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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.299 of 1988.

Date of decision: JANUARY 31, 1991.

Janardan Sathua ... Applicant.

Versus

Union of India represented through
Commissioner of Income Tax and others ... Respondents.

For the applicant ... Mr.N.C.Panigrahi,
Advocate.

For the respondents ... Mr.S.C.Roy,
Standing Counsel (Income-tax).

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 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.

JUDGMENT

N.SENGUPTA, MEMBER (J) In this application the orders impugned are Annexures-7(a) and 9 to the original application.

2. The applicant was working as a Stenographer in the Office of the Income-tax Officer, Balasore from May, 1986 to December, 1986. As a Stenographer he had to perform the journey on official duty from Balasore to Cuttack during the first week of May, 1986. The charge against him was that he submitted two bills for the same journey and thereby attempted to defraud the Government. It was

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alleged that had not the controlling Officer been vigilant, the applicant would have managed to grab the double payment for the same claim and further that in the two bills the modes of transport were mentioned differently which indicated an intention to cheat. The second charge against the applicant was that on 1.12.1986 when the Choukidar after Office hours wanted to close the office rooms, the applicant did not allow him to lock the room and remained in the Office inspite of requests and protests by the Choukidar. When the Choukidar insisted for vacating the office room so as to allow him to lock the room, the applicant abused him in filthy language and threatened to assault him with shoes. This conduct of the applicant was unbecoming of a Government Servant of his rank. An enquiry was held and the Enquiring Officer was the Inspector Assistant Commissioner, Eastern Zone, Calcutta and Income-Tax Officer, Ward B, Circle II was appointed as the Presenting Officer. At the time of drawing up of the disciplinary proceeding the applicant was serving in the Office of the Inspector Assistant Commissioner, Cuttack Range, Cuttack and he was the disciplinary authority. The applicant prayed for permission to appoint a lawyer in his defence, this prayer was not acceded to by the disciplinary authority. It is averred in the application that the concerned Choukidar was not produced as a witness by the departmental authorities and the Enquiring Officer in reaching the findings of guilt of the applicant on both counts, made some surmises and conjectures without any ~~visual~~ evidence. The disciplinary authority agreeing with the

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findings of the enquiring officer found the applicant guilty of both the charges and imposed the punishment of reducing the pay of the applicant by 5 stages in the scale of pay of Rs.1200-2040/- for five years with effect from 1.9.1987 with a further direction that the applicant would not earn increments of pay during the period of reduction and the future increments would be postponed accordingly. Against this order of punishment the applicant preferred an appeal to the Commissioner of Income-tax, Orissa, Bhubaneswar but the appellate authority agreed with the findings of the disciplinary authority. However he modified the order of punishment to one of reduction of pay by two stages for two years with effect from ~~by the~~ the date of passing of the order ~~of~~ disciplinary authority.

3. The respondents in their counter have maintained that a delinquent officer has no right to be represented by a legal practitioner, that as the applicant knowingly preferred a second claim for the same journey, the finding of the disciplinary authority was correct, that mere non-examination of the Choukidar did not vitiate the proceeding nor did it prejudice the applicant because other eye witnesses were examined and finally, there was no deviation from the principles of natural justice in conducting the enquiry.

4. We have heard Mr. N.C. Panigrahi, learned counsel for the applicant and Mr. S.C. Roy, learned Standing Counsel (Income-tax) for the respondents, and perused the relevant documents. Mr. Panigrahi has contended that the refusal

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of the authorities to allow the applicant to engage a lawyer to defend himself amounted to denial of reasonable opportunity. In this connection he has cited a decision reported in AIR 1972 SC 2178 (C.L.Subramaniam v. The Collector of Customs). The facts of that case were entirely different. In the reported case, the person who was being proceeded against, was a Preventive Officer, Grade II, Customs Office, Cochin. He made an application for permission to engage a counsel to appear and defend him during the enquiry as the presenting officer was a person legally trained. This request of the appellant before Their Lordships of the Supreme Court was turned down by the Assistant Collector of Customs who in his order of refusal of permission to engage a counsel stated that though the presenting officer was legally trained, he was not a legal practitioner and hence there was no necessity for engaging a lawyer to defend him at the enquiry. The Hon'ble Supreme Court found that the order of refusal was passed on a wrong assumption that the appellant before it wanted to engage a counsel because the presenting officer was a legal practitioner. The reason stated by the appellant was that he asked for permission to engage a counsel as the presenting officer was legally trained and that when a person who is trained prosecutor acts as the presenting officer it will be ^{un}inequitable to disallow the charged officer to take the assistance of a counsel or a person equally trained. In the circumstances of the case, it is not the case of the applicant that the presenting officer had ^{any} ⁱⁿ ~~no~~ training of law, all that

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he has alleged is that the presenting officer was a person learned. Legal procedures are somewhat technical and mere erudition would not be sufficient for entitling a person to present the prosecutor's case properly. It is also to be borne in mind that the applicant himself was a Stenographer who was to accompany the Income Tax Officer and was to take dictations of orders passed by such Officers. Therefore, it cannot be said that the applicant was a person wholly unfamiliar with the legal procedures. In view of these facts we are unable to find that the order not allowing the applicant to engage a lawyer caused any prejudice.

5. As Mr. Panigrahi has argued at length on the findings of the disciplinary authority on the 2nd charge we would take up that first. The second charge which related to abusing the Choukidar in filthy language, it is to be stated that the Choukidar himself was not examined. But the disciplinary authority as also the appellate authority opined that no prejudice was caused to the applicant by non-examination of the Choukidar. Those two authorities referred to the statement of one B.M. Satapathy, who is stated to be an eye witness to the occurrence. It has been urged on behalf of the applicant that the enquiring Officer opined that Mr. B.M. Satapathy's evidence suggested that some provocation was given by the Choukidar to the applicant and the enquiring Officer further went on to say that the other eye witnesses in their separate reports filed before the Inspecting Assistant Commissioner, Cuttack confirmed that they heard the applicant threatening the Choukidar with assault with a shoe. Admittedly, those

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two persons who filed their reports were not examined during the disciplinary proceeding. It is the elementary principle of justice that no statement recorded behind the back of the charged officer could be utilised against him. If really provocation came from the Choukidar, the person so provoked is bound to react and such reaction cannot be weighed in golden scales to judge whether it exceeded the limit or not. Had the Choukidar been examined, the applicant would have had an opportunity to show that the report to the Income-Tax Officer, Balasore was incorrect and in this connection a reference may be made to the case of State of Punjab v. Dewan Chuni Lal reported in AIR 1970 SC 2086, of-course the facts were somewhat different in that case but the ratio was that when the officer on whose report the impugned order was passed, though available, was not examined, there was denial of reasonable opportunity to the charged officer. In view of these circumstances we would hold that the finding of the disciplinary authority with regard to the second charge, is somewhat perverse and is unsustainable.

6. Argument has been advanced on behalf of the applicant that this Tribunal can modify the penalty and in this regard reliance has been placed on a decision reported in AIR 1983 SC 454 (Bhagat Ram v. State of Himachal Pradesh). In the reported case the Supreme Court quashed the order of imposition of penalty and it further stated that without prolonging the matter the Supreme Court would impose itself appropriate penalty. The penalty was imposed taking both the charges to have been proved but, as already shown above

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one of the charges was not properly proved, and we have refrained from expressing any opinion on the findings relating to the first charge, so it will not be possible to apply that decision of the Hon'ble Supreme Court. In the circumstances of the case we would remit back the case to the disciplinary authority for reconsideration.

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

Brunel
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Vice-Chairman

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Menon
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Member (Judicial)

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Central Administrative Tribunal,
Cuttack Bench, Cuttack.
January 31, 1991/Sarangi.

