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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No. 255 of 1991


Date of decision: June 24, 1994

Krushna Chandra Mallik	...	Applicant
	Versus	
Union of India & Others	...	Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? No
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not? No


 (H. RAJENDRA PRASAD)
 MEMBER (ADMINISTRATIVE)
 24 JUN 94

 24-6-94
 (K.P. ACHARYA)
 VICE CHAIRMAN

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Versus

Union of India & Others ... Respondents

For the Applicant ... Mr. DP. DHALSAMANT, Advocate

For the Respondents ... Mr. Aswini Kumar Mishra,
Senior Standing Counsel (Central)

CORAM:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN
AND
THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

...

JUDGMENT

K. P. ACHARYA, V.C.

In this application under section 9 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the impugned order of punishment contained in annexure 2 and to direct the Opposite Parties to reinstate the petitioner forthwith.

2. Shortly stated the case of the petitioner is that while the petitioner was serving as E.D.D.A cum E.D.M.C. Ostapur, a set up charges were delivered to him containing two item of charges namely the petitioner was entrusted with a money order of Rs.100/ to be delivered to Smt. Kanchanabala Mallick on 24th December, 1985 and the said amount was not paid on the same date to the said payee and the second item of charge was that the petitioner had

received three registered letters to be delivered to the

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addressee and he did not return back to P.O. on the same day but came back on 18th January, 1986 at about 12.30 hours. The enquiry officer found that charge No.1 had not been established and further held that charge No.2 had been proved. The disciplinary authority took a different view and held that both the charges have been established and ordered removal of the petitioner from service which is under challenge and sought to be quashed.

3. In their counter, the Opposite Parties maintain that there is overwhelming evidence on the side of the prosecution and principles of natural justice having been strictly followed, the order of punishment should not be unsettled - rather it should be sustained.

4. We have heard Mr. B.P. Dalsamant learned counsel appearing for the petitioner and Mr. Aswini Kumar Mishra learned Senior Standing Counsel (Central). The enquiry officer found that charge No.1 had ^{not} been established because the payee namely Smt. Kanchalabala Mallick departed from her previous statement recorded during the preliminary investigation. Before the enquiry officer Smt. Kanchalabala had stated that she had received the amount in due time and she had affixed her L.T.I. in the acknowledgement receipt. But it is maintained by the Opposite Parties including the enquiry

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disciplinary authority that the previous statement of Kanchalabaha was that she had not affixed her LTI and had not received the money. The disciplinary authority wanted to act on the previous statement of Smt. Kanchalabala ignoring the substantive evidence recorded by the enquiry officer. We are of opinion that the previous statement cannot form subject matter of a substantive evidence. The prosecution ^{would} either stand or fall on the substantive evidence alone. Therefore, we are of opinion that the enquiry officer was perfectly justified for coming to the conclusion that there is no substantive evidence before it that Smt. Kanchalabala had not given her LTI and had not received the amount in due time. We are of further opinion that the disciplinary authority took a perverse view on the question of law and acted illegally by acting on the previous statement more so because the attention of the witness Smt. Kanchalabala was not invited to her previous statement. In view of such a situation we are of opinion that charge No.1 has not been established.

5. So far as Charge No.2 is concerned, there may be very many reasons for which the petitioner could not have returned on the same day to P.O. If there would be any inordinate delay, on the part of the petitioner to return Ostapur Branch Post Office, we would have certainly taken ^{an} adverse view against the petitioner but the petitioner having arrived in the post office on the very next day, we

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find that no misconduct can be attributed to the petitioner. Therefore, we are of further view that this is a case of absolutely no evidence.

6. In view of the above reasonings, we are of opinion that both the charges had not been established and therefore, the petitioner is acquitted from these charges holding him to be no guilty. The order of punishment passed by the disciplinary authority are hereby quashed and the petitioner is exonerated from the charges. He should be reinstated into service within ten days from the date of receipt of a copy of the judgment and the petitioner is entitled to all the backwages which should be calculated and paid to the petitioner within 60 days from the date of receipt of a copy of the judgment.

7. Thus, the application stands allowed. No costs.

[Handwritten Signature]
MEMBER (ADMINISTRATIVE)
24 JUN 94

[Handwritten Signature]
VICE CHAIRMAN
24.6.94

Central Administrative Tribunal,
Cuttack Bench/K: Mohanty/24.6.94.