

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH & CUTTACK.

Original Application No.42 of 1988.

Date of decision : January 3,1989.

Pramod Kumar Das, aged about 34 years,  
son of late Natabar Das, At/P.O.Baniasahi,  
Puri-2, Ex-EDBPM, Baniasahi, Dist.Puri.

... Applicant.

Versus

1. Union of India, represented by its  
Secretary, Department of Posts,  
Dak Bhavan, New Delhi.
2. Postmaster General, Orissa Circle,  
At/P.O.Bhubaneswar, Dist-Puri.
3. Senior Superintendent of post Offices,  
Puri Division, At, P.O. & Dist.Puri.
4. Shri H.Mishra,  
Asst. Superintendent of Post Offices,  
(O), Office of the Senior Superintendent  
of Post Offices, Puri Division,  
At, P.O. and District-Puri.

... Respondents.

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

For the respondents ... Mr.A.B.Mishra, Sr.Standing Counsel  
(Central)

-----  
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 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.
-

J U D G M E N T

K.P.ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the order of punishment imposed on him resulting from a disciplinary proceeding.

2. Shortly stated, the case of the applicant is that the applicant was an Extra-departmental Branch Postmaster of Baniyasahi Post Office within the district of Puri. It was alleged against the applicant that on 31.5.1984 the applicant was entrusted with Rs.45/- by Smt. Indramani Pradhan of village Samantarapur, Baniyasahi on 31.5.1984 to be deposited into her Savings Bank Account No.274933. The applicant not having accounted for the said amount is said to have failed to maintain absolute integrity and devotion to duty. The second item of charge is that while the applicant was working as Extra-departmental Branch Postmaster, Baniyasahi Branch Office he received Shyamnagar MO No.176 dated 10.7.1985 for Rs.100/- payable to Katei Bewa village, Enchal. The applicant is said to have shown the Money order to have been paid to the payee on 22.7.1985 and accounted for the same on 23.7.1985, thereby failed to maintain absolute integrity and devotion to duty. The third item of charge is that the applicant could not produce before the Asst. Superintendent of Post Offices I/c, Puri Sub-Division the full amount of cash and stamps due from him on 23.7.1985. The amount produced by him was short by Rs.199.65 and hence, it is maintained that

the applicant failed to maintain absolute integrity and devotion to duty. The last item of charge is that while the applicant was functioning as Extra-departmental Branch Postmaster, Baniyasahi Post Office received one registered letter and seven ordinary letters for effecting delivery to the concerned addressees but instead of delivering the same he kept those articles in his office. The enquiry officer found the applicant guilty of charges I and III and so far as the charges II and IV are concerned, the enquiring officer held that the charges could not be proved. Accordingly, he submitted his findings to the disciplinary authority who in his turn disagreed with the views of the enquiring officer so far as the charges II and IV are concerned and the disciplinary authority found the applicant guilty of all the charges and ordered removal of the applicant from service. Being aggrieved by this order of punishment the applicant has filed this application with the aforesaid prayer.

3. In their counter, the respondents maintained that the case being of full proof evidence and the disciplinary authority having taken the correct view in the matter, this Bench should not interfere and quash the order of punishment. In a nut-shell it is maintained that the case being devoid of merit, is liable to be dismissed.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and learned Senior Standing Counsel (Central), Mr. A.B. Mishra at some length. We have also

perused the averments in the original application and in the counter and we have also perused the relevant documents pertaining to the merits of the case. At the outset we would like to refer to the order passed by the disciplinary authority disagreeing with the views of the enquiring officer so far as charges II and IV are concerned.

So far as Charge No. II is concerned, the Senior Superintendent of Post Offices i.e. the disciplinary authority stated that there being a contradiction and irreconcilable discrepancy between the statement made by Smt. Katei Bewa who was the payee of the money order of Rs.100/- having stated that during investigation she had not received the said amount and the contrary statement made before the enquiring officer that she had received the amount would lead one to the irresistible conclusion that the witness i.e. the payee, Smt. Katei Bewa had been gained over and therefore accepting her previous statement that the money order had not been received by her, the disciplinary authority i.e. the Senior Superintendent of Post Offices found the applicant guilty of the said charge. On the basis of the above reasons the applicant having been found to be guilty, it is now required by this Bench to address as to whether there was any justification on the part of the disciplinary authority to act on the previous statement and reject the substantive evidence before the enquiring officer. Law is well-settled that the departmental proceedings are of quasi-criminal in nature and even Their Lordships of the Hon'ble Supreme Court have gone to

the extent to say that though the standard of proof in a departmental proceeding cannot be equated with that of the standard of proof required in a criminal trial, yet, suspicion cannot take the place of proof in the departmental proceeding. Law is well-settled that if the witness has been gained over then it seriously affects his/her credibility. For that purpose it would not be legal and proper to accept the previous statement of a witness as substantive evidence and make it a foundation or basis for conviction. The present applicant had no opportunity to cross-examine Smt. Katei Bewa while she made the statement during investigation and in that context or in that light there are plethora of judgments laying down that the conviction or acquittal must be based on the substantive evidence but not on the previous statement which cannot take the form of substantive evidence. From the two sets of contradictory statements appearing in the evidence of Smt. Katei Bewa it would be dangerous and hazardous to act upon the previous statement especially when it has been made during investigation and the applicant had no opportunity to cross-examine the witness. In a case of this nature, the undisputed position of law is that such evidence of a gained over witness which can be used either in favour or against a particular party cannot be taken into consideration and such evidence can be used for the above mentioned purposes. So far as the evidence of Smt. Katei Bewa is concerned, the only line she has breathed in her evidence is that she has received the

amount. Once she herself admits to have received the amount, the question of misappropriation or temporary misappropriation by the applicant does not arise. Learned Senior Standing Counsel (Central) vehemently submitted before us that the applicant having deposited the amount, it should be held that the applicant had not paid the amount to Smt. Katei Bewa and on that account the disciplinary authority has also made certain observations by saying that payment made by the applicant confirms the fact that he misappropriated the amount and the question of threatening or coercion etc. does not arise. There are plethora of judicial pronouncements that without any substantive evidence bringing home the charge against a particular person, mere fact of deposit of the amount by any person cannot bring him within the mischief of section 409 of the Indian Penal Code. For various reasons a particular person may reimburse the government money but one cannot draw the inevitable conclusion that by this act the offence is proved and therefore, we do not find any merit in the aforesaid contention of learned Senior Standing Counsel (Central) and the reasons assigned by the disciplinary authority.

5. So far as the Charge No. IV is concerned, the disciplinary authority had remarked in his order,

" The I.O. has not examined the addressee which is a serious lapse in proving the charge. "

She further went on to say,

" However the SPS himself has admitted its non-delivery and the addressee had not been examined, taking the preponderance of probability, this charge is also taken as proved. "

Admissions require corroboration <sup>✓</sup> through direct or indirect and that particularly the disciplinary authority once having held that there is serious lapses in the merits of the case it was no longer open to the disciplinary authority to find the applicant guilty on the basis of preponderance of probability which has not been <sup>elucidated</sup> ~~elicited~~ in any manner by the disciplinary authority. Cryptically the matter has been disposed of by the disciplinary authority without stating the probabilities on which the disciplinary authority seeks to rely upon to come to a conclusion that the charge has been proved. In such circumstances, we would not agree with the disciplinary authority that the charge No.IV has been brought home against the applicant.

6. So far as the charge No.III is concerned the undisputed position before us is that on the very date of inspection i.e. 23.7.1985 the money in question was delivered by the applicant to the inspecting authority. This being the admitted position we fail to understand as to how there was shortage of the Government money. In such circumstances we are also of opinion that the charge No.III has not been established or proved with satisfactory evidence against the applicant.

7. Lastly, so far as the charge No.I is concerned after perusing the evidence and the relevant records we concur with the findings of the disciplinary authority that it has been proved that Rs.45/- had been temporarily



misappropriated by the applicant. Admittedly, Rs.45/- has been recovered from the applicant. So far as different nature of penalties to be imposed on Extra-departmental employees under the relevant Rules, <sup>it is laid down that</sup> ~~are~~ either he is to be dismissed from the service, or removed from service or the loss caused to the Government has to be recovered. In the present case loss of Rs.45/- having been recovered from the applicant we would say that ~~it~~ should be deemed that this recovery is sufficient penalty, coming within different nature of penalties prescribed under the Rules. In view of our finding that Charge No.I has been established, we feel that imposition of penalty of removal from service is grossly disproportionate to the offence committed and therefore, we would set aside the order of removal passed against the applicant and we direct his reinstatement within three months from the date of receipt of a copy of this judgment holding that the punishment of recovery of Rs.45/- is sufficient and would serve the ends of justice. The applicant shall not be entitled to any back wages.

8. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

*[Signature]*  
3.1.89  
.....  
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

9 agree.

*[Signature]*  
3.1.89  
.....  
Vice-Chairman

Central Admn. Tribunal,  
Cuttack Bench :Cuttack.  
January 3, 1989/Saranghi.

