

4

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

57

Original Application No.320 of 1991.

Date of decision : November 29, 1994.

Panu Barik

...

Applicant.

Versus


Union of India and 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 Tribunals or not ? *yes*


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)


(D.P. HIREMATH)
VICE-CHAIRMAN

29 Nov 94

6

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

Original Application NO.320 of 1991.

Date of decision : November 29, 1994.

CORAM:

THE HON'BLE MR. JUSTICE D.P. HIREMATH, VICE-CHAIRMAN
A N D

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

..

Panu Barik, aged about 55 years,
son of late Khetrabasi Barik
village & P.O. Baulabandha, Via-
Banapur, District-Puri.

... Applicant.

By Advocates

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

Versus

1. Union of India, represented by the
Chief Postmaster General, Orissa Circle,
Bhubaneswar-751001.
2. Director, Postal Services,
Bhubaneswar Region, Bhubaneswar-751001.
3. Senior Superintendent of Post Offices,
Puri Division, Puri-752001.

... Respondents.

By Advocate ..

Mr. Aswini Kumar Misra,
Sr. Standing Counsel (CAT).

...

O R D E R

D.P. HIREMATH, V.C., The applicant who was working as the Extra-
Departmental Branch Postmaster of Baulabandha Branch
Post Office in account with Kuhuri Sub Office in the
District of Puri faced a departmental enquiry for
failure to maintain absolute integrity and devotion to
duty as required of the holder of the post he held. The
Enquiry authority rendered a finding that the charge was

proved and the Disciplinary authority, Senior Superintendent of Post Offices, Puri Division, agreeing with the Enquiry^{ing} authority dismissed him from service by his order dated 30.7.1990(Annexure-A/3). The appeal preferred to the appellate authority i.e. the Chief Postmaster General, Orissa Circle, Bhubaneswar(Annexure-A/4) was dismissed on 22.1.1991. In this application, the applicant contends that the finding of the Enquiry authority that the charge is proved is not based on any legal evidence. The main plank of his attack of these orders is unsupporting evidence of the principal witness for the Department, the depositor, Dusasan. He gave evidence that he had never handed over any cash to the applicant and though entries were made in his Pass-book they were not supported by actual entrustment of money as contained therein. He has given his own explanation as to this state of things which would be referred to at a later stage. Though the jurisdiction of the Tribunal is limited to scrutinising if principles of natural justice were adhered to and not to go into the merits of the discussion of the evidence or charge, in the instant case, according to the applicant, he was found guilty on no evidence at all and this is how the interference of the Tribunal is invoked.

2. Excepting S.W.1, Dusasan no other evidence came forth in support of the charge. When no such evidence ^{was} ~~was~~ coming forth the Enquiry authority resorted to the use of the previous statements said to have been made by the applicant and without ^{confronting} ~~contraverting~~ them

to him the Enquiry authority ought not to have relied on them. Consequently, the Disciplinary authority could not have relied on them to agree with the finding rendered by the Enquiry authority. He thus prays for quashing of the order of his dismissal and reinstatement in the post which he held and consequential benefits.

3. The respondents inter alia contended that the applicant accepted Rs.200/- on 21.11.1987 and Rs.300/- on 10.12.1987 by way of deposit from the said Dusasan to be credited in his S.B.account No.297601 and the applicant having posted the transaction in the pass-book did not take the amount to the P.O.account. It was on 23.3.1988 that the said Dusasan applied for withdrawal of Rs.100/- from his account and such withdrawal was allowed by a payment of Rs.100/-. Even though this withdrawal entry was also made in the pass-book the same was not carried into the relevant account book. With regard to the main contention of the applicant that the principal witness for the Department did not support their case, it is urged that the said Dusasan had said at the later stage of his evidence that the amounts shown as credited in his passbook were infact paid at subsequent point of time in the hands of the applicant. It is rather unthinkable that two separate credit entries could have been made without receipt of any money. There was no charge of misappropriation against the applicant. The report of the Enquiry authority was based on evidence, on records and not on previous statements of the applicant as contended by him. All reasonable opportunity was given to him to

to defend himself, there is no violation of principles of natural justice, order of dismissal passed by the Disciplinary authority and confirmed by the appellate authority ~~are~~ ^{is} quite sustainable.

4. That in the pass-book given to Dusasan with regard to his account No.297601 the credit entries were made which are subject matter of charge has not been disputed at any stage, either during the enquiry or during hearing of this application. The article of charge (Annexure-A/1) is as follows:

" That the said Sri Panu Barik while functioning as EDBPM, Baulabandha BO during the period from 21.11.87 to 23.3.88 received a sum of Rs.200/- and Rs.300/- on 21.11.87 and 10.12.87 respectively from Sri Dusasan Moharana along with SB Pass book No.297601 for deposit in his pass book. Again on 23.3.88 Sri Moharana applied for an withdrawal of Rs.100/- from his said pass book. But Sri Barik did not take the amount into account in respect of all the three aforesaid transactions but only he entered the transaction in the pass book.

Thereby Sri Barik failed to maintain absolute integrity and devotion to duty as required of him under rule 17 of P & T ED Agents (Conduct & Service) Rules, 1964.

We have gone through the evidence given by Dusasan Moharana to which reference was made by learned counsel for the applicant. He had made a complaint as per Ext.S-1 marked during evidence regarding the transfer of his account and he further admitted that the balance shown in the pass book to which credit was Rs.1,414.65 paise on the date of application for transfer, namely 4.6.1988. He had gone to Baulabandha P.O. on 21.11.1987 to deposit Rs.200/- and while handing over pass book he came away as he had not taken the cash of Rs.200/- with him but had left the same at home in another trouser pocket. He however requested the applicant

to make necessary entries in the pass book and that later he would bring the cash and hand over to the applicant. Having got the entries thus made in his pass book, when he was returning to his village he met two persons of Bhusandapur who requested him to go to their village as the preparation of a boat for them was very urgent. Thus without going home he accompanied them to their village and this is how Rs.200/- remained unpaid to the applicant on that day. He also asserted that he has close family relationship with the applicant and therefore he had left the pass book with him for about 20 days or so. He again sent Rs.300/- through a certain person of his village for deposit and entry in the pass book and the said person had carried the pass book with him. It appears, as could be seen from his evidence that even cash of Rs.300/- was not paid to the applicant on that day. The messenger who had carried the money was one Biswanath Swain, related to him and what he says about these deposits in his own words is as follows:

4
" The amount of Rs.300/- was returned by the Messenger, Sri Swain about after 2/3 days without the pass book and told me that the BPM has asked me to attend the post office urgently. I attended the Post Office and the SPS informed that I have forgotten to hand over Rs.200/- deposited in my pass book on 21-11.87 and further the SPS told that he had made entry of deposit of Rs.300/- sent through messenger without receiving the amount from him. I realised the matter and was ashamed of my forgetfulness and handed over Rs.530/- to the SPS towards the deposits made in the pass book Ext-2 immediately after getting the amount from home. I have personally gone to Post Office and taken

withdrawal of Rs.100/- on 23.3.88 after signing the withdrawal form. I have not presented any payinslip during above two deposits. I have not collected any receipt from the SPS while leaving the pass book on 21.11.87 and 10.12.87. "

In the cross-examination he stated that after some days of receiving back Rs.300/- from the messenger he met the SPS and ascertained the position and handed over Rs.530/- " as desired by him". Thus he maintained even in the cross-examination by the applicant that on two dates stated above he had not handed over any cash to the applicant. To the questions put by the Enquiry authority he stated thus :

" As far as I remember I have taken the withdrawal of Rs.100/- before handing over Rs.530/- to the SPS. As asked by the SPS I have handed over Rs.530/- though the deposits were for Rs.500/-. I do not know the reason for the excess of Rs.30/- given by me. I had not claimed any receipt from the SPS as I m/o the amount towards the SB deposits. I admit the balance of Rs.1414.65 as correct as on 23.3.88."

This date of 23.3.1988 assumes importance as it was on that date that Rs.100/- was withdrawn by the applicant against a debit entry made in the pass book. It follows therefore by that date, the total amount to the credit of Dusan was Rs.1414.65 which also included the amount of Rs.300/- which is the subjectmatter of the present charge. The fact remains that the evidence of this witness as given as evidence for the Department, his veracity not having been challenged by cross-examining the witness if the Presenting Officer felt that he was not supporting the

charge either with ulterior motive or to bail out the applicant.

5. While learned counsel for the applicant relies on his evidence to show that he himself has admitted that actually no cash was handed over to the applicant, the respondents' counsel contended that the Presenting Officer who was the Department man could not observe the rules of evidence which given ^{opportunity} ~~chance~~ to the prosecutor to cross-examine the witness with the permission of the Enquiry authority as is done in a criminal court whenever a witness is found hostile to the ^{party} ~~authority~~ calling him. Rules of evidence do not strictly apply to the Departmental Proceeding, when no advocate was presenting the case, strict adherence to Rules of procedure cannot be insisted upon and infact ^{that they} ~~as~~ it is now well laid down, should not be insisted upon. Even Mr. P.V. Ramdas, appearing for the applicant did concede that in a departmental enquiry proof beyond reasonable doubt of a charge is not required but what should be looked into is existence of preponderance of probabilities. It is not disputed now that having made entries in the Pass book the applicant did not carry over the same into the relevant account books of the Post Office. The Enquiry authority observed in course of his order that when the SPS is transacting Govt. cash with any member of public there is no stand of good relationship of non-crediting of cash to Government account and deposits are shown authentically in pass book, Ext-S-2 and no sane man would believe that a Branch Postmaster like the SPS would show deposits not only once but twice within a gap of

12

13

20 days or so without actually raising the cash from the depositor. With regard to the evidence of S.W.1, the depositor the Enquiry authority says;

" Further the charge on the SPs that he showed deposits in the Ext. no.S-2/a and S-2/b and did not take the deposit to BO account is proved beyond doubt. The evidence of SW-1 goes to show that the SW-1 wanted his pass book(Ext-S-2) to be transferred to Gangadharpur SO with DLI 23.3.88 and balance Rs.1414.65 and made over the Pass book and got a receipt for the same. When the transfer was to be effected it was detected that there is discrepancy in the balance of the pass book along with the balance of H.O. Ledger. Such being the position of the case. the SPs, to save his skin, has gained over the depositor SW-1 and made him depose that he did not actually hand over cash to the SPs on the above date. "

6. The reason given by the applicant for not making the entries in the account books is quite different. He explained away the lapses by stating that he was suffering from filariasis high fever and therefore, he could not recollect the non-receipt of the cash in both the occasions and forgot to account for the same as per the entries in the pass book, Ext.S.2. He further maintained that the depositor, Dusasan took away the pass book then and there after the entries were made in the pass book with an assurance of payment of cash but failed to do so as he left the village. He also admitted to have not made any such entries in the pass book of any other person without receiving the money. In the statement of imputations of misconduct it could be noticed that Rs.100/- was withdrawn by the depositor, Shri Moharana on 23.3.1988 but the delinquent applicant credited Rs.530/-

4

13

14

(Rs.500/- towards 2 deposits and Rs.30/- towards interest) under classified receipt on 3.6.88 voluntarily at Baulabandha B.O. which was incorporated into H.O. account on 8.6.88. This is not refuted and this makes it manifestly clear that withdrawal of Rs.100/- was allowed to Dusasana even though according to the applicant two amounts i.e. Rs.200/- and Rs.300/- had not been received by him in cash. It is also pertinent to note S.W.1 does not speak about he paying Rs.30/- towards interest.

7. The Enquiry authority felt it rather difficult to accept the evidence given by Dusasana especially when the lapses on the part of the applicant to make the entries into the books of account ^{was} with regard to two deposits with a lapse of nearly 20 days or so. It is also hard to believe that Rs.100/- could have been paid without the applicant insisting on the payment of Rs.500/- by Dusasana. Though this Tribunal is not expected to weigh evidence as is done in the case of criminal appeals in order to see whether the finding of the Enquiry authority is based on no evidence at all, we had to make this exercise. It is not possible to accede to the contention of Mr. P.V. Ramdas that the finding of the Enquiry authority is influenced by the statements made by the applicant earlier. Though S.W.1 was not treated hostile and cross-examined by the Presenting Officer evidence given by Dusasana is inherently biased in favour of the applicant though he himself admits that he had got very good family relationship with the applicant. Though there is no charge of breach of trust or misappropriation, Rule 17 of the P & E ED Agents (Conduct & Service)

Rules, 1964 reads as follows:

" Every employee shall at all times maintain absolute integrity and devotion to duty. "


The Enquiry authority and the Disciplinary authority came to the conclusion on the evidence available on record both documentary and oral as well as the conduct of the applicant that he did not act with integrity that is required of him.

8. Though the learned counsel for the applicant relied on a decision of the Supreme Court in the case of Nand Kishore Prasad vrs. The State of Bihar and others, reported in AIR 1978 SC 1277, we are afraid, it may not in any way help him. Their Lordships at para 18 of the Report observed that before dealing with the contention canvassed they had to remind themselves of the principles in point crystalised by the judicial decisions. They added,

"The first of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence, i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries. As pointed out by this Court in Union of India v. H.C. Goel, AIR 1964 SC 364, " 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."

The second principle, which is a corollary from the first, is, that if the disciplinary inquiry has been conducted fairly without bias or predilection, in accordance with the relevant

disciplinary rules and the Constitutional provisions, the order passed by such authority cannot be interfered with in proceedings under Art. 226 of the Constitution, merely on the ground that it was based on evidence which would be insufficient for conviction of the delinquent on the same charge at a criminal trial."

Shri P.V. Ramdas, learned counsel for the applicant did not dispute that adequate opportunity was given to the applicant to defend himself before Enquiring authority and that rules of natural justice were observed by the Enquiry authority. His only grievance is that the entire finding by the Enquiring authority is based on "no evidence". The main plank of his argument is that because S.W.1 who was the person who had entrusted the money to the applicant did not support the prosecution or the Government. In a criminal trial even if some doubt is created that benefit should go to the accused persons as the standard of proof required in criminal trial is much higher than that required in support of a charge in domestic enquiry. Therefore, if the criminal court does not find that the evidence does not take the case to that standard then the accused may be entitled to the benefit of reasonable doubt. We have addressed ourselves to the material placed before the Enquiry authority by the Presenting Officer. It should be mentioned at once that the charge against the applicant was not one of criminal breach of trust or  misappropriation of the money received by him by virtue of the post held by him, taking the case to one under Section 409 of the Indian Penal Code. The only charge against him was that he did not conduct himself with that integrity that is required of a Government servant in his

position. Again, considering the admission made by S.W.1 himself that the total amount in the pass book tallied with the actual amount that he deposited and the one of corresponding entries in the official Account Books and the reasons given by the applicant during his examination in his defence the Enquiry authority found that there is evidence enough to sustain the article of charge. In our view, therefore, it cannot be said that the Enquiry authority and the Disciplinary authority had no evidence whatsoever in support of the charge but there was adequate evidence to sustain the charge. The evidence available was more than 'some evidence' as laid down by the Supreme Court in the case of Nand Kishore Prasad(supra). We are unable to find ourselves in agreement with the learned counsel's argument that this is a case of "no evidence".

9. For the reasons aforesaid we find no grounds to interfere with the order passed by the Disciplinary authority and confirmed by the appellate authority. The application is liable to be dismissed and the same is dismissed. No order as to costs.

.....
(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

29 Nov 94

.....
(D.P. HIREMATH)
VICE-CHAIRMAN.

Saranggi.