

3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No.115 of 1991.

DATE OF DECISION; AUGUST 18, 1993.

Baikunthanath Sethi

... Applicant.

Versus

Union of India and others ...


Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? *yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *yes*


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

18 Aug 93


(K. P. ACHARYA)
VICE-CHAIRMAN

④

5

of
Ver.

who in his turn concurred with the findings of the enquiring officer and ordered reduction of the pay of the applicant by two stages. The applicant preferred an appeal and the Director, Postal Services vide his order dated 15.3.1991, contained in Annexure-5 maintained the findings of the disciplinary authority and enhanced ^{the} penalty by ordering removal of the applicant from service. Hence, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that there is overwhelming evidence on the side of the prosecution to substantiate the allegation against the applicant and principles of natural justice having been strictly followed, the order of conviction should not be unsettled - rather it should be sustained and the case being devoid of merit is liable to be dismissed.

4. We have heard Mr.D.P.Dhalsamant, learned counsel for the applicant and Mr.Aswini Kumar Misra, learned Senior Standing Counsel(CAT) for the respondents. We have carefully gone through the enquiry report submitted by the Enquiring Officer. There is no direct evidence in this case to the effect that the applicant had affixed used stamps in the registered parcel. Even if there is no direct evidence yet one can be convicted on circumstantial evidence provided that each link in the circumstantial evidence is proved to the satisfaction

of the concerned authority. In the present case, there is no iota of credible circumstantial evidence indicating or pointing out the fact that the applicant had affixed the used stamps. Incidentally, it may be stated that one Bijay Kumar Naik was also one of the delinquent officers along with the present applicant. In the charge it is stated that the present applicant in collusion with the said Bijay Kumar Naik had affixed the used stamps on the registered parcel. From the enquiry report we also find that the enquiring officer has observed to the effect that inference can be drawn regarding the guilt of the present applicant. No doubt the standard of proof required in a criminal trial cannot be the same as that of the domestic enquiry but law is well settled that even in a domestic enquiry the evidence should be satisfactorily proved to bring home the charge. Surprisingly the Enquiring Officer observed as follows:

" It is to a reasonable mind that the evidences of Sri C.M. Rout (SW-1) has got much evidentiary value and can be relied upon to draw inference. The solitary refutation of Sri Sethi having no corroboration has not superceded the evidence of Sri C.M. Rout. It is thus held from the above discussions that the SPS Sri Sethi had actually affixed used up postage stamps on RP No. 3255 dt. 10.3.37. "

It is far beyond our comprehension as to how the enquiry officer thought that he could arrive at a finding regarding the guilt of the applicant by inference. Inference can be made only on the basis of credible evidence. At the cost of repetition we must say that there is absolutely no iota of evidence that the applicant had himself affixed the stamps. That

apart, even though there is grave suspicion against the applicant yet however grave ^{the} suspicion may be, ^{it} cannot take the place of proof even in the domestic enquiry. Our view gains support from a judgment of the Hon'ble Supreme Court reported in AIR 1964 SC 364 (Union of India vrs. H.C. Goel) in which Their Lordships have been pleased to observe as follows:

" Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules. "

Therefore, keeping in view the observations of Their Lordships in the case of Union of India vrs. H.C. Goel, we have absolutely no hesitation in our mind ^{to hold that} even though there is grave suspicion against the applicant, he cannot be held to be guilty because we are of opinion that this is a case of no evidence.

5. Mr. Dhalsamant, relied upon a judgment of the Supreme Court reported in AIR 1986 (2) Supreme Court 186 (Kashinath Dikshita v. Union of India and others) to substantiate his contention that serious prejudice has been caused to the applicant with regard to non-supply of preliminary enquiry report which was demanded by the applicant. Hon'ble Mr. Justice R.S. Pathak, (as my Lord the Chief Justice then was) speaking for the Court quoted

with approval the observations made by Their Lordships in the case of State of Punjab vrs. Bhagat Ram reported in S.C.R.1975(2) 370 which runs thus :

" The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given an opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the Government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken... "

In view of the aforesaid pronouncements of the Supreme Court consistent view has been taken by many of the Benches of the Central Administrative Tribunal that non-supply of preliminary enquiry report causes serious prejudice to the delinquent officer thereby violating the principles of natural justice. Apart from the above, a be~~d~~ roll of judgments on this subject have been delivered by different Benches, one such case may be cited which is

Qr

reported in (1989) 9 ATC 21(Jagannath Behera vrs. Union of India and others). In view of the aforesaid discussion we are of opinion that this is a case of no evidence and therefore, the charge ^{been} has not/ established.

6. It was next contended by Mr. Dhalsamant that depriving the applicant from cross-examining the Government Examiner of questioned documents has caused serious prejudice to the applicant. We have been taken through the relevant ordersheet contained in Annexures 8 and 9. On 29.3.1990 the Government examiner of questioned documents, Shri H.S. Tuteja had appeared. He was examined in the absence of the applicant. We would have certain^{ly} accepted the submission of Mr. Aswini Kumar Misra that no intimation having been given by the delinquent officer for his non-attendance, the Enquiring Officer had no obligation to adjourn the case due to the non-participation of the delinquent officer. But here is a case where the Enquiring Officer has himself found that non-attendance of Shri Ganeswar Tripathy, A.G.S. was due to the fact that the said A.G.S. Shri Tripathy was engaged on official duty upto 22.4.1990 and therefore, Shri Tripathy could not attend. This fact having been within the knowledge of the enquiring Officer, in all fairness he should have either adjourned the examination of Shri H.S. Tuteja or if examined, his cross-examination should have been deferred at the instance of enquiring officer so as to enable the ^{defense Asst. Shank} delinquent officer, to ⁱⁿ cross-examine Shri H.S. Tuteja on the next date.

No such step having been taken we are of opinion, that the applicant has been illegally deprived of the cross-examination of Shri H.S. Tuteja. We have no dispute with Mr. Aswini Kumar Misra that there was no prayer on the next day for giving an opportunity to the applicant to cross-examine Shri H.S. Tuteja. Undoubtedly, the delinquent officer should have come up with such a petition. But non-filing of such a petition does not cure the illegality or deprivation of the applicant of the compliance of principles of natural justice. To add to all this, there is no duty cast on the delinquent officer to fill up the lacuna of the prosecution. Therefore, we find no merit in the aforesaid contention of Mr. Aswini Kumar Misra.

7. Last but not the least, an incurable infirmity has appeared in this case. The Director, Postal Services, who was exercising the appellate power has enhanced the quantum of penalty by ordering removal of the applicant from service. From the records we find no notice was ever given to the applicant to show cause as to why the quantum of penalty should not be enhanced. Failure on the part of the appellate authority to give due notice to the delinquent officer was not disputed before us. We find that there is substantial force in the contention of Mr. Dhalsamant that the provision contained in Rule 27 (2) (iv) has been clearly violated. It runs thus:

" no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 16, of making a representation against such enhanced penalty."

Apart from the provisions contained in the aforesaid rules, principles of natural justice demand that before passing an adverse order against a particular person notice must be given to that person of the action proposed to be taken. Therefore, the rule making authority made a specific provision in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 that before enhancing the quantum of penalty the delinquent officer must be noticed and should be given an opportunity to show cause against the same. This provision not having been complied with, we are of opinion the principles of natural justice have been violated.

9. Taking into consideration the above mentioned infirmities appearing in this case and taking into consideration the fact that there is no evidence, we find the prosecution has failed to bring home the charge against the applicant and therefore, the applicant is acquitted of the charges and the impugned orders at Annexures-3 and 5 are hereby quashed. The applicant be reinstated into service within 15 (fifteen) days from the date of receipt of a copy of this judgment. The applicant be deemed to be continuing in service and he is entitled to all emoluments from the date of removal till the reinstatement which should be calculated and paid to the applicant within ninety days from the date of

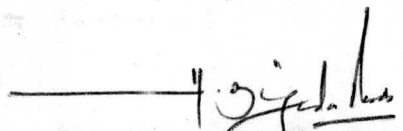
12

12

9

receipt of a copy of this judgment.

9. Thus, this application stands allowed leaving the parties to bear their own costs.


.....
MEMBER (ADMIN.)
18 Aug 93


18/8/93
.....
VICE-CHAIRMAN.

Central Admn. Tribunal,
Cuttack Bench, Cuttack.
August 18, 1993/Sarangi.

