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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 273 OF 1991
Date of decision: 6.3.94

Sri Jayadev Swain

...

Applicant

Versus

Union of India & Other.

...


Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? /rc
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

06 MAY 94


(K. P. ACHARYA)
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK Bench: CUTTACK.

ORIGINAL APPLICATION NO: 273 OF 1991

Date of decision: 6.8.1994.

Shri Jayadev Swain ... Applicant
Versus
Union of India & Others ... Respondents
For the Applicant ... H. S. P. V. Ramdas, B. K. Panda,
B. K. Mohapatra, K. S. K.
Rao, Advocates.
For the Respondents ... Mr. Aswini Kumar Mishra,
Senior Standing Counsel
(Central)

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CORAM:

THE HONOURABLE MR. K. P. ACHARYA, VICE CHAIRMAN
&
THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (A.M.R.)

.....

JUDGMENT

K. P. ACHARYA, V.C. Petitioner prays to quash the order of punishment passed by the Senior Superintendent of Post Offices, Bhubaneswar removing the petitioner from service with effect from the date on which he was put off from duty.

2. Shortly stated the case of the petitioner Shri Jayadev Swain is that while he was functioning as Branch Postmaster of village Bandapandusar in account with Itamati Sub Office within the District of Nayagarh, a set of charges were delivered to the petitioner alleging that the petitioner had accepted Rs.500/- from Shri Birendra Parida, an operator of Savings Bank account of the said post office and the amount was deposited in his pass book without impressing the date stamp

and it is further alleged that on the same date the petitioner returned the amount without obtaining an application for withdrawal. The second charge framed against the petitioner is that he received a sum of Rs.250/- from the messenger of the depositor namely Shri Bhikari Charan Paikaray for depositing the money under three heads namely R.D. Pass Book, S.F. Pass Book and another S.F. Pass Book.. The Petitioner received the money and entered the same in the Pass Books. But later on he took return of the pass book from the depositor and impressed the date stamp. It was therefore, alleged that the petitioner had violated Rule 17 of the E.D. Conduct Rules. A full fledged enquiry was conducted and ultimately the enquiry Officer found that charge No.1 had been established and charge No.2 was not proved. The disciplinary authority concurred with the findings given by the enquiry officer in respect of Charge No.1 and while differing with the enquiry Officer, the disciplinary authority held that Charge No.2 had also been established and therefore, ordered removal of the petitioner from service. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintain that the case being one of fullproof evidence and the disciplinary authority having come to its correct conclusion, the order of punishment should not be unsettled - rather it should be sustained. In a crux it is maintained by the Opposite Parties that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. P.V. Balkrushna Rao learned counsel appearing for the Petitioner and Mr. Aswini Kumar Mishra learned Senior Standing Counsel (Central). In the discussion of evidence made by the enquiry Officer it is stated as follows:

"The depositor during enquiry on 12.4.86 has admitted that he handed over Rs.500/- to the SPS who is conversant with the procedure for deposit in SB a/c, has made the entry in his own handwriting. Instead of taking the amount into a/c, he returned the amount to the depositor as admitted by the depositor during inquiry on 12.4.86."

This evidently indicates without any doubt that though the money had been paid by the depositor yet the same was immediately taken back by the depositor. Of course this statement of the depositor is sought to be disbelieved on very frivolous ground and abruptly the enquiry officer came to a conclusion that the charge had been proved. In our opinion offence of misappropriation is completed when the amount is received

and remains in the custody of the Government servant and the manner of disbursement goes unexplained then it can safely be presumed that the Government servant has misappropriated the amount in question. But here there being a categorical evidence deposed to by the depositor that he has again immediately taken back the money in question, the offence of misappropriation cannot be held to have been proved. This aspect has completely been lost sight both by the enquiry officer and the disciplinary authority. It was argued by the learned Standing Counsel that the depositor had been gained over. This argument is without any basis. Courts cannot act on inferences. Courts are to go strictly by the substantive evidence on record. Therefore, we are of opinion that Charge No.1 has not been proved.

6. As regards, Charge No.2, the enquiry officer states that Shri Paikray (depositor) could not say exactly when he sent the pass book alongwith the amount through the messenger. The messenger P.W.-5 also did not say the date on which he handed over the cash and pass book to the delinquent officer. P.W.-4 states in his evidence about the date of presentation of the pass book which appears to be 6.12.1984 whereas in the charge it is stated that the pass book was handed over to the petitioner on 20.12.1984. Law is well settled that the Courts

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must strictly be by the charge and nothing else.
On this account, there is great variance between the charge framed against the delinquent officer and the evidence on record. There is absolutely no iota of evidence that the money was handed over to the petitioner by the messenger on 28.12.1984 and therefore, rightly the enquiry officer came to the conclusion that there is no evidence that the petitioner has accepted and deposited the money on 28.12.1984. The disciplinary authority rushed to her conclusion saying that the preponderance of probability is that the cash and pass book was handed over to the petitioner much prior to 27.12.1984 and abruptly she comes to the conclusion that the charge had been proved without assigning any acceptable reasons as to why she differs with the enquiry officer. Here again the disciplinary authority has deviated from the specific date mentioned in the charge. Law is well settled that even in a disciplinary proceeding, however, much the suspicion may be grave, it cannot take place of proof. In the case of Union of India Vs. H.C. Goel reported in AIR 1964 SC 364, 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 more 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 factual aspects stated above and keeping in view the dictum laid down by Their Lordships in the case of H.C. Goel (supra), we are of opinion that prosecution has signally failed to bring home both the charges against the delinquent officer i.e. the Petitioner who is exonerated from all the charges and it is directed that the petitioner should be reinstated into services within ten days from the date of receipt of a copy of the judgment and within thirty days therefrom, the petitioner be paid all his arrears emoluments with effect from the date on which the petitioner was put off from duty till the day prior to his reinstatement into service.

5. Thus, the Original Application is accordingly disposed of. No costs.


MEMBER (ADMINISTRATIVE)

06 MAY 94


VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench/A. Mohanty. 6.5.1994