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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.161 of 1989.

Date of decision : August 20, 1990.

Ganeswar Sahoo ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.J.Das,
B.S.Tripathy,
S.Mallik,
K.P.Misra, Advocates.

For the respondents ... Mr.Tahali Dalai,
Additional Standing Counsel
(Central)

C O R A M :

THE HONOURABLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE 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 ? *yes*.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

N.SENGUPTA, MEMBER (J) The applicant was the Overseer of Mails at Kantabanji. A disciplinary proceeding under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was initiated against him and punishment of recovery of Rs.5000/- was inflicted by the Disciplinary authority, Respondent No.3. Against this order of infliction of punishment, he preferred

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an appeal to the Director of Postal Services, Sambalpur Region but did not succeed.

2. On a perusal of the annexures to the application it appears that the applicant was initially appointed as a Postman and later came to be Overseer of Mails of Kantabanji Circle in the year 1984-85. Within Kantabanji circle lies the Extra-Departmental Sub Office at ^{Turekela} ~~Torekela~~. The allegation against the applicant was that as Overseer of Mails he was required to visit different places within his circle and examine at least 10 Pass Books and verify if the transactions were entered correctly in those Pass books, he (the applicant) in some months did not pay visit to ~~Torekela~~ and in the months he paid visit, he did not examine the required number of pass books which facilitated commission of frauds by the Extra-Departmental Sub-Postmaster, ~~Torekela~~ resulting in a loss to the Government. Different persons were responsible for the total amount misappropriated by the Extra-Departmental Sub-Postmaster who ultimately committed suicide. The ^{explanation} grievance of the applicant was ^{that} in some months he could not pay visit to ~~Torekela~~ as he was either on casual leave or he was required to take cash and for the months he verified lesser number of pass books, the deositors did not come forward or cooperate with him and that resulted in verification of lesser number of pass books. This explanation did not prevail with the departmental authorities who imposed the punishment referred to above.

3. We have heard Mr.K.P.Misra, learned counsel

Yea Expt.
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for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents and perused the different annexures to the application and the counter filed by the respondents. Mr. Misra, ^{the} learned counsel for the applicant, has urged that the proceeding was ~~from~~ its very inception vitiated inasmuch as in the notice to show cause the punishment was suggested and in support of this he has cited a decision of the Calcutta High Court in the case of Balai Chandra Singha Ray versus Union of India reported in 1984(2) SLR 566. On going through this decision we find it unnecessary to express whether we entirely agree with the reasonings assigned by the learned Judge who decided the case because in the instant case what Mr. Misra has referred is not the notice to show cause but it is really a charge-sheet for imposition of minor penalty. Mr. Misra has contended that the disciplinary authority had decided to impose a minor penalty would show that he had prejudged the case. We are unable to agree with this contention because what the Disciplinary authority had before it was a loss occasioned to the Government in which the applicant was not directly involved though he was indirectly responsible. When such were the facts, no question of prejudging the issue could arise. Infact, the applicant was given opportunity to make his representation and that was in accordance with Rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965.

4. Mr. Misra has next contended that the Department did not give him any copy of the statements of the persons said to have been recorded by it during the

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preliminary enquiry. In this regard Mr. Dalai's contention is that no prejudice was really caused to the applicant because the case of the applicant was one for not performing the duty and there could not have been any negative statement and the non-performance of duty was best known to the applicant and he was to give his explanation. The allegation or the imputation was that loss was caused to the Government, how the loss was caused does not appear to have been stated in the memo of charges. To say that some loss occasioned to the Government on account of fraud committed with respect to Savings Bank deposits, some statements of the depositors must have been recorded. If any finding is based on such statements and the statements were recorded behind the back of the applicant, the decision arrived at would be vulnerable. Mr. K. P. Misra has cited the decision in Mansa Ram versus General Manager, Telecommunication, J & K Circle, Srinagar and others reported in 1980 (3) SLR 520 but for what we are going to state below we need not discuss that decision. On a reading of the annexures it is found that the Department did not specify how loss was occasioned or how the amount of loss was arrived at. In these circumstances, it is difficult to sustain the impugned order at Annexures-3 and 5. The applicant succeeds and the case is remanded back to the disciplinary authority to give an opportunity to the applicant to controvert the statements of the witnesses relying on which the amount of loss was calculated and thereafter to give a reasoned order about apportionment of the loss, if any.

Mr. E. S. S. / 2078

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

B. Mohan 20.8.90
.....
Vice-Chairman

M. S. Singh 20.8.90
.....
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
August 20, 1990/Saranghi.

