CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.14 of 1991

Date of decision : 18.5.1993

Nikunja Bihari Mohanty ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant... Mr.Antaryami Rath, Advocate.

For the respondents ... Mr.P.N.Mohapatra, Addl. Standing Counsel (Central).

C O R A M :

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MR.M.Y.PRIOLKAR, MEMBER(ADMN).

...

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.

2. To be referred to the Reporters or not ? Yes.

3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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JUDGMENT

K.P.ACHARYA, V.C., In this application under Section 19 of the Administrative Tribunals Act, 1985. the applicant prays to quash the order of punishment passed against the applicant contained in Annexure-22 dated 21.12.1990, reducing the pay of the applicant by four stages in his existing time scale for a period of 3 years with cumulative effect and furthermore, to recover 25 per cent of the value of the stolen goods in monthly instalment of Rs.500/-.

2. Shortly stated, the case of the applicant is that he was functioning as Inspector in-Charge of Customs Godown, Bhubaneswar during the period from 9.9.1985 to 5.2.1988. On 25.8.1987 at about 9.30 hours when he reached the Office he found that the grill gate of the Customs Godown on the first floor of the building No.6 was jammed and it could not be opened. The seal of the lock of the corner room was hanging. The hook of the door bolt was also broken. Information was given by the applicant to his higher authorities and it was found certain articles had been removed and therefore, first information report was filed in the Rasulgarh Police-station at Bhubaneswar. During the pendency of the investigation of the criminal case a disciplinary proceeding was initiated against the applicant and after a fullfledged enquiry the above mentioned punishment order was passed which is under challenge and sought to be quashed.

3. In their counter, the respondents maintained that the case at hand is a case of full proof evidence and principles of natural justice having been followed in its strictest terms, the punishment order should not be quashed and it should be sustained and the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. Antaryami Rath, learned counsel for the applicant and Mr. P. N. Mohapatra, learned Additional Standing Counsel for the respondents.

5. Law is well settled that in exercise of jurisdiction under Article 226 of the Constitution of India, a High Court could quash an order of punishment when a particular case is of no evidence and/or the delinquent officer has been deprived of effectively and adequately defending himself due to non-compliance of the principles of natural justice. Under the provisions contained in the Administrative Tribunals Act, 1985, the Tribunal hasbeen vested with the same powers and functions of a High Court or that of a Civil Court while considering the cases of this nature. Undisputedly, a civil Court could consider the evidence, shift the evidence and weigh the evidence. But the Tribunal is not required to assess the evidence or appreciate the evidence in the same manner as that of a criminal trial. But the charge could be framed against a delinquent officer only when there is satisfactory evidence to establish the guilt. In the present case, admittedly there were Sepoys guarding the godown. Some of them were also jointly charge-sheeted

along with the applicant. Therefore, the prosecution does not propose to put theentire responsibility of removal of the goods on the shoulder of the applicant. We have also perused the evidence of certain witnesses contained in Annexure-12 to 16 and Annexure-17 contains the questions put by the enquiry Officer to the charged officer. On a perusal of the evidence of the witnesses contained in Annexures-12 to 16 one cannot but come to irresistible conclusion that there is nothing to indicate satisfactorily that the applicant was the author of the crime in question. On a perusal of the evidence, at the worst it may create a suspicion in the mind of the Court that the applicant might have had a hand in the matter. But law is well settled by the Apex Court that even in a departmental enquiry suspicion cannot take the place of proof however grave the suspicion may be. Our view gains support from a judgment reported in AIR 1964 SC 364. Their Lordships at paragraph 27 of the judgment were 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 asmuch to regular criminal trials as to disciplinary enquiries held under the statutory rules. "

In the circumstances stated above, we cannot but find that this is a case of no evidence.

6. From the records we find that written statement of defence was submitted by the applicant on 5.7.1988. From Annexure4 dated 13.5.1988 it would be found that the Deputy Collector(P & E), Central Excise and Customs, Bhubaneswar exercising his powers conferred under sub-rule(2) of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 appointed Shri S.B.Singh, Assistant Collector(Technical) as the inquiring Officer. Sub-rule(5)(a) of Rule 14 of the said Rules provides as follows:

> " On receipt of the writtenstatement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary to do so, appoint under sub-rule(2), an inquiring authority for the purpose, and where all the articles of charge havebeen admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 15."

From the above quoted provisions it is clear that calling upon the delinquent officer to submit his written defence is not an empty formality. Due importance must be given to this aspect. The intention of the rule making authority is that on receipt of the written statement of defence, the disciplinary authority has to consider whether prima facie the delinquent officer could be held to be guilty of the charges. In case, the disciplinary authority is of opinion that there is prima facie case against a particular Officer then only he could appoint an enquiring officer otherwise the delinquent officer has to be discharged. But inthe

present case, as indicated above, the enquiring officer has been appointed in the order contained in Annexure-4 in which the delinquent officer hasb e en informed that the enquiring officer has been appointed and vide Annexure-5 dated 21.6.1988 the statement of imputations havebeen delivered to the applicant calling upon the applicant to submit his explanation within ten days. We think there is substantial f orce in the contentionof Mr. Antaryami Rath, that the dsiciplinary authority before deliver-ing the memo of charges had closed the mind and even though he had called upon the applicant to submit his written statement of defence yet, by 13.5.1988 he had already decided to carry on the proceeding against the applicant. The step taken by the disciplinary authority in pre-determining the issue is against the provisions contained in the aforesaid rules and therefore, we find that there is also substantial force in the contention of Mr. Antaryami Rath that principles of natural justice have been violated.

7. Mr. Rath invited our attention to Annexure-9, which is a record relating to the proceeding conducted on 11.8.1988. The applicant wanted copy of the findings made in the preliminary enquiry of Shri S.S.Lenka, Assistant Collector (Tribunal) and also copy of the statement of Shri Sarat Kumar Pattnaik, Inspector and also the copy of the findings of the Police on the basis of the F.I.R. lodged by the Department. All these

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documents were denied to the applic ant. The enquiring officer held that the preliminary inquiry report is top secret document and therefore, copy of the same cannot be given to the delinquent officer. He further stated that copy of the preliminary enquiry report has not been made subject matter of the listed documents and therefore, copy of the same should not be given to the delinquent officer. The enquiry Officer further observed that the presenting officer was not aware of any statement of Shri Sarat Kumar Pattnaik to have been recorded, Copy of the Police report should not be furnished to the delinquent officer because F.I.R. was lodged in connection with alleged theft case whereas the case under enquiry is one of misappropriation of Government property. Undisputedly, a preliminary enquiry had been conducted and statement of witnesses had been recorded. In our opinion, proceeding was initiated on the basis of the preliminary enquiry report. Therefore, it was incumbent on the enquiry Officer to direct the prosecution to serve a copy ofthe enquiry on the applicant. Equally it was the duty of the enquiry Officer to direct the prosecution to supply copies of statements of witnesses mentioned above recorded during the preliminary enquiry, failing which principles of natural justice have been violated and the delinquent officer hasbeen deprived to adequately and effectively defend himself. In a case reported in

ATR 1986(1)CAT 424(Sankari Pada Mukherjee vrs. Union of India)(in which one of us, Acharya,J was a party to the case)the Division Bench relying upon a judgment of the Hon'ble Supreme Court reported in 1975(1)Service Law Reporter 2(State of Punjab vrs. Bhagat Ram) observed as follows:

> " We propose to deal with item No.8 and dispose of the contention put forward before the Tribunal so far as this document is concerned that is the preliminary enquiry report of the C.B.I.which is said to be meant exclusively for the discipoinary authority. It was contended by Mr.Chakraborty that the report of the C.B.I. being the basis or the foundation over which the disciplinary proceeding has been started and the C.B.I.official who had conducted the enquiry being a witness for the prosecution who seeks to prove the charge, it was incumbent upon the prosecution to make available a copy of the report to the delinquent, so as to enable him to settle and plead his defence. "

In this connection, the Calcutta Bench observed that copy of the preliminary enquiry report of the C.B.I. is the basis on which the allegation hasbeen levelled against the delinquent and therefore, all reasonable opportunity should havebeen given to the delinquent in the interest of justice to peruse the report enabling the delinquent to effectively defend himself. In the case of State of Punjab(supra), Their Lordships were pleased to observe as follows:

> "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 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 himare .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 notbe 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 theGovernment servant. "

In another case reported in A.T.R.1986(2) SC 186(Kashinath Dikshita vrs. Unionof India and others),Hon'ble Mr. Justice R.S.Pathak(as my Lord the Chief Justice of India then was) speaking for the Court was pleased to observe as follows:

" When a Government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence,crossexamine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf.Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question : " What is the harm in making available the material ?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adament attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the Courts came to the conclusion that failureto supply these materials would be tentamount todenial of reasonable opportunity to the appellant todefend himself. On the other hand by making available the copies of the documents and statements the disciplinary

> authority was not running any risk. There was no hing confidential or privileged in it. It is not even the case of the respondent that there was involved any consideration of security of State or privilege. No doubt the discipoinary authority gave an opportunity to the appellant to inspect the documents and take notes as mentioned earlier. But even in this connection the reasonable request of the appellant to have the relevant portions of the documents extracted with the help of his stenographer was refused. "

Their Lordships while deciding the case of Kashinath Dikshita had also relied upon the very same view taken by Their Lordships of the Supreme Court in the case of Trilok Nath vrs. Union of India reported in 1967 SLR 759, State of Punjab vrs. Bhagat Ram reported in 1975(2) SCR 370 and State of U.P. vrs. Mohd. Sharif reported in 1982 II LLJ180.

8. So far as the non-supply of copy of the F.I.R. and the final form is concerned, the reasonings assigned by the Enquiry Officer were the case at hand is one of misappropriation where-as the F.I.R. was drawn up making out a case of theft. This reasoning does not appeal to us because undoubtedly the F.I.R. was lodged alleging a case of theft. But the theft has ultimately resulted in misappropriation by the applicant because of the fact that the applicant was in custody of Government property.

9. In view of theaforesaid facts and circumstances of the case we are of opinion that the principles laid down by Their Lordships in the above mentioned cases,

apply in full force to the facts of the present case and therefore, there is no escape from the conclusion that the applicant has been seriously prejudiced due to non-compliance of the principles of natural justice which has prevented the applicant to effectively and adequately defend himself.

10. Last but not the least, we have found from Annexure-17 that the applicant has been examined by the Enquiry Officer who has taken the role of Prosecutor. This is not provided under the law. In a judgment reported A.T.R.1986 C.A.T.195(Balu Singh vrs. Unionof India and others) a Division Bench of the Central Administrative Tribunal, Principal Bench, has observed as follows:

> " Where the Enquiry Officerhad subjected the delinquent employee to cross-examination and had thus assumed the role of both the judges as well as prosecutor, then the factum of enquiry officer assuming the role of the prosecutor vitiates the entire proceedings. The impugned orders deserve to be quashedand are hereby quashed. "

Ordinarily we might have directed a de novo enquiry. But in view of the incurable infirmities appearing in the instant case in regard to non-compliance of the principles of natural justice depriving the applicant from effectively defending himself and in view of the fact that this proceeding had been initiated in the year 1988 we do not feel it just and expedient in the interest of justice to make the delinqurnt officer to face the hazards of the enquiry any further.

11. In view of the discussionsmade above, finding that this is a case of noevidence and further finding that principles of natural justice havebeen violated, we do hereby quash the order of punishment imposed onthe applicant and we do hereby exonerate the applicamt of the charges levelled against him.

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

18/5/93.

MEMBER(ADMN)

VICE-CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
18.5.93 / Sarangi.