

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO: 94 OF 1989.

Date of decision : 18th October, 1990.

Gulia Charan Majhi Applicant

Versus

Union of India and others Respondents

For the applicant Ms. S.L.Patnaik,
Mr. O.N.Ghosh,
Advocate

For the Respondents Mr. Tahali Dalai, learned
Additional 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)

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1. Whether reporters of local papers may be allowed to see the fair copy of the judgment? Yes.
 2. To be referred to the reporters or not? No.
 3. Whether Their Lordship's wish to see the fair copy of the judgment? Yes.
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J U D G M E N T

N.SENGUPTA, MEMBER (J),

The applicant was working as Extra Departmental Branch Post Master (E.D.B.P.M.) of Damudigoda Branch Post Office. The Sub-Divisional Inspector (Postal) Bangriposi Sub-Division put him (the applicant) off duty on 2.11.1985 on account of a Disciplinary Proceeding pending against him and this order of the Sub-Divisional Inspector (Postal) was approved by the Superintendent of Post Offices, Mayurbhanj Division by his order dated 19.11.1985 (vide Annexure-3). In the Disciplinary Proceeding, there were two articles of charge, one was that while he (the applicant) was working as E.D.B.P.M. Damudigoda received a money order on dated 15.2.1985 for Rs. 240/- payable to Draupadi Bewa and shown the amount to have been paid to payee on 21.2.1985. But the payee complained not to have received the amount on that date, so the applicant paid Rs. 300/- including the value of the M.O. to Draupadi Bewa. Thus, he (the applicant) failed to maintain absolute integrity and devotion to duty. The second charge was that he (the applicant) on 6.6.1982 received Rs. 100/- for depositing in S.B. Account No. 741416 of Birabati Murmu. He made entry of the amount in the Pass Book with date stamp. But did not incorporate the transaction in the Branch Office account

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on 7.6.1982. Thereby he contravened the rules relating to maintenance of accounts in the Savings Bank Section. After the charge and filing of the statement by the applicant, the sub-Divisional Inspector (Postal) was appointed ^{as} enquiry Officer. The Enquiry Officer submitted his report after the enquiry to the disciplinary authority. The enquiry officer gave the findings that the charges levelled against the applicant ~~were~~ ^{were} not proved. After receipt of the report of enquiry, the Disciplinary Authority i.e. Respondent No.4 ^{from} deferred the findings of the enquiry officer and passed the impugned order of removal of the applicant from service with effect from the date he was put off duty. This order was passed on 10.5.1988. Against this order imposing penalty, the applicant preferred an appeal to the Additional Post Master General on 29.7.1988 vide Annexure-9. But till the date of filing of the application on 3rd March, 1989 the appeal had not been disposed of. However, it was rejected on 31.8.1989. Making these allegations, the applicant has prayed for quashing the order putting him off duty and the order confirming the order ^{of} put off duty passed by Respondent No.4 and the impugned order of punishment passed by Respondent No.4 with consequential benefits of his re-instatement in service with retrospective effect from 2.11.1985.

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2. The Respondents in their reply have stated that the reasons mentioned by the Enquiry Officer in

support of his findings that the charges were not proved were not cogent and he indulged in conjectures and surmise, and as such the Disciplinary Authority after going through the materials on record passed the order of removal from Service. **To** the counter some Annexures have been made and it has been stated that the applicant misappropriated the amount of money order payable to Draupadi Bewa and the amount deposited by Birabati Murmu.

3. We have heard Ms. S.L.Patnaik, the learned Counsel for the applicant and Mr. Tahali Dalai the learned Additional Standing Counsel for the Respondents. Ms. Patnaik has urged that the view expressed by the Disciplinary Authority is wholly unsupportable and is not based on evidence. She has further contended that the enquiry Officer dealt with each and every items of evidence at length and the Disciplinary Authority did not ~~make~~^{not} those reasons of the Enquiry Officer except making sweeping observations that the view expressed by the enquiry officer was not proper. This Tribunal is not an Appellate Authority, but the limits of its powers are to find if there was any violation of the principle of natural justice, and if the impugned order is based on no evidence. From Annexure-7, it would be apparent that no copy of the enquiry report was given to the applicant nor was he heard by the disciplinary authority. It is an elementary principle of natural justice that when there is a finding in favour of a person, it cannot be

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disturbed without affording him an opportunity to be heard . Therefore, as the order of the removal has been passed without giving the applicant an opportunity of being heard by the Disciplinary Authority, the order cannot be sustained. Mr. Dalai has contended that when the disciplinary authority passed the order of removal, after the rejection of the appeal by the Director of Postal Services the applicant cannot say that there was any denial of reasonable opportunity to the applicant to defend himself. Assuming that by preferring an appeal against the order of removal, the applicant got an opportunity to assail the order of the Disciplinary Authority and complaint about the denial of proper opportunity, on reading the appellate order it would be apparent that in fact there were certain illegalities. From the appellate order as also from the order of the enquiry officer it would be found that some of the relevant documents such as the Post Man's book showing visit of the Postman to the concerned village and payment of the amount to be reported by the Post man, ^{were not produced and there was a} refusal to make a comparison of the L.T.I. appearing on the M.O. form with the one ^{on the statement of Draupadi} appearing ~~the same~~ as a specimen. It is also pertinent to note that the appellate authority observed "though the charges were not proved as per the evidence adduced during the enquiry, the Disciplinary authority has not been convinced and taking into account

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the earlier statements made by the witnesses disposed of the case". It is now settled beyond all controversy that a statement of a person recorded behind the back of the charged officer cannot be utilised in proof of the charge. Thus, it would be found that there has been a denial of reasonable opportunity to the applicant to defend himself. ^{- Ms Patnaik -} ~~She~~ has contended that the order of putting the applicant off duty was passed on 2.11.1985 and the Memorandum of charges were framed on 25.7.1986. Therefore, there was really no disciplinary proceeding pending against the applicant on the date he was put off duty. She has referred to the instructions of Director General Posts and Telegraphs in letter No.151/7/77 dated 23rd March, 1978 to the effect that E.D.Agents may be put off duty only during the pendency of enquiry and not when any enquiry is contemplated. We have underlined this portion as the thrust of the argument of Ms. Patnaik relates to this portion of the instructions. She has further contended that an enquiry would be deemed to be pending only from the date of Memorandum of charges is served on the charged officer and not prior to that. From the Annexures we find that some preliminary enquiry had already been made regarding the allegations which later gave rise to the framing of the charges and as in fact charges were framed, we would say that there might

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have been some irregularity but the order putting the applicant off duty cannot be said to be void ab initio.

4. In view of the reasons mentioned above we would quash the order of removal and direct the reinstatement of the applicant. The re-instatement of the applicant be done within one month from the date of receipt of a copy of the judgment and he would be entitled to emoluments with effect from today.

5. The case is accordingly disposed of leaving the parties to bear their own costs.

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VICE-CHAIRMAN



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MEMBER (JUDICIAL)

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