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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No. 343 of 1991

Date of decision: May 26, 1993.

Shri Balakrishna Sethy ... Applicant

- Versus -

Union of India and others ... Respondents

For the Applicant ... M/s. Devananda Misra,
Deepak Misra,
R.N.Naik,
A.Deo,
B.S.Tripathy
P.Panda,
Advocates.

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

C O R A M

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

THE HONOURABLE MR. H. REJENDRA PRASAD, MEMBER (ADMN.)

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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JUDGMENT

K.P.ACHARYA, V.C.

The Petitioner while working as a Registration Postal Assistant in Puri Head Post Office on 10th October, 1985 he is said to have received two insured parcels in the Post office. Further allegation against the Petitioner is that those two insured parcels which were in the custody of the petitioner ~~was~~ lost and the fact that it was not intimated to the Assistant Post Master, incharge. A disciplinary proceeding, under Rule 16, was initiated but from the records, we find that the procedure laid down under Rule 14 has been adopted. Be that as it may, the enquiry officer found that Charge No.1 namely custody of two insured parcels with the petitioner and ~~which~~ they were lost caused by the petitioner was not proved. The enquiry officer, further found that the charge framed against the petitioner that he had not reported the matter to the Assistant Post Master incharge was established. Accordingly, the enquiry officer, submitted his findings to the disciplinary authority, who in his turn, disagreed with the findings of the enquiry officer in respect of charge No.1 and held that both the charges were established and proved. The Disciplinary Authority ordered recovery of

Rs.1776.66p. from the Petitioner. Petitioner preferred an appeal which did not yield any fruitful result. An application was filed before this Bench to quash the order of punishment which formed subject matter of Original Application No.188 of 1990. The Bench by its judgment dated 21st February, 1991 passed in Original Application No.188 of 1990 remanded the case to the disciplinary authority for further consideration because of some infirmities appearing in the case. Vide order dated 28th August, 1991 contained in Annexure 3, the Senior Superintendent of Post Offices, Puri Division, Puri (the Disciplinary authority) held that both the charges have been established and ^{the} same quantum of penalty was imposed on the petitioner. Hence this application has been filed with the aforesaid prayer.

2. In their counter, the Opposite Parties maintain that there is overwhelming evidence on the side of the prosecution that the petitioner had kept in custody ~~of~~ the Insured Parcels. It is further maintained by the Opposite Parties that the Disciplinary authority had taken a very lenient view in respect of the petitioner's negligence of duty, and had imposed a quantum of penalty of recovery only. Therefore, it is maintained by the Opposite Parties that the case being devoid of merit is liable to be dismissed.

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3. We have heard Mr. Deepak Misra learned counsel appearing for the petitioner and Mr. Aswini Kumar Misra learned Standing Counsel (Central) appearing for the Opposite Parties. Mr. Deepak Misra learned counsel appearing for the Petitioner submitted that there is absolutely no evidence to come to an irresistible conclusion that the petitioner kept in his custody of the insured parcels and therefore, rightly the enquiry authority came to a conclusion that all the charges were not proved. The disciplinary authority gave a ^{perverse} persuasive finding without any reasons as to why he ^{by diff're} defers from the finding of the enquiry officer. Such being the position, Mr. Mishra learned counsel appearing for the petitioner contended that the punishment should be quashed.

On the other hand Mr. Aswini K. Misra learned Standing Counsel (Central) appearing for the Opposite Parties contended that the Disciplinary authority has given ample reasons in his order which was impugned in Original Application No. 188 of 1990. Ample and sufficient reasons have been given for ^{diff're} deferring with the findings of the enquiry officer. and there was no necessity in repeating the same. Therefore, the contention put forward by Mr. Deepak Mishra learned counsel appearing for the petitioner is not sustainable. We have given our anxious consideration to the arguments advanced at Bar.

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Once this Bench had quashed the order of punishment which was impugned in Original Application No.188 of 1990, there cannot be any other conclusion but it must be said that the impugned order in Original Application No.188 of 1990 does not exist in the eyes of law. If that impugned order no longer exists in the eyes of law, there was absolutely no justification on the part of the disciplinary authority to get himself satisfied by passing a ^{Cryptic} ~~new~~ order which is under challenge in this Original Application. The disciplinary authority in the impugned order, in this original application states as follows :-

" I have gone through the whole case including the decision of the Hon'ble CAT O.A No.188/90 dtd.21.2. 92. As per direction of CAT Cuttack Bench Cuttack Sri Balakrushna Sethi was supplied with a copy of the IO's report on 13.3.1991 to submit his representation or submission if any. He submitted his written representation on 11.4.1991.

After going through the representation of Sri Sethi and through evaluation of the inquiry report I find that the charge levelled against the official Sri Sethi stands proved in toto. He has failed to discharge the duties/ responsibilities assigned to him and has lacked absolute devotion to duty and acted in a manner un-becoming of a Government servant thereby has violated the provisions of Rule-3(i) (ii) and (iii) of CCS (Conduct) Rules, 1964.

Since no new fact could be brought out by the official Sri Sethi in his representation dtd.11.4.91 in support of his stand".

4. In view of the above quoted observation of the Senior Superintendent of Post Offices, Puri Division, Puri we cannot but come to an irresistible conclusion that the impugned order is ~~an~~ ^{an} ~~irresistible~~ ^{irresistible} ~~order~~ ^{order} ~~overruling~~ ^{overruling} one. It appears to us that the disciplinary authority had persuaded himself by the finding given by the disciplinary authority in his earlier order (forming subject matter of Original Application No. 188 of 1990) which no longer exists in the eyes of law after the case was remanded by this Bench. Law is well settled and it was rightly and fairly not disputed at the Bar that whenever a disciplinary authority ~~differs~~ ^{differs} ~~defers~~ with the findings of the enquiry officer, the disciplinary authority must give a reasoned order stating the reasons for which the disciplinary authority ~~differs~~ ^{differs} with the enquiry officer. Judge made laws strongly denounce the actions taken by the disciplinary authority in passing a bald order especially when there is a conflict of opinion regarding the culpability of the delinquent officer in respect of certain charges between the enquiry officer and the disciplinary authority. We feel tempted to quote the observations of Their Lordships in the case of Ram Chander Vs. Union of India and others reported in AIR 1986 SC 1173. Of course observations of Their Lordships relate to the duties cast on the appellate authority to pass a reasoned order. This does not make much difference

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The disciplinary authority has a duty and obligation to pass a reasoned order because such reasoned order will be the subject matter of judicial review. At Paragraph 24 of the judgment, Their Lordships have been pleased to observe as follows :

" xx xx. Such being the legal position it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given ".

5. In the case of K.I. Shephard v. Union of India and others reported in (1987) 4 SCC 431, Hon'ble Mr. Justice R.N. Mishra (As my Lord Chief Justice then was) speaking for the Court at paragraph 12 of the judgment was pleased to observe as follows :

"On the basis of these authorities it must be held that even when a State agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet".

Therefore in quasi judicial matters personal hearing must be given as has been observed by Their Lordships in the case of Ramchander Vs. Union of India and others (supra).

6. Last but not the least, the Senior Superintendent of Post Offices, has observed that on a thorough evaluation of the enquiry report, he has found that the 'charge' levelled against the official Shri Sethy has been proved in toto. Admittedly, there are two charges out of which one has been held by the enquiry officer to have been not proved. Had the disciplinary authority stated that the 'charges' levelled against the delinquent officer has been proved - the matter would stand in a different footing. But in this particular case, having used the word 'charge' it was incumbent upon the disciplinary authority to specifically say as to which charge has been proved and which charge has not been proved. However, due to ^{the} infirmities appearing in this case, we find that there is substantial force in the contention of Mr. Deepak Misra learned counsel appearing for the petitioner that the impugned order of punishment is not sustainable. Therefore, we quash the same and we remand this case to the disciplinary authority namely the Senior Superintendent of Post Offices, Puri Division, Puri with a direction that he must consider all aspects of the case including the evidence on

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and would pass a reasoned order. Petitioner's counsel Mr. Deepak Misra expressed that a personal hearing be given to the petitioner. We have no objection, if the disciplinary authority may give a personal hearing to the delinquent officer.

6. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.

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MEMBER (ADMINISTRATIVE)

Ke. a/s *26/5/93.*
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
26.5.93

