

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 37 of 1988.

Date of decision: February 1, 1990.

Sri Chitrasen Tanty, son of late
Bidyadhar Tanty, At/P.O.Diamunda,
Via.Sargipalli, Dist.Sundargarh. ...

Applicant.

Versus

1. Union of India, represented by Director,
Postal Services, Sambalpur Region,
Sambalpur-768001.
2. Superintendent of Post Offices,
Sundargarh Division,
Sundargarh-770001.
3. Asst. Superintendent of Post Offices,
Sundargarh Division, Sundargarh-770001.

... Respondents.

For the applicant ... M/s. P.V. Ramdas,
B.K. Panda, Advocates.

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

C O R A M :

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

A N D

THE HON'BLE MISS USHA SAVARA, MEMBER (ADMINISTRATIVE)

1. Whether reporters of local papers may be 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)

The applicant was an Extra-Departmental Delivery Agent cum Extra-Departmental Mail Carrier of Diamunda Branch Post Office within the district of Sundargarh. As Mail Carrier he was to carry cash bag and Mail bag as well. An allegation of opening the mail bag and theft of Rs.500/- from the cash bag was made, there was also an allegation that an amount of Rs.400/- remitted by money order to be paid to one Smt. Gita Naik had not really been paid and her signature was forged in the space of the money order form meant to note the acknowledgment of the payee of the receipt of the amount. The applicant was put off duty on 20.12.1986 and a charge -sheet was served on him on 12.3.1987. In the charge-sheet there were two articles of charge, one relating to opening of mail and cash bag and theft of Rs.500/- and the other relating to non-payment of Rs.400/- payable to Smt. Giti Naik and forgery of her signature. In the enquiry the Department adduced evidence and Giti Naik was one of the witnesses examined for the Department. The Enquiring Officer found that the charge relating to opening of mail bag and theft of Rs.500/- was not adequately proved, so he exonerated the applicant of that charge. But, however, he found that the materials on record of the departmental proceedings were sufficient to find the applicant guilty of the second charge.

As was expected, the applicant in the departmental proceeding denied both the charges.

Since the present application is confined to the second charge and the order of removal was based on a finding

of guilt under that charge, it would not be necessary on our part to refer to the first charge or the evidence with regard to that.

2. For the sake of convenience the second charge may be extracted.

" That during the aforesaid capacity in the aforesaid Office the said Sri C.Tanty on 8.12.86 received the amount with Bhawanipatna Gandhi Chowk M.O. No.4799 dt.3.12.86 for Rs.400/- for effecting payment to the payee. But Sri Tanty took payment himself the value of the said M.O. for Rs.400/- and shown the M.O. as paid on 8.12.86 by forging the signature of the payee.

The amount of Rs.400/- was only paid to the payee Smt. Geeti Naik on 18.12.86 and thus temporarily misappropriated by Sri C.Tanty for the period from 8.12.86 to 17.12.86."

3. In the counter filed all that has been stated relates to affording of reasonable opportunity to the applicant to defend himself and that the disciplinary authority correctly decided the disciplinary proceeding.

4. We have heard Mr.P.V.Ramdas, learned counsel for the applicant and Mr.Tahali Dalai, learned Additional Standing Counsel for the Central Government. Mr.Ramdas has drawn our attention to the enquiry report (Annexure-2) particularly to the pages from 21 to 24. It may here be stated that prior to the starting of the departmental enquiry, a petition of complaint said to have been signed by Geeti Naik was received which led to the starting of the departmental proceeding. The Enquiring Officer while dealing with the second charge stated that one M.Marandi was examined as P.W.3 and he deposed before him that Ext-2 in the departmental proceeding i.e. the complaint was

Handwritten signature

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brought from Geeti Naik and the M.O. acknowledging ^{receipt} receipt from the Postmaster of Sundergarh. Then he obtained the statement from the applicant. One Savings Bank withdrawal form containing the signatures of the payee Geeti Naik was also brought by the said M. Marandi from the applicant, and that withdrawal form was marked as Ext-4 in the departmental proceeding. From the enquiry report it would further be found that Geeti Naik admitted before the Enquiring Officer that she had signed the complaint which was marked as Ext-2 in the departmental proceeding but, however, she admitted that she had received Rs. 400/- towards the value of the money order from the applicant and at that time nobody else was present. She also admitted during the course of enquiry that the signature on the money order form was her. The enquiring officer did not like to act upon the admissions of Geeti Naik on two grounds namely, according to Geeti Naik there was no witness present when the payment of the money order was alleged by the applicant to have been made but the money order acknowledgment was signed by one Tiknath Bhoi as a witness and secondly, the fact that there was delay in making the payment was suggestive of the fact that there was a temporary misappropriation of the amount by the present applicant. The enquiring officer was alive to the principle of law that a suspicion is not substitute for proof and infact he utilised that while recording his finding on charge No. I. The statement in the complaint made by Giti Naik was behind the back of the applicant, may be it was proved by Geeti herself that she made a complaint but that would not be sufficient evidence to warrant the conclusion of guilt of the charged officer, more so when she, during

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the departmental proceeding, admitted to have received the amount and put her signature on the money order form in the space meant for acknowledging receipt. It has repeatedly been held by various courts as well as by this Tribunal that if the evidence in the proceeding itself would suggest that allegations in the previous complaint might not be true and even if there may be a suspicion about the charged officer to have been involved, it would not be proper to return a finding of guilt. Cross-examination is one of the effective weapons in the hands of a charged officer to show that statements made by a witness whether earlier or during the course of enquiry is untrue and in the instant case, when being cross-examined the payee admitted to have received the amount and put her signature, in our opinion there was no material to hold that infact payment was not made to Giti Naik on the date mentioned in the money order form.

Mr. Dalai has contended that the fact that the money was kept with the applicant for 10 days could prove temporary misappropriation. Misappropriation differs from detention as is understood in law. Misappropriation connotes much more than a mere non-payment, unless there be conversion of the amount by the charged officer to his own use or for a purpose not permissible under the Rules, there cannot be a case of misappropriation. From the enquiry report itself it would be crystal clear that there was absolutely no material to show that the money was really converted to own use in contravention of the Rules. We would ofcourse hasten to add that the detention of the money does not appear to have been explained, possibly because that was not the averment of the charge. Since we find that there was no evidence to support the

charge, the order of finding guilty and consequently removal from service is hereby quashed. Accordingly, the applicant should be reinstated and all other consequential monetary benefits should be given to him. This judgment should be implemented within a period of two months from the date of receipt of a copy of it. No costs.

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M. Faruqi
Member (Administrative)

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M. Faruqi
Member (Judicial)

