

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO: 460 OF 1989.

Date of decision : December, 13, 1990.

Prahallad Khatua

: Applicants

Versus

Union of India and others

: Respondents

For the applicant

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

For the Respondents

Mr. Aswini Kumar Misra,
Sr. Standing Counsel
(C.A.T.)

for the intervener

M/s S.K.Mohanty,
S.P.Mohanty

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? No
3. Whether Their Lordships wish to see the fair copy of the Judgment? Yes.

JUDGMENT

K.P.ACHARYA, VICE CHAIRMAN In this application under section 19 of the Administrative Tribunals Act, 1985 the petitioner prays to quash the orders contained in Annexures-1, 2, 3 and 4 and to direct reinstatement of the petitioner with full back wages since the date on which the petitioner was put off from duty.

2. Shortly stated, the case of the petitioner is that while he was functioning as E.D.B.P.M. of Nalanda Branch Post Office, within the district of Cuttack he was put off from duty on a contemplated proceeding and subsequently a set of charges delivered to the petitioner. The chargesheet contains 3 items of charges out of which the enquiry officer found that charge Nos; 1 and 3 were not established and charge No.2 having been held to be proved, the petitioner has been removed from service. Hence this application with the aforesaid prayer.

3. The Respondents in their counter affidavit have maintained that the charge which is held to have been proved should not be unsettled because there is overwhelming evidence against the petitioner that he had committed several irregularities

and illegalities . In such a situation, in no circumstance the punishment should be interfered with and the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. R.N.Naik learned Counsel for the applicant and Mr. A.K.Misra learned Senior Standing Counsel (CAT) for the Respondents at some length. Succinctly stated the case of the prosecution relating to the charge which is held to have been proved indicates that the petitioner while functioning as Extra Departmental Branch Post Master (E.D.B.P.M), Nalanda Branch Post Office had shown certain entries to have been made in the recurring Pass Book in which Smt. Rebati Panda was the operator and this was done by the petitioner after the Pass Book had been closed and entire money had been withdrawn by the depositor. This matter ultimately came to the notice of the higher authorities and therefore the petitioner was proceeded against for such irregularity having been committed by him and ultimately the charge having been proved, the Disciplinary Authority ordered removal of the petitioner from service.

5. During the course of argument advanced by Mr. Naik it has been submitted that after a particular Savings Bank Account operated in the Post Office stands closed, no payment can be made to a Post Master and

therefore prosecution story is nothing but false. The operator is not entitled to any further amount and therefore, there was no mensrea on the part of the petitioner who had jocularly made his entry(if true) to have certain jokes with his friend. Therefore, the order of punishment should be quashed.

6. This submission of Mr. Naik was stiffly opposed by Mr. Misra learned Counsel for the Respondents on the ground that the irregularity committed by the petitioner should not be lightly brushed aside. The entry made after the closure of account may give an opportunity to the operator to claim the amount. In such circumstances, the order of punishment should be upheld.

7. It was further submitted by Mr. Naik that in case the Bench comes to a finding that the charge has been established for such a trivial allegation an order removing the petitioner from service is unwarranted under the law as it is grossly disproportionate to the gravity of the charge and therefore on that account at least the Bench should interfere.

8. After giving our anxious consideration to the arguments advanced by the Bar we do not like to express any opinion on the contention of Mr. Naik as to whether the ^{mensrea} account was operating in the mind of the petitioner or whether these entries were ^{made} in a jocular

manner because of the order we propose to pass in this case.

9. While perusing the records we find that a copy of the enquiry report has not been furnished to the delinquent officer before the order of punishment was passed. In this connection the judgment of the Full Bench reported in 1988 (3) Service Law Journal 449 (Prem Nath K. Sharma Vs. Union of India, and others) is relevant. The Full Bench was of the view that the Forty second amendment of the Constitution has only removed show cause notice to be issued to the delinquent officer but reasonable opportunity which should be given to the delinquent officer to attack the findings contained in the enquiry report, has not been disturbed. The Full Bench was of further view that furnishing a copy of the enquiry report to the delinquent officer is for the purpose of complying with the principles of natural justice so as to enable the delinquent officer to have his say in the matter which should be heard by the Disciplinary Authority before any order of punishment is passed. Therefore, the Full Bench was of the view that before the order of punishment is passed a copy of the enquiry report must be furnished to the delinquent officer.

10. In the present case, on a perusal of the relevant records we find that a copy of the order of punishment has been sent to the delinquent officer alongwith the order of punishment whereas there is absolutely no evidence that the copy of the enquiry report was ever delivered ^{to} the delinquent officer before the order of punishment was passed. Therefore, we are of opinion that this case comes within the principles laid down by the Full Bench and we are of the further opinion that there has been a gross violation of the principles of natural justice which ensures to the benefit of the petitioner. Therefore, we do hereby quash the order of punishment passed against the petitioner removing him from service and so also the appellate order confirming the order of punishment and we remand the case to the disciplinary authority with a direction that he should furnish a copy of the enquiry report to the petitioner and call upon him to submit his explanation on the enquiry report and after perusal of the materials in the show cause, if filed by the charged officer the Disciplinary Authority should pass an order as deemed fit and proper . By virtue of the fact that we have quashed the order of punishment, the petitioner will not be entitled to reinstatement and

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will not be entitled to any back wages. These matters would be governed by the ultimate order which will be passed by the Disciplinary Authority.

11. Before we part with this case we must observe that Mr. Naik vehemently prays before us that the penalty from removal of service is grossly disproportionate to the gravity of the charge. We refrain ourselves from expressing any opinion on this question and so also an other matters stated above as we are remanding the case to the Disciplinary Authority. Any expression of opinion may embarrass the Authority and it may affect the interest of either parties. We are sure that the Disciplinary Authority will take into consideration the submission of the Counsel regarding the extreme penalty, if he holds the charge to be proved while disposing of the case.

12. While remanding the case we would also say that in case the Disciplinary Authority proposes not to proceed any further against the delinquent officer, we have no objection. We leave this to the discretion of the Disciplinary Authority. Appearing from the intervener Mr. S.K.Mohanty learned Counsel submitted that in case the Disciplinary Authority does

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not want to proceed against the petitioner, the Disciplinary Authority is bound to reinstate the petitioner and Shri A.K.Pani who is now working temporarily in place of the petitioner may be removed. We leave this aspect also to the Disciplinary Authority to consider ~~this aspect~~ and pass appropriate orders.

13. This case is disposed of accordingly.

There would be no order as to costs.

Armen
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VICE CHAIRMAN

13-12-90

K. Mohanty
.....
VICE CHAIRMAN

13/12/90



Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty.