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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 151 of 1989.

Date of decision : July 5, 1990.

Jaya Krishna Nath ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. Devananda Misra,
Deepak Misra,
R.N. Naik, A. Deo,
B.S. Tripathy, Advocates.

For the respondents ... Mr. Ganeswar Rath,
Standing Counsel (Central)

C O R A M:

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

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) The applicant has sought for the reliefs of quashing the order of removal from service (Annexure-2) and directions to reinstate him in service and pay him back wages.

2. The undisputed facts are that the applicant had in response to an advertisement applied for the post of a

*N. Sengupta
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Postal Assistant. At the time of making the application for such appointment, he filed a copy of a certificate showing that he belongs to a Scheduled Tribe. The applicant was selected and appointed as Postal Assistant. The appointment was in 1981. In 1985 the Postal Department received information that the applicant on the strength of a false scheduled Tribe certificate got himself appointed against the reserved quota for Scheduled Tribe persons. After this information, the Department made some enquiries and thereafter initiated a disciplinary proceeding on 20.4.1985 alleging that the applicant by producing a forged copy of a false Scheduled Tribe certificate obtained appointment and thereby was guilty of not maintaining absolute integrity and violating Rule 20 of the Central Civil Services (Conduct) Rules, 1964. After the initiation of the disciplinary proceeding, an enquiring officer was appointed and after conclusion of the enquiry the said officer submitted a report agreeing with which the disciplinary authority i.e. Respondent No.4 passed an order of removal on 27.1.1989. Against that order of the disciplinary authority the applicant preferred an appeal to the Director of Postal Services, Sambalpur on 15.3.1989 and the said appeal had not been disposed of by the time of presenting the original application in this Tribunal.

3. The respondents in their counter have maintained that the applicant by practising fraud was liable to be proceeded against and accordingly a disciplinary proceeding

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M/s G/T*

was started and the order of removal was passed after giving the applicant all reasonable opportunities to meet the case against him. Their case, in substance, is that the applicant has really no ground to ask for the reliefs he has sought.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. Ganeswar Rath, learned Standing Counsel (Central) for the respondents. On behalf of the applicant a contention has been raised that as the filing of the so called forged false certificate was prior to the applicant entering into service, the Central Civil Services (Conduct) Rules, 1964 can have no application. There may be some substance in this contention but it is not of much avail to the applicant inasmuch as if really by practising fraud he secured his appointment, he made himself liable to be removed after being given an opportunity of being heard. The proceeding that was initiated against the applicant was definitely necessary to afford the applicant an opportunity to be heard and to place materials to show that the allegations made against him were unfounded, this position would emerge on reading Article 311 of the Constitution of India. On behalf of the respondents it has been urged that the applicant should not have rushed to this Tribunal before the disposal of the appeal preferred by him to the Director of Postal Services. If the proceeding against the applicant would be deemed to be under the Central Civil Services (Classifi-

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cation, Control & Appeal) Rules, definitely an appeal lies. But however, without expressing any final opinion on the matter, we may say that there is scope to doubt the applicability of Central Civil Services (Classification, Control & Appeal) Rules to the facts of the instant case. Therefore, we would say that the applicant should not fail on the ground of not having waited till the disposal of the appeal by the Director of Postal Services.

5. We have already stated that the applicant is entitled to a reasonable opportunity of being heard. As would be found from Annexure-2, a copy of the report of the Enquiring Officer was annexed to the order of removal from service, i.e. prior to the final order of removal, no copy of the enquiry report was supplied to the applicant. Even though we have doubts about the applicability of the Central Civil Services (Classification, Control & Appeal) Rules, yet we are clear in our mind that the ratio of the decision of this Tribunal in Premnath K. Sharma's case reported in (1988) 6 ATC 904 would apply because what was being considered in that case was the meaning of the expression 'reasonable opportunity' as used in Article 311(2) of the Constitution of India.

6. For what has been stated above, we would remit the case back to the disciplinary authority i.e. Respondent No.4 for giving the applicant a hearing and then dispose of the proceeding against the applicant, within three months from the date of receipt of a copy

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of this judgment. No copy of the enquiry report need be supplied to the applicant afresh as the applicant has already had a copy.

7. This application is accordingly disposed of leaving the parties to bear their own costs.

Ramachand 5.7.90
Vice-Chairman

Alka Kapoor 5.7.90
Member (Judicial)

