

3

5

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 30 OF 1991

Date of decision: 4.11.1992.

A. Trinadha Rao .... Applicant

-Versus-

Union of India and others .... Respondents

For the Applicant .... M/s P.V. Ramdas,  
B.K. Panda,  
D.N. Mohapatra,  
Advocates

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

-----  
CORAM:

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

A N D

THE HONOURABLE MR. M.Y. PRIOULKAR, 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.

....

54  
6

JUDGMENT

K.P. ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to quash the orders contained in Annexures 2, 3 and 4 imposing a punishment of compulsory retirement.

2. Shortly stated the case of the Petitioner is that while he was serving as L.S.G official in the Office of the Senior Superintendent of Post Offices Berhampur, a disciplinary proceeding was initiated against the Petitioner under Rule 14. A couple of charges were framed against the Petitioner. The first charge was that he submitted a false bill on account of the advance taken by him for enabling his four children to travel to Madras on L.T.C. In the second charge, it was alleged that while the Petitioner was working as ledger Assistant at Berhampur, received Rs. 300/- with original pass book of the operator of the S.B. Account No. 540174 from one Shri J. Narayan Reddy. The amount was not deposited in the account but a duplicate Pass Book was prepared and the amount of Rs. 300/- was misappropriated. A full-fledged enquiry was held and the enquiry officer found that the charges had been established and accordingly submitted his findings to the disciplinary authority who in his turn concurred with the findings of the enquiry officer and as a measure of punishment, the disciplinary authority ordered recovery of Rs. 300/- and further ordered that the pay of the Petitioner be reduced from Rs. 1560/- to Rs. 1440/-. Matter was carried in appeal and

the Additional Postmaster General remanded the case for de novo enquiry from the stage of consideration of the enquiry report submitted by the enquiry officer. After the direction was complied, the Director of Postal Services, vide his order dated 21st August, 1989 dismissed the Petitioner from service with immediate effect. On appeal, the Chief Postmaster General found the Petitioner guilty of the charges but modified the quantum of penalty by ordering compulsory retirement. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that there being overwhelming evidence against the Petitioner and principles of natural justice having been strictly complied, the order of punishment should be upheld and the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. P.V. Ramdas, learned counsel appearing for the Petitioner and Mr. Aswini Kumar Misra learned Standing Counsel (Central) for the Opposite Parties.

5. It was submitted by Mr. Ramdas learned counsel for the petitioner that conceding for the sake of argument that there is overwhelming evidence to bring home the charge against the Petitioner as contended by the learned St. Counsel yet the order of punishment is liable to be set aside on the ground of noncompliance of the principles of natural justice which has seriously prejudice the petitioner. To support his contention Mr. Ramdas learned counsel for the petitioner had taken

us to the order of the Chief Postmaster General contained in Annexure 4. Therein it is stated as follows:

"His plea that the extracts of the prescriptions were not given to him is not a material point as because he was allowed to inspect the documents and he could have taken the extracts. The appellant takes the plea that injustice was metred out to him as because the preliminary enquiry report of the S.D.I(P) has not been supplied to him. The documents was not supplied to him as it was taken as confidential and it was meant for the disciplinary authority to note the facts."

6. From the above quoted observations of the Chief Postmaster General, it is patently clear that; (1) copy of the preliminary enquiry report was not supplied to the Petitioner; (2) copies of the prescriptions over which the prosecution relied upon was not given to the Petitioner; (3) copies of the attendance register was not given to the petitioner. The Chief Postmaster General holds that nonsupply of copies of these documents was not fatal to the prosecution because it remained open to Petitioner to take extracts and copies of such documents were not supplied being confidential in nature. In the case of Kashinath Dikshita V. Union of India and Others reported in ATR 1986(2) S.C. 186 Hon'ble Mr. Justice Pathak (as my Lord Chief Justice of India then was) speaking for the Court was pleased to observe as follows:-

" When a Government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no 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 to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are

7

incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies ~~xx xx xx~~."

On this account, the punishment was quashed by the Hon'ble Supreme Court. In the case of State of Punjab Vs. Bhagatram reported in 1975 (1) Service Law Reporter (2) Their Lordships observed as follows:

" The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the Government servant is afforded a reasonable opportunity to defend himself against charges on which enquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross-examination".

" It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the enquiry in support of the charges levelled against the Government Servant".

In the case of Sankari Pada Mukherjee V. Union of India and others reported in ATR 1986 C.A.T. 424, one of us (Acharya J.) was a party to the judgment. In the said case it has been held as follows:

" Where the report of the C.B.I. is the basis on which the allegations are being levelled against the delinquent then all reasonable opportunity should be given to the delinquent for the ends of justice to peruse the report enabling him to effectively defend himself and we cannot agree with the contention that the CBI Report is only meant for the disciplinary authority".

7. In the circumstances stated above, we find there

N

is substantial force in the contention of Mr. Ramdas learned Counsel appearing for the Petitioner that non-supply of copies of documents relied upon by the prosecution has seriously prejudiced the petitioner.

8. It was next contended by Mr. Ramdas learned counsel appearing for the Petitioner that the Petitioner was not given the aid of a defence assistant and therefore, he could not properly cross examine. From the records, we find that the petitioner had made an application to engage a legal practitioner. The enquiry officer refused to permit without approval accorded by the disciplinary authority. Since the prosecution was not represented by a legal practitioner, we find no illegality to have been committed by the enquiry officer but from the records we find that the petitioner had made an application to allow one Shri B.D. Pruthi, A.P.M. Accounts New Delhi to act as Defence Assistant. The enquiry officer observed as follows:

"His request was duly considered and found the S.P.S. did not produce the certificate/declaration showing the no. of cases in which Shri Pruthi was functioning as A.G.S by that time, despite of my repeated warnings. Therefore his request was rejected. And it was

The Petitioner again made a representation for engagement of another defence assistant. The enquiry officer held as follows:

"Representation of Shri Rao was considered by me and found not appropriate to postpone the enquiry."

9. In the circumstances stated above, the Petitioner was not allowed a defence assistant. Therefore, without least hesitation in our mind, we would hold that the Petitioner

has also been prejudiced on this account. In view of the aforesaid discussion relating to denial of reasonable opportunity, given to the Petitioner to defend himself, we find that principle of natural justice has been violated and the petitioner has been seriously prejudiced.

10. Last but not the least, we find that copy of the enquiry report has not been given to the Petitioner before order of punishment was imposed. It has been enclosed to the order of punishment. Hence the principles laid down by Their Lordships in the case of Union of India Vs. Mohd. Ramzan Khan reported in AIR 1991 SC 471 has not been complied. Ordinarily we would have sent back this case on remand for compliance of the principles laid down by Their Lordships in the case of Mohd. Ramzan Khan (supra) but in view of the non-compliance of the principles of relating to other matters natural justice as stated above, we find no justifiable reason to send the case back on remand. We would therefore, quash the order of punishment imposed on the petitioner and hold that the petitioner is deemed to have been in service with effect from the date of compulsory retirement and he is entitled to all financial emoluments which should be calculated and paid to the Petitioner (lest amount if drawn towards pension) within 90 days from the date of receipt of a copy of the judgment. In case the petitioner has not attained the age of superannuation, he should be allowed to join his post within 30 days from the date of receipt of a copy of the judgment.

N.

10

12

7

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

W. M. Khan  
\_\_\_\_\_  
MEMBER (ADMINISTRATIVE)

L. S. S. Rao <sup>OMB</sup>  
\_\_\_\_\_  
4. XI. 92  
VICE CHAIRMAN

Central Administrative Tribunal  
Cuttack Bench, Cuttack/K. M. Mamtani

4.11.1992.

