Proposal to take action against him and of the ~~imputations~~ ^{importations} of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal,

(b) holding an enquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary"

(The rest portion of the Rule not being much relevant for the present purpose, not quoted).

On reading the above two clauses of sub-Rule(1) of Rule-16, it would be clear that the ordinary procedure is to dispose of the proceeding after considering the representation made by the charged officer, but there may be cases where some facts may be required to be proved to establish the charge and in such a case ~~an~~ ^{an} enquiry may be necessary, there may also be other reasons such as a request by the charged officer for an enquiry, but the discretion to hold an enquiry for a minor penalty vests in the disciplinary authority. Mr. Misra has not been able to show anything which would have necessitated the holding of an enquiry. We would, therefore, not accept this contention of Sri Misra.

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M/s. S. S. 90

7. As regards the contention of Mr. Misra that as the applicant had not himself misappropriated the amount no order of recovery would have been passed, we would say that if due to any omission in the performance of duty by the applicant, a loss occasioned to the Government, he can be asked to make good the loss according to the extent of his responsibility. For what we are going to state below, we, would not like to make any further discussion on this contention of Mr. Misra.

8. The next contention of Mr. Misra is that neither the disciplinary authority nor the appellants authority having given the applicant an opportunity of personal hearing, the orders passed by them are to be set aside. On reading Rule 16 of C.C.S. (C.C.A.) Rules it would be found that there is no provision for affording an opportunity of personal hearing. It is true that a person can not be condemned unheard but hearing may include making of a representation in writings, in this connection a reference to the case of P.K. Sharma vs. Union of India & Ors., reported in 1989 (1) A.T.J. 92 may be made. In this view of the matter, we would say that the disciplinary authority was not under an obligation to give the applicant a personal hearing when he did not ask for.

9. So far as the appellate order is concerned, it stands on a different footing. The impugned appellate order is vulnerable on two grounds, namely the appellate authority did not follow the mandate of Rule 27 of C.C.S. (C.C.A.) Rules and also for not affording the applicant an opportunity of personal hearing. On reading sub-rule (2) of Rule 27 it would

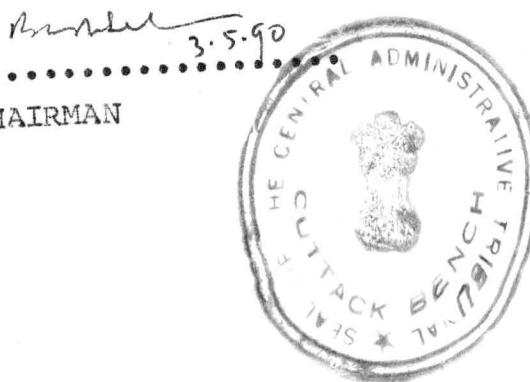
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be found that the appellate authority must indicate in his order if the procedure laid down in the rules had been complied with, about this appellate order is silent. It can also be found that though the appellate authority mentioned the grounds stated by the applicant in his appeal petition, he has not at all discussed nor has he given any finding on those grounds of appeal. The D.G.P & T in his circular letter No. 101/2/80-Disc. II dated 1.10.80 gave specific instructions as to what an appellate order should contain, but those instructions do not appear to have been followed. As regards giving of personal hearing it would be sufficient to refer to II 1988 A.T.LT. (CAT) 421 (Ramsing -vs-Union of India), that decision is binding on us.

10. In the result the order of the appellate authority i.e. the order passed by Respondent No. 2 is quashed and the case ^{is} remitted back to Respondent No. 2 for fresh disposal within 3 months from the date of receipt of a copy of this order, after giving the applicant an opportunity of personal hearing and complying with the provisions of Rule-27 of C.C.S. (C.C.A.) Rules and the instructions of D.G.P.T. referred to in the preceding paragraph.

11. The applicant succeeds in part. No costs.

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VICE-CHAIRMAN



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MEMBER (JUDICIAL)

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