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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 256 of 1989.

Date of decision: November 16, 1990.

Dolagebinda Sahoo ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. S. Kr. Mohanty
S. P. Mohanty, Advocates.

For the respondents ... Mr. Aswini Kumar Misra,
Sr. Standing Counsel (CAT)

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 has been compulsorily retired in a disciplinary proceeding started against him where the substance of the charge was temporary defalcation of the Government money in the Post Office.

2. Admittedly, the applicant was the Sub-Postmaster of Barambagarh Sub Office from 31.1.1986 to 8.2.1986 and in that capacity he was the joint custodian of the Postal cash including stamps etc. It is also undisputed that Sub-Divisional Inspector (Postal), Athgarh Sub-Division inspected the Post Office on 5.2.1986 and detected

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shortage of Rs.3000/-.. There was only one article charge which could be found from Annexure.1. The case of the applicant is that he had nominated defence assistant who later declined to act as such and became disqualified as he had two cases in his hand as defence assistant in other cases. The applicant asked for time to nominate another defence assistant but he was not given an opportunity to find out another man to assist him in the enquiry. The applicant was selected to undergo inservice training at Darbhanga from 1.8.1988 to 12.8.1988, so he informed the Inquiry Officer to post the enquiry to a date some time after 16.8.1988 so as to enable him to attend the enquiry. But the Enquiring Officer held the enquiry on 13.8.1988 which made it impossible for him(the applicant) to attend the enquiry on that date. Thereafter the applicant wanted some time to submit his defence brief. In this regard he sent a telegram on 22.8.1988 but this request of his was not allowed thereby he was deprived of a reasonable opportunity to defend his case before the Enquiring Officer. He also asked for production of some documents including the Error Book vide Annexure-2 but he was denied the opportunity to refer those documents during the course of hearing and that prejudiced him. He has also challenged the decision of the Superintendent of Post Offices to initiate the disciplinary proceeding or to frame charge or to appoint an enquiring officer as his appointing authority is Director of Postal Services.. He preferred an appeal to the Post-Master General but that met with no success. To

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put in brief, the applicant has sought for a direction to quash the orders at Annexures-6 & 7.

3. The respondents in their counter have maintained ~~that~~ that infact there was no denial of reasonable opportunity because the documents which the applicant wanted to be produced were not very much material for the enquiry and secondly, once the applicant had himself admitted that there was a shortage of cash as found by the Sub-Divisional Inspector (Postal) and subsequently the applicant also made good the shortage, the applicant cannot claim that there has been denial of reasonable opportunity.

4. We have heard Mr. A. Kr. Mohanty, learned counsel for the applicant and Mr. A. K. Misra, learned Senior Standing Counsel (CAT) for the respondents. Mr. A. K. Mishra has argued by reiterating what has been stated in the counter filed by the respondents. But we are afraid that the contentions of Mr. Misra cannot be allowed to prevail for the following reasons. There is no dispute that infact the applicant was selected to undergo ~~in~~ service training at Darbhanga, Bihar from 1.8.1988 to 12.8.1988 and that the enquiry was held on 13.8.1988 in Orissa. The applicant also attended the training. It is really impossible for a person to attend the enquiry on 13.8.1988 to put forth his defence. If a person is not allowed to put forth his defence undoubtedly he is seriously prejudiced

5. With regard to the documents it may be stated that on referring to Annexure-2 we find that the applicant asked for production of the Dfrer Book of Sub A/C Branch.

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On referring to Enquiry report, which has been made Annexure- R-4, it would be found that in fact the Enquiring Officer referred to ^{the} absence of an entry in the said error book, if the error book was not available during the enquiry, the absence of an entry should not have been relied on. As such, non-production of this Error Book prejudiced the applicant.

6. The applicant asked for time to nominate his defence assistant but he was denied time and there is no denial of the fact that the first person whom the applicant nominated was found to be incompetent to act as defence assistant as he was having two cases in his hand. The assistance of another Government servant was not ^a ~~the~~ mere formality. To deny a person to nominate defence assistant would be a deviation from the principles of natural justice.

7. It has next been contended by Mr. Mohanty that the applicant might have made admission but in this particular incident the admission as ^{- made -} ~~given~~, cannot be acted upon. There appears to be more substance in this contention of Mr. Mohanty though Mr. Misra on the other hand has very vehemently ^{- contested this submission, ^} ~~objected to~~. We do not feel it necessary to dilate much on this argument except saying that a piece of evidence ^{may be taken against} ~~may be taken~~ but it cannot be acted upon without affording an opportunity to explain the same.

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8. The last of the contentions is about the decision of the Superintendent of Post Offices to initiate a disciplinary proceeding or to frame charge or to appoint an enquiry officer. Law is that ordinarily the

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appointing authority is competent to initiate a disciplinary proceeding and frame charge for major penalty but there may be delegation of power in certain cases. In the instant case we have no material to say that infact there was any delegation of powers to impose the punishment of compulsory retirement to the Superintendent of Post Offices. There is also another aspect of the matter i.e. even though compulsory retirement which amounts to removal from service was passed, no copy of the enquiry report was supplied to the applicant prior to imposition of that penalty.

9. For all these reasons we have no doubt that the enquiry has been vitiated and consequently we quash the order of compulsory retirement vide Annexure-6. The applicant is on the Verge of retirement on superannuation. Therefore, we would direct reinstatement of the applicant in service within a week from the date of receipt of a copy of this judgment, with all consequential service benefits including the financial benefits with effect from the date of his compulsory retirement till the date of reinstatement.

10. This application is accordingly disposed of.

No costs.

B. N. Mukherjee 16.11.90
Vice-Chairman



A. S. Venkatesh 16.11.90
Member (Judicial)

Central Administrative Tribunal
Cuttack Bench, Cuttack.
November 16, 1990/Sarangi.