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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.266 of 1991.
Date of Decision: 19.11.1992.

Bhajagobinda Satpathy ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.Deepak Misra,
R.N.Naik, A.Deo,
B.S.Tripathy, P.Panda,
D.K.Sahoo, Advocates.

For the respondents ... Mr.Aswini Kumar Misra,
Sr.Standing Counsel(Central)

C O R A M:

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

A N D

THE HONOURABLE MR.C.S.PANDEY, MEMBER(ADMN.)

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

2. To be referred tothe Reporters or not ? Yes.

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

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J U D G M E N T

K.P.ACHARYA,V.C., In this application under section 19 of the Administrative Tribunals Act,1985, the applicant, Bhajagobinda Satpathy challenges the order of punishment passed against him resulting from a disciplinary proceeding.

2. Shortly stated, the case of the applicant is that while he was functioning as S.B.D.O. of Cuttack City Division in the Postal Department a set of charges was delivered to him in connection with a proceeding under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules,1965. Three items of charges were framed against Shri Satpathy and they are as follows:

While Shri Satpathy was working as S.D.I.(P) in Kalahandi South Sub-Division(later renamed as Dharamgarh Sub-Division) during the period from May,1981 to May, 1984,Ghutrukhal Branch Office was within his jurisdiction, petitioner forged the writings and signature of one Shri Santosh Kumar Satapathy in an application for appointment to the post of Extra-Departmental Delivery Agent,Ghutrukhal Branch Post Office and fraudulently appointed Shri Santosh Kumar Satapathy as E.D.D.A. of the said Post Office violating the conditions for appointment as E.D.DA. The next charge against the applicant is that due to the fraudulent appointment issued by the applicant,he(the applicant) drew allowances of Rs.1991.10 towards the allowances payable to Shri Santosh Kumar Satpathy between the period from 7.1.1983 to 30.11.1983 by forging the

signature of the said Sri Satpathy. The third charge framed against the applicant is that he had provisionally appointed one Sarat Kumar Acharya as Extra-Departmental Delivery Agent, Ranibahal for the period between 7.9.1982 and 6.12.1982 and again reappointed him with effect from 1.10.1982 to 30.9.1983 without complying with the relevant provisions. A full-fledged enquiry was held and the Enquiry Officer found the applicant guilty of all the charges and accordingly submitted his findings to the Disciplinary authority who in his turn concurred with the findings of the Enquiry Officer and ordered dismissal of the applicant from service. The applicant preferred an appeal and the appellate authority confirmed the findings of the Enquiry Officer and that of the Disciplinary authority and came to the conclusion that the charges had been brought home against the applicant but modified the quantum of penalty to the extent of compulsory retirement. Being aggrieved by the orders passed by the above mentioned authorities, the applicant has filed this application with the aforesaid prayer.

3. In their counter, the respondents maintained that case involves full proof and overwhelming evidence to establish the charges and principles of natural justice having been strictly complied with the case is devoid of merit and liable to be dismissed.

4. We have heard Mr.Deepak Misra, learned counsel for the applicant and Mr.Aswini Kumar Misra, learned Senior Standing Counsel(CAT) for the respondents. In several judgments in the past it has been held by this Bench that the Central

Administrative Tribunal, under the Statute, could exercise the same powers as that of a High Court exercising jurisdiction under Article 226 of the Constitution of India and/or that of a Civil Court. It hasbeen the law laid down by the Hon'ble Supreme Court in the case of Union of India vrs. Parma Nanda, reported in AIR 1989 SC 1185, where Their Lordships have been pleased to observe as follows:

> " From an analysis of Secs. 14,15,16,27,28 and 29, it becomes apparent that in the case of proceedings transferred to the Tribunal from a civil court or High Court, the Tribunal has the jurisdiction to exercise all the powers which the civil court could in a suit or the High Court in a writ proceeding could have respectively exercised. In an original proceeding instituted before the Tribunal under Sec.19, the Tribunal can exercise any of the powers of a civil court, or High Court. The Tribunal thus could exercise only such powers which the Civil Court or the High Court could have exercised by way of judicial review. It is neither less nor more. Because, the Tribunal is just a substitute to the Civil Court and High Court. That has been put beyond the pale of controversy by this Court while upholding constitutional validity of the Act, in S.P.Sampat Kumar v. Unionof India(1987)1 SCC 124 :(AIR 1987 SC 386). "

In view of the law laid down by the Hon'ble Supreme Court the Central Administrative Tribunal is competent to quash a punishment where it comes to the conclusion that the punishment has resulted from a case of no evidence and so far as the civil court is concerned it has the powers of weighing the evidence and shifting the evidence. Doubtless, the Central Administrative Tribunal, has the powers to shift the evidence and weigh the evidence. No doubt, the preponderance of probabilities is one of the guiding factors for coming to a conclusion regarding the guilt or otherwise of the

delinquent officer . But in our opinion, preponderance of probabilities would be taken into consideration on the basis of unimpeachable and trustworthy evidence adduced by the prosecution. In case, the evidence as placed before the concerned authority fails to establish or support the charges to drive the Court to the irresistible conclusion regarding the culpability of the delinquent officer then the preponderance of probabilities pale into the significance and the delinquent officer is bound to be given thebenefit. Even though the standard of proof required in a criminal proceeding is not applicable to domestic enquiries yet in a disciplinary proceeding suspicion cannot take the place of proof. At paragraph 27 of the judgment reported in AIR 1964 SC 364(Union of India vrs. H.C.Goel), Their Lordships 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 totake 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. "

5. At the outset we have stated the law laid down by the Hon'ble Supreme Court because while dealing with the merits of the case, itwould be found that the Enquiring Officer, disciplinary authority and the appellate authority have allowed themselves to be swayed away by their moral convictions taking refuge under the principles of preponderance of probabilities.

6. Now, we would proceed to consider the merits of the case. We have already stated the nature of charges framed against the applicant. The first two charges are interlinked. The first charge relates to the application of Santosh Kumar Satapathy, said to havebeen written by the applicant, Bhajagobinda Satpathy and the signature of Sri Santosh Kumar Satpathy to have been written by the present applicant. The second charge relates to drawal of monthly allowance of Santosh Kumar Satapathy containing the signature of Santosh Kumar Satapathy in the hand of the present applicant. If it is found that the present applicant was the author of those documents, there is no escape from the conclusion that the charges had been brought home against the present applicant, and incase, it is held that the prosecution has failed to provethe case with satisfactory evidence that the applicant was the author of those documents, then the benefit must go to the applicant. In order to establish the charge the admitted signatures of the present applicant, Bhajagobinda Satpathy and that of Santosh Kumar Satapathy were sent to the Government Examiner of questioned documents to be compared with the disputed handwritings and signatures finding place in the documents. The Government Examiner of questioned documents gave an opinion that the handwriting and signatures appearing in the documents are of the present applicant. That is not the end of all. Admittedly, the Government Examiner of questioned documents who had examined the documents and had rendered the above mentioned opinion was not examined and therefore, the applicant had no opportunity to

cross-examine the handwriting expert. Santosh Kumar Satapathy was examined as D.W.1. He stated in his evidence that the handwriting and signature appearing in the application and the signature appearing in the acquittance roll is of nobody else but himself. Therefore, on the one side there is the opinion of handwriting expert and on the other side there is the evidence of Santosh Kumar Satapathy. Even if Santosh Kumar Satpathy would not have been examined it was incumbent on the prosecution to examine the handwriting expert so as to enable the delinquent officer to cross-examine the handwriting expert. This was one of the grounds of attack put forward by the delinquent officer before the enquiring officer. The enquiring officer while analysing the grounds of attack put forward by the applicant has stated as follows:

> " The Examiner of the questioned documents whogave the report has not been examined as such the opportunity to cross-examine him has not been given."

Thereafter, the Enquiring Officer states as follows:

> " As soon as a questioned document is admitted by the author the nature of 'questioned' vanishes and becomes an admitted document as agreed by SW-6 in cross-examination."

Furthermore, the Inquiry Officer observes as follows:

> " The opinion in this case hasbeen asked for and given through ordinary course of communication of the Departments of Governments. The opinion has been given by the Examiner of Questioned Document on the basis of his skill, technical knowledge and experience. He has neither seen or known the person whose signature and writing are disputed. The admitted signatures and writings of the charged officer have been taken before responsible officials who have been examined during this inquiry. The author of the opinion has neither seen the handwriting of

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Sri Santosh Kumar Satapathy before hand that his cross-examinations would have mattered. Over and above the standard of proof of departmental inquiry being preponderance of probability, I have no doubt at all of the opinion expressed in S-35. Hence point (a) as raised by the Defence is rejected. "

The Inquiry Officer further observed as follows :

" Certain truths which are eternal are to be accepted without any proof. Certain documents and published documents also require no proof. This condition is also acceptable in Indian Evidence Act.

A few examples can be cited.

a) The sun rises in the East.
b) Male creatures cannot be pregnant to give birth to child.
c) The Mahabharata war was fought between the Kauravas and Pandavas.
d) The age of retirement of Central Govt. servants in India as per extant rules is 58 years of age."

On reading the above quoted observations of the Enquiring Officer, we cannot restrain ourselves from saying that the arguments are fantastic. Judicial notice can be taken of thematters stated at '(a),(b) &(c)' and such judicial notice could only be taken by Court and not the Enquiring Officer. Conceeding for the sake of argument that judicial notice can be taken of these facts by the Enquiring Officer in a departmental proceeding, we fail to comprehend as to how these examples or observations quoted earlier fit in with the grievance of the applicant that he has been seriously prejudiced for having been deprived of cross-examining the hand-writing expert. Opportunity is always given to a charged Officer or an accused in a criminal trial to cross-examine the particular witness because he would be able to elicit the infirmities appearing in the evidence

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which may work out in his favour and to thebest of our knowledge we do not know any provis ion under any law that depriving a charged officer from cross-examining any witness far less to speak of a handwriting expert will not prejudice the delinquent officer. We are also equally unaware of any provision which would authorise the Enquiring Officer to accept the opinion of the handwriting expert(who has neither been examined nor cross-examined) on the basis of these frivolous examples. We are equally surprised to find the reasonings assigned by the disciplinary authority namely the Director of Postal Services, Sambalpur, who is a highly placed Officerin the Postal Department. In his order he states as follows:

> " The Coroner or a Doctor who is assigned the job of conducting a post-mortem on a dead body can not be questioned on the logic or the technical expertise which he makes use of in coming to his conclusions of the likely cause of death of the person on whom postmortem has been conducted. Similarly, an officer who hasbeen appointed for doing a professional job cannot be questioned on the theory based on which he has given his opinion. The opinion, therefore, of a Govt.Examiner of the questioned documents cannot be disputed. "

We are constrained to note with regret that such a highly placed Officer of the Postal Department is devoid of the fundamental knowledge of the practice and procedure adhered in law courts complying withthe provisions of the Evidence Act. We particularly mention the word' Courts' because the Director has given the example of Postmortem report. We have absolutely no hesitation in our mind to state that the Postmortem report is not a substantive piece of evidence and that is settled position of law.

The doctor conducting the autopsy is bound to be examined failing which the postmortem report cannot be taken as proved and hence cannot be exhibited. In case the handwriting of the doctor conducting the autopsy is proved by another doctor, thecontents of the document is only proved to the extent that autopsy was conducted on the deadbody of the particular person whose name hasbeen mentioned in the report and nothing beyond that. Equally law is well settled that if an accused in a criminal trial is not allowed to cross-examine the doctor conducting the autopsy, such post-mortem report cannot form the basis forconviction as it is not a substantive evidenceand cannot be taken notice of by the Court of Session in regard to the death of a particular person meeting homicidal death or injuries sustained by the deceased. In our opinion, this example given by the Director (Disciplinary authority) is equally untenable.

In another place the Director observes as follows:

> " The I.O. is the sole judge in the case entrusted to him to accept or reject any evidence that is produced by either the defence side or prosecution side. It is for either of the sides contending the issue to convince the Inquiry Officer of their positions."

By these observations we construe that the Director means to say that any evidence whether admissible or inadmissible, whether principles of natural justice complied or not, if accepted by the Inquiry Officer then it is bound to be accepted by all other forums above the Inquiry Officer. This is a fantastic principle of law laid down by the Director which is foreign to the criminal jurisprudence and so also to the law laid down in regard to disciplinary proceeding.

7. The handwriting expert not having been examined and his statement not havingbeen recorded by the Inquiry Officer and no opportunity having been given to the delinquent Officer(present applicant) to test the opinion by way of cross-examination, the delinquent officer i.e. the petitioner

has not only been seriously prejudiced but judicial notice of such opinion cannot be taken and therefore, the finding arrived at by the Inquiry Officer and the disciplinary authority and that of the appellate authority concluding that according to the opinion of the handwriting expert the author of the documents in question was the applicant is unacceptable and therefore without least hesitation in our mind we would drive ourselves to the irresistible conclusion that there is absolutely no evidence that the applicant was the author of the documents namely the application said to have been made by Santosh Kumar Satapathy for appointment and the documents by which emoluments were drawn by the applicant signing in his hand the name of Santosh Kumar Satapathy. At the worst it may be said that there may be grave suspicion against the applicant on this count but as observed by Their Lordships of the Supreme Court in the case of H.C.Goel(supra) such sucpicion cannot take the place of proof. Since we have come to the conclusion that there is no evidence that the applicant was the author of such documents both charges 1 and 2 are held not to have been substantiated and the applicant is exonerated from the charges.

8. Next, we would consider charge No.3. At the cost of repeptiton, it may be said that the applicant was charged for having provisionally appointed one Sarat Kumar Acharya as Extra-Departmental Delivery Agent, Ranibahal Branch Office for three months i.e. from 7.9.1982 to 6.12.1982 and simultaneously Sarat Kumar

Acharya was appointed provisionally as Extra-Departmental DeliveryAgent of Mukhigoda Sub Office for a period of one year i.e. from 1.10.1982 to 30.9.1983 in violation of the instructions issued by the Director General, P & T, New Delhi. In his report, the Inquiry Officer stated that the defence has admitted as per Exts. S-8 and S-9 that the charged Officer had issued appointment orders in favour of Sarat Kumar ACharya at Mukhiguda during the period of currency of his appointment as Extra-Departmental Delivery Agent, Ranibahal. In another breath, the Inquiry Officer states that the defence disputed the fact of currency of the appointment of Sri ACharya during which he was appointed as Extra-Departmental Delivery Agent, Mukhiguda. We are unable to understand what the Inquiry Officer meant to say . It was very seriously disputed before us that the defence had not admitted as per Exts.S.8 and S.9 that such appointment orders were issued. In view of the serious dispute raised before us and in view of contradictory statements made by the Inquiry Officer in his report we had called upon the Postal Department to produce the relevant file for our perusal, and it was not produced. Despite this contradictory statement made bythe Inquiry Officer, onus of proof was thrust on the charged Officer. The Inquiry Officer held that the defence should have examined Shri ACharya or should have produced documentary and oral evidence to substantiate its case and the charged officer not having done so it is held that this issue stands proved. Inour opinion, this is another fantastic approach made bythe Ihauiry Officer.

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Even in a domestic inqury onus lies on the prosecution to establlsh the charge. Prosecution cannot rely upon the silence observed by the charted offi cer so long as prosecution has not proved its case with satisfactory evidence. It was the bounden duty of the prosecution to examine ShriSarat Kumar Acharya. Prosecution d id not chose to examine Sarat Kumar Acharya. In the inquiry report it is stated that the applicant had cited him as a witness and because Shri Acharya did not appe ar on the date to which the said Shri Acharya was summoned his attendance was dispensed with which is another illegality committed by the Inquiry Officer who had a heavy responsibility of enforcing or securing the attendance of Shri Acharya. If Shri Acharya was not examined, as a defence witness there was no justification on the part of the Inquiry Officer to jump into a conclusion that because of the non-examination of Shri Acharya by the delinquent officer the charge stands proved. This approach is against all cannons of justice, equity and fair play.

9. Last but not the least, a grievance was laid before us that the applicant was shown the contents of the documents on which the prosecution relied upon and copies of the same were not supplied to the charged officer for which serious prejudice has been caused to the applicant. In the case of Kashinath Dikshita vrs. Union of India

and others, reported in 1986 SCC (L&S)502 Their Lordships were pleased to observe as follows:

> " When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity tomeet the charges against him in an effective manner. Andno 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 tohim. In the absence of such copies the concerned employee cannot prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible. Whether or not refu-sal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental enquiry depends on the facts of each case. In the facts and circumstances of the present case the appellant had been prejudiced in regard to his defence on account of the non-supply of the statements and documents. "

The very same view hasbeen taken by the Supreme Court in several other cases, namely State of Uttar Pradesh vrs. Mohd. Sharif(dead) through L.Rs. reported in AIR 1982 SC 937 and The State of Punjabvrs. Bhagat Ram, reported in AIR 1974 SC 2335. Applying the principles laid down by Their Lordships in the above mentioned judgmentstothe facts of the present case, we are of opinion that the applicant was deprived of a reasonable opportunity to defend himself and hence serious prejudice has been caused to him.

10. In view of the facts and circumstances stated above, and in view of the discussions in the foregoing paragraphs weare of opinion that this is a case of no evidence and the applicant has been prejudiced for non-compliance of the principles of natural justice, and hence the order of punishment cannot be sustained. Therefore, while exonerating the applicant from all the charges, the order of punishment and the penalty imposed

on the applicant both by the disciplinary authority and the appellate authority are hereby quashed. The applicant is deemed to be continuing in service with effect from the date of removal from service and/or the date of compulsory retirement entitling him to all his financial emoluments which he would have ordinarily drawn. The amount be calculated and paid to the applicant within 90 days from the date of receipt of a copy of this judgment.

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

19.11.92

MEMBER(ADMINISTRATIVE)

VICE-CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack,
19.11.1992/Sarangi.