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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH

Original Application No. 4 of 1988.

Date of decision .. December 22, 1988.

Sri Trilochan Mishra,
son of Balakrishna Mishra,
Ex- Branch Post Master,
Vill/P.O- Bisipada,
Dist- Phulbani. Applicant.

Versus

1. Union of India,
represented by the Postmaster General,
Orissa Circle, Bhubaneswar- 751 001.
2. Director of Postal Services,
Samkalpur Region, Samkalpur- 768 001.
3. Superintendent of Post Offices,
Phulbani Division, At/P.O- Phulbani, 762 001.

.... Respondents.

M/s P.V. Ramdas & B.K. Panda,
Advocates For Applicant.

Mr. A.B. Misra, Sr. Standing Counsel
(Central)

Mr. Tahali Dalai, Addl. 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 prays for quashing the order of punishment passed in a disciplinary proceeding and for payment of arrear salary.

2. Shortly stated, the case of the petitioner is that he was initially appointed as Extra- Departmental Branch Postmaster of Bisipada within the district of Phulbani. This appointment was made in the year 1973. On 12.11.1976 the petitioner was put off from duty and on 17.12.1976 a departmental proceeding was initiated against the petitioner. While the matter stood thus, the petitioner was an accused in G.R. Case No.10 of 1977 under section 468/471 IPC. On 13.5.1980 the petitioner was convicted by the learned Chief Judicial Magistrate, Phulbani as a result of which the petitioner was dismissed from service on 18.8.1980. Then the matter had been carried in appeal and the learned Sessions Judge, Ganjam-Boudh, Berhampur allowed the appeal forming subject-matter of Criminal Appeal No.18 of 1980 on 3.4.1982. Since the petitioner was not reinstated into service the petitioner moved the Hon'ble High Court of Orissa for appropriate orders and it formed the subject matter of O.J.C.No.1240 of 1983 and subsequently heard and disposed of by us in Transferred Application No.349 of 1986 on 28.2.1987. By then fresh charges had been drawn up against the petitioner and they were four in number. Details need not be stated because of the

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conclusion we propose to arrive at. The inquiry was conducted against the petitioner by a particular Inquiring Officer namely Sri S.J.A. Bhukari, Asst. Superintendent of Post Offices. While pronouncing the judgment in the aforesaid T.A. we directed that the proceeding be disposed of within one month from the date of receipt of a copy of this judgment (if not already disposed of) and in case the disciplinary proceeding is not disposed of within one month from the date of receipt of a copy of the judgment, it would be deemed to have been quashed because we found from the record that the proceeding was initiated soon after the judgment of acquittal ^{was} passed by learned Sessions Judge. The Inquiring Officer found the petitioner guilty of Charge Nos. I and II and he further held that Charge Nos. III and IV had not been established. He then submitted his findings to the disciplinary authority who in his turn ordered removal of the petitioner from service vide Annexure-14 dated 23.3.1987. Hence this application.

3. In their counter, the Opposite Parties maintained that the case being one of full proof evidence ~~exxx~~ the order of punishment should not be unsettled and the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. P.V. Ramdas, learned counsel for the petitioner and Mr. Tahali Dalai, learned Addl. Standing Counsel for the Central Government at some

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length. We find from the records that the case has been disposed of ex-parte due to the absence of the petitioner. In such serious allegations, we feel that an ex-parte order finding the petitioner guilty may not be proper. Even though we do not appreciate the conduct of the delinquent officer who remained absent from the inquiry yet for the ends of justice and equity, we feel that the inquiry should be conducted once again in presence of the petitioner particularly when the penalty is one of extreme nature. In case the petitioner remains absent from the inquiry on this occasion, the Inquiring Officer would be at liberty to proceed with the inquiry ex-parte. We are sure a reasonable opportunity will be afforded to the petitioner to defend himself according to law.

5. Lastly Mr. Ramdas submitted before us that since there was some dispute between the petitioner on one side and Mr. S.J.A. Bokhari, the Inquiring Officer in other side in regard to pledging of a gold ring of the petitioner, he did not expect a fair and impartial trial from Mr. Bokhari. On this score the delinquent officer made a representation earlier which was turned down. Of course on the basis of wild allegations we cannot come to the conclusion that bad blood flows between the petitioner and Mr. Bokhari. But we like to say that justice shall not only be done but there shall be manifestation of justice being done. Since there is some apprehension in the mind of the petitioner for the ends of justice it would be justifiable for the Superintendent

of Post Offices, Phulbani to appoint some other Inquiring Officer to conduct the inquiry and dispose of the matter expeditiously. By this it should not be construed that we have taken an adverse view against Mr. Bokhari. It is only on the well settled principle that JUSTICE SHALL NOT ONLY BE DONE BUT THERE SHALL BE MANIFESTATION OF JUSTICE BEING DONE, we have ordered for appointment of the Inquiring Officer. Thus, the case is remanded for further inquiry and we hope the inquiry would be disposed of within 120 days from the date of receipt of a copy of this judgment. The order of punishment is hereby set aside and the petitioner may continue to remain under put off duty as already ordered by the competent authority.

6. So far as the second prayer of the petitioner is concerned that once the criminal court has held him to be not guilty, the competent authority was bound to reinstate him and pay him back wages, we would keep this matter open to be decided by the disciplinary authority and in case an adverse order is passed against the petitioner, then we reserve our right to make a judicial review of the order. We are sure the petitioner will co-operate in the expeditious disposal of the inquiry.

7. Thus, the application is accordingly disposed of.

of leaving the parties to bear their own costs .

Kazaz Roy
22.12.88
Member (Judicial)

B.R. PATEL, VICE CHAIRMAN,

I agree.

Ramachand
22.12.88
Vice Chairman



Central Administrative Tribunal,
Cuttack Bench.
December 22, 1988/Roy, Sr. P.A.