

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

(S)

ORIGINAL APPLICATION NO: 123 OF 1989.

Date of decision: December, 17, 1990.

Sanatan Moharana

Applicant

Versus

Union of India and others

Respondents

For the applicant

: M/s. A.K.Mohapatra,
P.K.Mohapatra
Advocates

For the Respondents

: Mr. Tahali Dalai, Additional
Standing Counsel (Central)

C O R A M:

THE HON'BLE MR. B.R.PATEL VICE CHAIRMAN

AND

THE HON'BLE MR. K.P.ACHARYA VICE CHAIRMAN

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.

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(b)

JUDGMENT

K.P.ACHARYA VICE CHAIRMAN, In this application Under Section 19 of the Administrative Tribunals Act, 1985 the petitioner prays to quash the order contained in Annexure-3 and the appellate order contained in Annexure-7 removing the petitioner from service.

2. Shortly stated the case of the petitioner is that while he was functioning as Extra Departmental Branch Post Master (E.D.B.P.M.) of the Kothsahi Post Office within the District of Puri, a set of charges were delivered to the petitioner alleging that he had received certain money from different depositors during a particular period and though he had entered those in the pass Book, yet he had not accounted for the said amount, in other relevant records thereby misappropriating the amount in question. Hence a proceeding was drawn up against the petitioner and after a fullfledged enquiry, the enquiry officer found the charges to have been established and accordingly submitted his report to the Disciplinary Authority who in his turn concurred with the findings of the enquiry officer and ordered ~~of~~ removal of the applicant from service vide Annexure-3.

Appeal preferred by the petitioner did not yield any

fruitful result and vide Annexure-7 namely the order passed the Appellate Authority, the appeal stood dismissed. Hence this application with the aforesaid prayer.

3. In their counter the Opposite Parties have maintained that the case being one of the overwhelming evidence and principles of natural justice having been strictly observed in the present case, the order of punishment is not liable to be set aside rather it should be sustained. The case being devoid of merit is liable to be dismissed.

4. We have heard Mr. A.K.Mohapatra learned Counsel for the petitioner and Mr. Tahali Dalai learned Additional Standing Counsel(Central) for the Opposite Parties at some length.

5. Mr. Mohapatra offers several comments on the merits of the case but we refrain ourselves from expressing any opinion on the merits of the case because of the order we propose to pass in this case. In the judgment reported in ATR 1986 (2)CAT 252 (Ramchandra Vs. Union of India and others), Their Lordships of Hon'ble Supreme Court have been pleased to observe as follows:

" Such being the legal position, it is of utmost importance after the Forty Second amendment as interpreted by the majority

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in Tulasiram Patel case that the appellate authority must not only give hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by Tribunals, such as the Railway Board in the present case, will promote public confidence in the Administrative process".

Mr. Mohapatra invited our attention to the Memo of appeal filed by the petitioner before the appellate Authority in which he had prayed for a personal hearing. In such circumstances, we are of opinion and especially keeping in view the observations of the Hon'ble Supreme Court, it was incumbent on the appellate authority to give an opportunity to the petitioner to have his say in the matter before the appellate authority. That not having been done we think there is considerable force in the contention of Mr. Mohapatra that principles of natural justice has been violated.

6. It was next urged by Mr. Mohapatra that in view of the judgment of the Full Bench reported in 1988 (3) Service Law Journal 449 (Premnath K. Sharma Vs. Union of India and others) it was mandatory on the part of the Disciplinary Authority to cause service of a copy of the enquiry report to the petitioner and after giving an opportunity to the petitioner to have

his say in the matter the impugned order should have been passed. The Disciplinary Authority not having been done so, the petitioner stands prejudiced and thereby principles of natural justice is violated. The Full Bench in the case of Premnath K.Sharma (Supra) observed as follows:

"In other words, reasonable opportunity e visaged to be afforded by Article 311 (2) would be satisfied only when all the material on the basis of which the Disciplinary Authority is required to come to a conclusion in regard to the guilty or otherwise of the charged officer is made available to the charged officer and he is afforded an opportunity to make his representation".

Admittedly the petitioner was not given a personal hearing by the Appellate Authority. Admittedly copy of the Enquiry Report was not furnished to the charged officer before the order of removal was passed. In these circumstances where is no ~~scope~~ ^{escape} from the conclusion that principles of natural justice had been violated.

7. Therefore, we do hereby quash Annexure-3 and 7 imposing punishment over the petitioner and we send this case back on remand to the Disciplinary Authority with a direction to furnish a copy of the enquiry report to the petitioner(charged officer) within three weeks from the date of receipt of a copy of the judgment and thereafter fix a date for submission of any ^{Ch.}

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written statement by the charged officer attacking the findings and thereafter orders be passed according to law. In case the petitioner ^{prefers} ~~prefers~~ a personal hearing, the Disciplinary Authority should give an opportunity for personal hearing. By virtue of our order quashing Annexures-3 and 7, the petitioner will not be entitled to any back wages or reinstatement which would depend upon the result of the enquiry. Mr. Dalai submitted that by virtue of quashing of Annexures-3 and 7, the petitioner may claim reinstatement. Law has made sufficient provision empowering the Disciplinary Authority to take such action to keep the charged officer out of duty and we give liberty to the Disciplinary Authority to pass appropriate orders according to law.

8. Thus, this case is accordingly disposed of. There would be no order as to costs.

Arshad
17/12/90
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VICE CHAIRMAN



K. Mohanty
17/12/90
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VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench/K. Mohanty.