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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 200/91

Cuttack, this the 27th April, 1995

Sri Padmanav Dora Applicant.

Vrs.

Union of India & 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)

27 APR 95


(D.P. HIREMATH)
VICE-CHAIRMAN

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(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.200 OF 1991

Cuttack, this the 27th day of April, 1995

CORAM:

THE HONOURABLE SHRI JUSTICE D.P.HIREMATH, VICE-CHAIRMAN
A N D

THE HONOURABLE SHRI H.RAJENDRA PRASAD, MEMBER (ADMN.)

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Sri Padmanav Dora,
aged about 45 years,
S/o late Dhanurjaya Dora,
At/P.O-Majhiguda,
Via-Nowrangapur,
Dist.Koraput

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APPLICANT.

By the Advocates

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M/s P.V.Ramdas,
B.K.Panda,
D.N.Mohapatra &
M.B.K.Rao.

-versus-

1. Union of India,
represented by the
Chief Post Master General,
Orissa Circle,
Bhubaneswar-1,
Dist.Puri
751 001.

2. Director, Postal Services,
C/o.Post Master General,
Berhampur Region,
Berhampur (Ganjam),
760 001.

3. Senior Superintendent of Post Offices,
Koraput Division,
Jeypore (K) 764 001

.... RESPONDENTS.

By the Advocate

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Shri Aswini Kr.Misra.

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-2-

O R D E R

D.P.HIREMATH, VICE-CHAIRMAN

The applicant herein, who was the Branch Post Master, Majhiguda in Koraput district, faced three charges as per Annexure-1 dated 2.8.1989. The inquiring authority held that charge no.3 was not proved, but found charge nos.1 and 2 proved. Therefore, we confine ourselves only to these two charges which are as follows:

"Article-I

That Shri Padmanabha Dora while working as BPM, Majhiguda B.O. in account with Nowrangpur SO during the period from 15-5-79 to 8-6-89 received Rayagada (E) MO No.633 dated 21.12.88 for Rs.150/- on 23.12.88. He paid the said MO to a wrong person other than the correct payee on 24.12.88 in contravention of Rule 10 of Rules for Branch Offices and charged in the Branch Office Account of 24.12.88.

Shri Padmanabha Dora, EDBPM, Majhiguda by his above acts failed to maintain devotion to duties as required under Rule 17 of P&T ED Agents (Conduct and Service) Rules, 1964.

Article-II

That the said Shri Padmanabha Dora, while working as EDBPM, Majhiguda during the aforesaid period received Nowrangpur Money Orders Nos.2981/129 dtd.30.7.87 for Rs.1000/-, 2981/130 dtd.30.7.88 for Rs.1000/- and 2987 dtd.30.7.87 for Rs.760/- on 4.8.87 payable to Smt. Dharmika Harijan, showed them as paid in Post Office accounts on 7.8.87 but short paid the amount to the payee of the MOs.

Shri Padmanabha Dora, EDBPM, Majhiguda B.O. by his above acts failed to maintain absolute integrity and devotion to duty as required under Rule 17 of P&T ED Agents (Conduct and Service) Rules, 1964."



2. Witnesses were examined before the inquiring authority and assessing the entire evidence, the inquiring authority in its findings observed that it is revealed that Rayagada M.O.633 dated 21.12.1988 for Rs.150/- (Ext.2) payable to Jhajbin Nag was received. It was entrusted to P.W.10 vide Ext.33/1 on 23.12.1988, but the same was returned as absent. A person named as Jhajbin came to the Post Office on the next day and the applicant had paid the amount in presence of Sunadhan Majhi (P.W.3). P.W.3 during inquiry stated that he knew Jhajbin, but did not know his surname. He also stated no person named as Jhajbin Nag was known other than the person who took payment. Jhajbin Suna (P.W.6) stated that he was not expecting any M.O. and that he had not put L.T.I. anywhere. He, however, denied that he did ~~not~~ put L.T.I. anywhere. He received the amount in presence of P.W.3. When Jhajbin Nag of Doraguda and the S.P.S. approached him to refund the amount, he refunded the same to the S.P.S. He categorically stated that he never told the B.P.M. (applicant) his name as Jhajbin Nag. From the evidence so recorded, the inquiring authority came to the conclusion that the charge of payment of

-4-

M.O. to a person other than the real payee stood proved with supporting documents stated therein.

3. As far as second charge is concerned, initially the charge was that out of Rs.2760/- that was to be paid to Dharmika Harijan (P.W.14), Rs.1380/- was retained by the applicant and that he short-paid the amount. However, during enquiry it came out that in fact such a huge amount of Rs.1380/-, i.e. half the total amount, was paid to the said Dharmika Harijan, but only Rs.50/- was accepted by the applicant on the date of payment. In conclusion, the enquiring authority found that this part of the allegation that short-payment was made to the payee could not be proved conclusively. However, on the confession made by the applicant himself that he accepted Rs.50/- as gratification, the charge was held proved. There was a plea that Ext.15, the confessional statement was written on the dictation of P.W.2 which did not find favour with the inquiring authority, because P.W.2 stated that he recorded the statement by putting questions and B.Mohapatra (P.W.4) had written Ext.15 and that P.W.4 stated that he had written it as per the depositions of respective

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-5-

persons in the confronting enquiry. During confronting enquiry, the S.P.S. denied to have paid ~~the~~ short to Dharmika Harijan and he could have also refuted the allegation. Therefore, his plea that he had written about acceptance of Rs.50/- as per dictation is an afterthought.

4. Thus the findings of the inquiring authority on the two charges are to the effect that Rs.150/- was paid to a wrong person, namely, Jhajbin Suna and the applicant received Rs.50/- paid by Dharmika Harijan. The disciplinary authority imposed the punishment of removal of the applicant from E.D.service with immediate effect agreeing with the findings of the enquiring authority. This was passed on 28.2.1990. The appeal preferred to the Director, Postal Services was dismissed.

5. The learned counsel for the applicant urged that practically there was no evidence to show that on the first charge the applicant had any guilty intention, because if at all the amount was paid to a wrong person, it was for the reason that the Money Order did not contain clear and specific address of the payee. It had come in

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-6-

evidence that there were two persons by name Jhajbin, one in Doraguda and another in Majhiguda. The one in Doraguda is with his surname as 'Nag' whereas the other in Majhiguda is with his surname as 'Suna'. It was this Jhajbin Suna who had received the Money Order by going to the Post Office and meeting the applicant. At that time, some identification was made. It is also the case of the respondents that subsequently when the real person, namely, Jhajbin Nag appeared and told that it was he who was to receive the Money Order, the amount was received from Jhajbin Suna and made over to Jhajbin Nag. This is how Jhajbin Nag received his money and the mistake crept in for the simple reason that there was no definite identifying address to fix up the identity of the person who was entitled to receive the money. In our considered view, this explanation of the applicant followed by subsequent conduct, both of the applicant as well as the wrong recipient Jhajbin Suna ought to have led to an inference that practically there was no guilty intention on the part of the applicant to make any illegal gains to himself or to ~~make~~ ^{confere} any benefit to any person with an ulterior motive. The Enquiring authority as well as the disciplinary authority

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-7-

have found that this is against integrity of the postal official which cannot be encouraged. In our view, the question of integrity does not come into the picture at all. At the same time, it is urged on behalf of the respondents that the applicant did not make necessary entries in the Postal Register and to that extent, he should be held to have committed breach of the Conduct Rules inasmuch as he did not maintain the Register properly. That perhaps could be the inference from the evidence on record. At any rate, we are of the view that though admittedly a wrong person was the recipient of Rs.150/-, that does not in any way speak against the integrity of the applicant. He may ^{at the} most be liable to be punished for certain irregularity he committed in not making entries in the relevant Register.

6. The next charge, as we have pointed out, is one of receiving Rs.50/- from Dharmika Harijan. Initially the charge was grave inasmuch as the allegation was that the applicant had retained Rs.1380/- out of the total money due to that lady. There was no evidence to this effect. Therefore, ultimately it boiled down to the applicant receiving only Rs.50/- which according to him was paid by the said lady herself.

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-8-

The learned counsel for the applicant has submitted that there was no evidence of demand by the applicant himself and if at all any payment was made, it was voluntarily made by the said Dharmika Harijan. We are also taken through certain portions of the evidence recorded during inquiry. Practically in the evidence of none of the witnesses we find that the applicant made a demand for illegal gratification. There is also no evidence to show that he himself voluntarily retained or deducted half the total amount as alleged earlier in the charge memo. It appears that the lady herself voluntarily made payment of Rs.50/- when she received Rs.2760/-.

7. As far as this finding of the inquiring authority confirmed by the disciplinary authority is concerned, we think we should not re-appreciate the evidence to examine whether the finding is correct. Keeping in mind the limited scope of interference in the conclusions reached during domestic inquiry, we are of the view that unless the approach and appreciation of evidence are wholly perverse and the finding arrived at is totally wrong for want of evidence, we cannot interfere with the conclusions recorded. Therefore, we proceed on the basis of the

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finding of the applicant accepting Rs.50/- from Dharmika Harijan when offer was made by her. The acceptance presupposes an offer which must have flown from other person. Ext.15 was relied upon by the inquiring authority as a confessional statement of the applicant. The Supreme Court in the case of J.D.Jain v. The Management of State Bank of India and another (AIR 1982 SC 673) pointed out that even a confessional statement by delinquent during domestic inquiry can be relied upon and cannot be set out under the strict rules of evidence. It is well settled that in a domestic inquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. In addition to the evidence of P.W.14, the inquiring authority had Ext.15 to support this finding.

8. It is now established that the applicant has received or accepted Rs.50/- as found during domestic inquiry. Now whether the punishment of removal is disproportionate to the charge proved is the only question that remains to be considered by us. The applicant's counsel invited our attention

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-10-

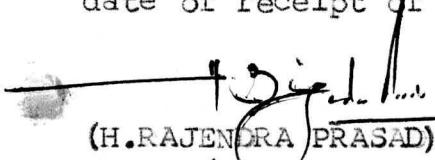
to a decision of the Orissa High Court in O.J.C.No.7047 of 1993 in the case of Sibnarayan Das v. State Bank of India and others (decided on 14.2.1995) finding that the punishment imposed on the petitioner before the High Court was severe and lesser punishment was called for. Relying on the decisions of the Supreme Court cited therein the High Court quashed the order of termination of service of the petitioner therein, set aside the orders impugned and remitted the matter to the disciplinary authority to reconsider the case of the petitioner and to pass appropriate order. Relying on the decision in the case of Bhagat Ram v. State of Himachal Pradesh (AIR 1983 SC 454) the High Court pointed out that it is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. As we find ourselves in respectful agreement with the view taken by the Orissa High Court, we find it unnecessary to refer to the other decisions relied upon by the High Court. In the instant case, we find that the punishment of removal from service is too severe and disproportionate to the charge found proved, for the simple reason that there is no proof

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-11-

of the applicant himself making demand of illegal gratification and if at all it voluntarily flowed from the said Dharmika Harijan and she paid Rs.50/- out of her own will for the reason that she was receiving such a huge amount of RS.2760/-, it cannot be concluded considered that the applicant is guilty of accepting illegal gratification. We, however, add at the same time that such a practice, though sought to be made out, cannot be encouraged and in the instant case we are more concerned with the mens rea of the applicant. We, therefore, find that the punishment of removal imposed by the disciplinary authority and confirmed by the appellate authority is disproportionate to the charge found proved and this is a fit case in which we should set aside the punishment imposed by the disciplinary authority and remit the case to the disciplinary authority for reconsidering the case of the applicant in the light of the Rules that existed at the time the inquiry was held and to pass appropriate orders. As far as practicable and possible, the case shall be disposed of within ninety days from the date of receipt of copy of this order.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)
27 APR 95


(D.P. HIREMATH)
VICE-CHAIRMAN

A.Nayak, P.S.