

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.**

Original Application No.177 of 1989.

Date of decision: November 28, 1990.

Amar Singh Soni Applicant.

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Applicant.

Versus

Union of India and others ... Respondents.

Respondents.

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

For the respondents ... Mr. Tahali Dalai,
Addl. 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 ? *No*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

N. SENGUPTA, MEMBER (J) The applicant was appointed as Extra-Departmental Branch Post Master (E.D.B.P.M.) of Jhitiki Branch Office in the district of Sambalpur. Admittedly, on 9.3.1983 an M.C. of Rs.100/- was received to be paid. This receipt was not taken into the Branch Office Account till 15.3.1983. Subsequently, the applicant entered the amount in the concerned registers and did what was necessary. On 28.3.1983 the applicant was put off duty and faced a

disciplinary proceeding under Rule 8 of the Extra-Departmental Agents (Conduct & Service) Rules, 1964. In that proceeding the Disciplinary authority i.e. the Senior Superintendent of Post Offices, Sambalpur Division passed an order of removal of the applicant from service with effect from the date the applicant was put off duty. Against this order the applicant preferred an appeal and this was rejected by the appellate authority i.e. the Director of Postal Services, Sambalpur Region by order dated 16.5.1988 vide Annexure-4. The grievance of the applicant is that he never misappropriated any amount, he was not supplied with a copy of the report of enquiry before the disciplinary authority imposed the punishment and no copy of speaking order passed by the appellate authority has been supplied to him.

2. The respondents in their counter have maintained that the applicant committed breach of departmental Rules and was negligent and for this he incurred the lesser penalty of removal from service.

3. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents and perused the papers. Annexure-R-7 is the report of the enquiry Officer. We would like to refer to the charge. The charge is as follows:

"That the said Sri Amar Singh Soni while functioning as EDBPM Jhitiki BO in a/c with Paikmal SO temporarily misappropriated a sum of Rs.100/- in respect of Jhitiki BO M.O. No. 34 dt. 9.3.83 remitted by Sri Tikaram Soni, Jhitiki for the period from 9.3.83 to 15.3.83."

*Recd Encl
28/11/90*

We have referred to the charge. From it, it would be evident that the charge was for temporary misappropriation of an amount of Rs.100/- for the period from 9.3.1983 to 15.3.1983. The Enquiring Officer after recording evidence and on an appreciation of the said evidence adduced before him came to the conclusion that due to lack of evidence and defective charges the charge of misappropriation was not proved. However, he further opined that there was infringement of Departmental Rules, due to the negligence on the part of the delinquent E.D. B.P.M. The Disciplinary authority in his order, copy of which is Annexure-2, observed that he took into account both the charges originally framed and the irregularities revealed during the course of departmental proceeding and further that though proving or disproving misappropriation with the strict legal sense of the term was not his jurisdiction, the delay in accounting for the amount of Rs.100/- in respect of the Money order stood proved and there was irregularity for taking serious view of the case. It is elementary principle that though the disciplinary proceeding is not a criminal proceeding yet it is a quasi ^{criminal} judicial one. A person cannot be found guilty of something with which he has not been charged and had not been called upon to meet such a case. The applicant from the very beginning had informed the Department that as he was suffering and had been busy for his Sister's marriage, he could not account for the Money order amount of Rs.100/- in time. We also find that the period from 9.3.1983 to 15.3.1983 is just a week. That being so, the final order of the disciplinary authority cannot be sustained. Apart

Mr. S. S. S. 1

from this as has been consistently held, non-supply of copy of the enquiry report before imposition of penalty vitiates the final order. Therefore, on that count also the disciplinary authority's order suffers.

4. With regard to the appellate order we would say that before us there is no speaking order, only an intimation of a rejection of the appeal is there. The appellate authority is required to pass a speaking order and if that has not been done, the order cannot really be sustained. In these circumstances of the case, we quash the order of removal and direct reinstatement of the applicant within a month hence. But however, the applicant not having performed the duties of the Extra-Departmental Branch Post Master will not be entitled to back wages.

5. The application is accordingly disposed of.

No costs.

Mandal 28/11/90
Vice-Chairman

Healde 28/11/90
Member (Judicial)



Central Administrative Tribunal
Cuttack Bench, Cuttack.
November 28, 1990/Sarangi.