

6
II

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 374 of 1988.

Date of decision : May 24, 1990.

Pratfulla Kumar Jena ... Applicant.

Versus

Union of India and others ... Respondents.

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

For the respondents ... Mr. Aswini Kumar Misra,
Sr. Standing Counsel (CAT)

CORAM:

THE HON'BLE MR. R. BALASUBRAMANIAN, MEMBER (ADMN.)

A N D

THE HON'BLE 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 ? 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 claimed are for quashing the charge framed on 19.9.1985 and the order dated 6.10.1988 at Annexure-2 to the application directing holding a de novo enquiry against the applicant.

2. The facts alleged by the applicant are that he was

appointed as an Extra-Departmental Delivery Agent of Anarpal Sub Office by Respondent No.5 i.e. Sub-Divisional Inspector (Postal), Bhadrak West Sub-Division, Bhadrak. On 6.10.1983 a memorandum of charge, copy whereof is at Annexure-1 to the application, was served on him. Prior to that he was put off duty on 6.10.1983. Respondent No.4, i.e. Sub-Divisional Inspector (Postal), Bhadrak East Sub-Division, Bhadrak, framed the charge and took up other steps such as appointing an Enquiring Officer and a presenting officer for the enquiry in the consequent disciplinary proceeding. After receipt of the enquiry report, the then Sub-Divisional Inspector (Postal), Bhadrak East Sub-Division found that (the S.D.I.(P), Bhadrak East Sub-Division) had no jurisdiction to order enquiry or frame charge, it was the S.D.I.(P) of Bhadrak West Sub-Division who had jurisdiction, he being the appointing authority of the applicant. After that on 6.10.1988 the S.D.I.(P), Bhadrak West Sub-Division ordered to hold a de novo proceeding from the stage of issue of charge-sheet. Making these allegations the applicant has prayed for the reliefs mentioned above and in addition has prayed for a direction to the respondents to pay him his salary and other service benefits from the date he was put off duty.

3. The respondents in their reply have not disputed the allegations of the applicant with regard to the irregularity of the proceeding initiated by the Respondent No.4. from the stage of framing of the charge and service of

8 (W)

memorandum of the charge, but they have denied the allegation of the applicant with regard to the applicant being put off duty by Respondent No.4. Their case in this regard is that the appointing authority of the applicant i.e. Respondent No.5 put him (the applicant) off duty. They have filed Annexure-R/2, copy of the order putting the applicant off duty. In the counter it has been mentioned that the Superintendent of Post Offices, Bhadrak Division appointed Respondent No.4 as the ad hoc disciplinary authority and thus Respondent No.4 proceeded with the disciplinary proceeding but that order of the Superintendent of Post Offices, Bhadrak Division appointing Respondent No.4 as the ad hoc disciplinary authority was not quite regular inasmuch as both Respondents 4 & 5 belong to the same cadre. An ad hoc disciplinary authority should be a person of a rank higher than that of the ordinary disciplinary authority but not the appellate authority under the Rules. After this irregularity in the appointment of ad hoc disciplinary authority was discovered, an order to have the proceeding de novo from the stage of charge was passed. As the charges against the applicant are serious and grave in that he is alleged to have fraudulently misappropriated some amounts, an enquiry is imperative. The respondents, in fine, contend that there has been no illegality in ordering de novo enquiry. They have also taken the plea of bar of Section 20 of the Administrative

9
V

Tribunals Act, 1985 by stating that the applicant approached this Tribunal before exhausting the departmental remedy of appeal against the order of the Respondent No.5.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. Aswini Kumar Misra, learned Senior Standing Counsel (CAT) for the respondents. It is admitted that the applicant was put off duty in 1983 and the memorandum of charge was served on the applicant on 19.9.1985 i.e. about 3 years after he (the applicant) was put off duty. Learned counsel for the applicant has contended that the order putting the applicant off duty became invalid after expiry of 6 months, Even though the E.D. Agents (Conduct and Service) Rules envisage for disposal of the enquiry within a period of 120 days that rule cannot be made applicable to the case of delay in serving the memorandum of charge after putting a person off duty i.e. suspending him. Learned counsel for the applicant has sought reliance on a decision of the Sikkim High Court reported in 1985 (2) SLJ 265 (Sarani Giri v. Union of India and others). In that case what the learned Judge held was that suspension in contemplation of disciplinary proceeding without assigning any reason for suspension for more than 3 months was to be quashed. To that case Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 was applicable. His Lordships quoted the office memorandum No. 35014/1/81/Ests. (A) dated 9.11.1982 of the Ministry of Home Affairs, Department of Personnel

& A.R. In Annexure-R/2 to the counter what was mentioned was that the applicant was put off duty with immediate effect pending investigation into the allegation of misconduct against him. It would thus appear that in the order putting the applicant off duty ~~was~~ indication of the reasons for putting the applicant off duty was given. Therefore, the case cited by learned counsel is not of much assistance.

5. The real question that arises for consideration in this case is whether was it proper on the part of the Respondent No.5 to order a de novo enquiry. From the admitted facts it can safely be said that there was a delay of about 2 years for framing the charge and serving the memorandum of charge on the applicant since the date of his being put off duty. The disciplinary proceeding continued from 19.7.1985 till 6.10.1988 i.e. for a little more than three years and in fact exactly 5 years elapsed between the date the applicant ~~being~~ ^{was} put off duty and the date when the order of de novo enquiry was passed. On 2.12.1988 the appointing authority framed a set of charges repeating the charges that were framed by the B.D.I.(P), Bhadrak East Sub-Division. The charges related to non-payment of an M.O. of Rs.110/- on 19.8.1983 and forging signature of one Madhusudan Panigrahi on the Money order form, Non-payment of another amount on 3.8.1983 to one Kasinath Beuria and obtaining a bogus signature on the money order paid voucher form, the third charge also relates to non-

payment of money order amount and obtaining of a bogus endorsement on the money order paid voucher and the fourth charge also was for non-payment of an amount of Rs.40/- on 4.8.1983. From the pleadings it can be gathered that the previous proceeding was almost complete in all respects except that no final order could be passed due to detection of irregularity in the appointment of an ad hoc disciplinary authority. By the time the order for de novo enquiry was made more than 5 years had elapsed and much of the evidence which the applicant would have adduced in support of his innocence might have vanished. When a person had to undergo an ordeal of being without employment and facing the departmental proceeding for 5 years, it would not be in the interest of justice to allow a denovo enquiry. Another fact also can be taken notice of, that a disciplinary proceeding is a quasi criminal proceeding and a charged officer has a right to cross-examine the witness and in the process of cross-examining the witnesses he is apt to put suggestions to the witnesses for the Department with regard to his own case, if a denovo enquiry is made, the Department, if it so likes, ^{- may} try to plug the loopholes in the evidence which were ^{- brought out} ~~left~~ during the enquiry which has already been held.

6. For these reasons, without going to the merits we would direct that no de novo enquiry should be commenced.

7. Learned counsel for the applicant has urged that

the applicant should be paid back wages. We are not able to accept this submission on two grounds namely, we are not expressing any opinion about the guilt or otherwise of the applicant so far as the charges are concerned, we are quashing the order of holding de novo enquiry only on the ground of possible mis-carriage of justice. The second ground is that under Rule 9 of E.D. Agents (Conduct and Service) Rules, 1964 a person who has been put off duty is not entitled to wages during the period of put off duty.

8. In the result, we quash Annexures-1 and 2. The applicant should be reinstated in service within one month from the date of receipt of a copy of this judgment. But he shall not be entitled to any back wages. This application is accordingly disposed of leaving the parties to bear their own costs.

R. Balasubramanian 24/5/90.
Member (Administrative)

K. S. Sankaran 24/5/90
Member (Judicial)

