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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.266 of 1988.

Date of decision: May 15, 1991.

Pravat Kumar Prusty ... Applicant.

Versus

Union of India and others ... Respondents.

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

For the respondents ... Mr.T.Dalai,
Addl. Standing Counsel(Central)

C O R A M:

THE HONOURABLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers maybe 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) In this application the reliefs sought for are for quashing the punishment order vide Annexure-1, and for a direction to reinstate the applicant in service.

Memorandum

2. The applicant was working as an Extra-Departmental Delivery Agent (E.D.D.A.) of Hatasahi Branch Post Office in the district of Balasore. One Gourimani lodged a complaint with the Postal authorities that she had not received Rs. 40/- sent by money order which was payable to her towards old age pension. After receipt of that

complaint the concerned Postal authorities made some preliminary enquiries in which Respondent No.4 recorded the statements of some of the persons whom he thought to be acquainted with the facts relevant for the case. Thereafter, the applicant was served with a memorandum of charges framed on 9.9.1985. A disciplinary proceeding under the P & T Extra Departmental Agents (Conduct and Service) Rules, 1964 was ^{started} made and the Sub-Divisional Inspector (Postal), Balasore East Sub-Division was appointed as the Enquiring Officer who submitted his report on 19.8.1987. After receiving the enquiry report Respondent No.4 on 30.1.1988 finding the applicant guilty passed an order of removal from service with immediate effect. The applicant has averred that he preferred an appeal to Respondent No.3 on 15.2.1988 but as the appeal was not disposed of, he has been obliged to make this application after expiry of six months from the date of the appeal petition.

3. For what we are going to state below, it is not necessary to set out all the facts mentioned by the respondents in their counter. However, it may be indicated that the case of the respondents is that the applicant had received the money order and was entrusted with the duty of paying the amount to the payee, Gourimani but instead of making payment, he committed some forgeries.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents. On behalf

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of the applicant various contentions including the objections to user of statements recorded in the absence of the applicant, non-examination of certain disputed writings, and thumb impression by an expert have been raised. On the other hand, Mr.Dalai has contended that doubtless the statements of some persons recorded in the preliminary enquiry had to be used as by the date of commencement of the enquiry in the disciplinary proceeding they were dead. We refrain from expressing any opinion on this contention of Mr.Dalai because we find that the impugned order of punishment cannot be sustained on another ground. From Annexure-1, i.e. the copy of the order passed by the disciplinary authority it would be found that copy of the report submitted by the Enquiring Officer was made over to the applicant along with the order of punishment. It has now been laid down by the Hon'ble Supreme Court that where an order of removal from service is passed, in a disciplinary proceeding without giving a copy of the report submitted by the enquiring officer to the disciplinary authority, the punishment of removal cannot be sustained (See 1991(1)SLJ 196, Union of India v. Md. Ramjan Khan). Since in the instant case, no copy of enquiry report was supplied to the applicant before imposing the punishment of removal from service, the impugned order of punishment cannot be sustained and is accordingly quashed. If the authority so chooses they may continue the proceeding after giving the applicant an opportunity to make his representation concerning the enquiry report to the disciplinary authority. We do not mean that the respondents are ~~no~~ under

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obligation to continue the disciplinary proceeding. Whether the proceeding should continue or not it is entirely left with the discretion of the disciplinary authority. We express no opinion on the other contentions raised during the course of arguments addressed before us.

5. The case is accordingly disposed of. No costs.

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Bimal
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
May 15, 1991/Sarangi.



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Keswani
Member (Judicial)