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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK.

Original Application No.100 of 1988

Date of decision : January 13, 1989.

Sri Nirakar Sahu, aged about 35 years,  
son of Late B.Sahu, E.D.B.P.M.,  
village-Badakusasthali, Via-Berhampur,  
Dist.Ganjam. ...

Applicant.

Versus

1. Union of India, represented by the Postmaster General, Orissa Circle, Bhubaneswar-751001.
2. Additional Postmaster General, Orissa Circle, Bhubaneswar-751001, Dist-Puri.
3. Senior Superintendent of Post Offices, Berhampur (Gm) East Division, Berhampur-760001, Dist.Ganjam.

... Respondents.

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

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

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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)

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *Y*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, Annexure-3 containing the notice issued by the Additional Postmaster General to the applicant calling upon him to show cause as to why penalty of dismissal from service would not be imposed on the applicant, is under challenge.

2. Shortly stated, the case of the applicant is that while he was functioning as Extra-Departmental Branch Postmaster in Badakusasthali Post Office within the district of Ganjam a disciplinary proceeding was initiated against the applicant on an allegation that he had committed temporary misappropriation of certain money entrusted to him by different persons and accordingly 5 items of charges were framed and delivered to the applicant who faced the enquiry. The enquiring officer found that charges I, II, III and IV had been proved and he further found that Charge No.V had not been established. Accordingly, he submitted his findings to the disciplinary authority who in his turn disagreed with the views expressed by the enquiring officer that charges I, II & III had been proved. In otherwörds, the disciplinary authority found that Charges I, II & III had not been proved. The disciplinary authority concurred with the findings of the enquiring officer to the extent that charge IV had been established and Charge No.V could not be proved. The disciplinary authority after giving a reasoned order further stated that a severe warning to the

applicant for his laches would serve the ends of justice and accordingly the disciplinary authority gave a severe warning to the applicant and ordered reinstatement of the applicant into service. Ultimately, this case came to the notice of the Additional Postmaster General who is the reviewing authority and the Additional Postmaster General was of the view that the disciplinary authority had taken a lenient view of the matter and vide Annexure-3 the reviewing authority issued a notice to the applicant to show cause as to why the applicant should not be dismissed from service. At this stage, the applicant has approached this Bench with this application with a prayer to quash Annexure-3.

3. In their counter, the respondents maintained that no illegality has been committed by the reviewing authority in issuing such a notice because it was well within the rights of the reviewing authority vested in her under the law to issue such a notice after the reviewing authority was satisfied that an illegality had been committed by the disciplinary authority. Further, it is maintained by the respondents that it was premature on the part of the applicant to have rushed to the Court instead of submitting his show cause. Therefore, it is maintained in the counter that the case being devoid of merit, is liable to be dismissed,

4. We have heard Mr. P. V. Ramdas, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) at some length. Mr. Ramdas submitted

that the impugned order contained in Annexure-3 is liable to be quashed because it was incumbent upon the reviewing authority i.e. the Additional Postmaster General to pass a reasoned order as to why she felt inclined to take a view other than what has been taken by the disciplinary authority. The reviewing authority having failed to give a reasoned order, the impugned order should be quashed and in support of his contention Mr. Ramdas relied upon a judgment of the Central Administrative Tribunal, Calcutta Bench reported in ATR 1986 (2)CAT 13 (S.K.Chatterjee v. Union of India and others). In this case, the petitioner S.K.Chatterjee was proceeded against by the departmental authorities for having misconducted himself in making short delivery of some liquor bottles. The disciplinary authority passed an order stating that an amount of Rs. 408/- should be recovered from the petitioner S.K.Chatterjee in five instalments. The matter attracted the attention of Senior Divisional Commercial Superintendent, Asansol who was the reviewing authority and he ordered issuance of notice to Shri S.K.Chatterjee to show cause as to why quantum of penalty should not be enhanced and the reviewing authority was of the opinion that the petitioner, S.K.Chatterjee has been very leniently dealt with by the disciplinary authority. At this stage, S.K.Chatterjee invoked the jurisdiction of the Hon'ble High Court of Calcutta by filing an application under article 226 of the Constitution praying therein to quash the notice issued by the reviewing authority and ultimately the case was transferred under

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section 29 of the Administrative Tribunals Act ,1985, to the Calcutta Bench for disposal according to law. Justice Asha Mukul Pal, Vice-Chairman, and Justice B. Mukhopadhyay, Member of the Calcutta Bench held that the notice issued by the reviewing authority is bound to be quashed because it had not passed a reasoned order indicating the grounds for which the reviewing authority takes a view other than what had been taken by the disciplinary authority. Hon'ble Judges observed as follows :

" By reading the said purported show cause in its entirety, we do not find any statement/observation or any reason in justification of issuing the said purported show cause notice. On the contrary, the impugned notice shows a biased mind : he observes " A.C.S. has accepted the findings and yet has closed the case by merely ordering the recovery of the costs of the liquor from Shri Chattejee." Patently the said Senior Divisional Commercial Superintendent exposes himself to a mental attitude which is likely to create bias. He has lost the judicial balance in a matter which is quasi-judicial in nature."

Further, the Hon'ble Judges in the succeeding paragraph stated as follows :

" We expected a justifiable reason from the reviewing authority when he differed from the disciplinary authority - but there was none.

The reviewing authority by issuing that purported notice betrayed a kind of bias- he viewed the matter in a manner as if the "severer punishment" to be imposed upon the applicant as indicated in annexure 'C' is a fait accompli. "

Similar view has been taken by the Principal Bench in a case reported in ATR 1988 (1)CAT 257 (Govind Lal Chopra v. Union of India). The Hon'ble Judges observed as follows :

" The learned counsel for the applicant has stated

that the impugned order passed by the Revisional authority does not show that the representation to the show cause notice has been considered at all. There is no reason given by the Revisional authority while passing the order. Thus, it suffers from serious infirmity. In support of his contention the learned counsel relies on a decision of the Calcutta Bench of the Tribunal in S.K.Chatterjee v. Union of India 1986 (2) AISLD 111 where it has been held by the Calcutta Bench of the Tribunal that where the authority issuing the show cause notice for a more severe penalty to be imposed on review does not give any reasons for differing with the disciplinary authority in his order, such order manifests non application of mind. "

Applying the principles laid down in the above mentioned cases we are now required to find out whether reasons have been assigned in the impugned order. Mr.Tahali Dalai, learned Additional Standing Counsel (Central) emphatically urged before us that the above mentioned cases have no application to the facts of the present case, because in the impugned order the Additional Postmaster General has given sufficient reasons for taking a view other than what has been taken by the disciplinary authority. To appreciate the contention put forward by Mr.Dalai it is worthwhile to state that in the impugned order contained in Annexure-3, the Additional Postmaster General in paragraph 1 states the facts put up against the delinquent officer i.e. the present applicant. In paragraph 2 suddenly the Additional Postmaster General jumps into a conclusion that a wrong view had been taken by the disciplinary authority. The observations of the Additional Postmaster General in paragraph 2 run thus :

" The undersigned reviewed the case with reference to the relevant records. The undersigned does not agree with the findings

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arrived at by the disciplinary authority. The undersigned also observes that the disciplinary authority has shown too much leniency in letting the EDA off with a warning when the charges brought against him involved moral turpitude and were proved in oral inquiry. The undersigned has therefore come to a provisional conclusion to impose on the EDA, Sri Nirakar Sahoo, the penalty of dismissal from service.

Though we have given our anxious consideration and careful attention to the observations of the reviewing authority quoted above, we do not find anywhere any iota of reasoning given by the Additional Postmaster General as to why she takes a view other than what has been taken by the disciplinary authority. We are unable to accept the contention of learned Additional Standing Counsel (Central) that sufficient reason has been given by the reviewing authority. On the contrary, we are of firm view that no reason at all has been assigned by the reviewing authority in the show cause notice indicating as to why she would take a view other than what has been taken by the disciplinary authority. In such circumstances, we are of further view that the principles laid down by the Hon'ble Judges of the Calcutta Bench and that of the Principal Bench apply mutatis mutandis to the facts of the present case. Having come to the conclusion that no reasons have been assigned by the reviewing authority, there is no other course left open to us but to quash the order contained in Annexure-3 and therefore, we do hereby quash Annexure-3.

5. Thus, this application stands allowed leaving  
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the parties to bear their own costs.

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*Kazas* 13.1.89  
.....13.1.89.....  
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,



*I agree.*

*Ram* 13.1.89  
.....13.1.89.....  
Vice-Chairman

Central Administrative Tribunal,  
Cuttack Bench, Cuttack.  
January 13, 1989/S.Sarangi.