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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 31 of 1991

Date of Decision: 9.11.1992

Padman Sahu

Applicant

Versus

Union of India & Others

Respondents

For the applicant

Mr. G. A. R. Dera,
Advocate

For the respondents

Mr. R. C. Rath,
Standing Counsel
(Rly. Administration)

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C O R A M:

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

AND

THE HONOURABLE MR. K. J. RAMAN, MEMBER (ADMINISTRATIVE)

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1. Whether the reporters of legal newspapers may be allowed to see the judgment ? Yes
2. To be referred to 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.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to quash the order of punishment contained in Annexure 3 imposing a penalty to the extent of reduction of Pay scale of the Petitioner by one stage from Rs.1600/- to Rs.1560/- in the scale of Rs. 1400-2300/- for a period of one year with effect from 1st May, 1990 without cumulative effect and it is further prayed to quash the order passed by the Appellate Authority confirming the order of punishment and to direct full salary to be paid to the Petitioner and to order promotion of the Petitioner to the Post of Headclerk with effect from 1st January, 1984.

2. Shortly stated the case of the Petitioner is that he was recruited to the post of a Junior Clerk through the Railway Service Commission and he joined the said Post on 20th February, 1962. In course of time the Petitioner was promoted to the Post of Senior Clerk in the year 1975. Ultimately he was promoted to the Post of Head Clerk with effect from 1st June, 1985 and the Petitioner was serving as Senior clerk in the Office of the Assistant Engineer(II) at Cuttack when a complaint was lodged by Shri N.Sahani, Khalasi before an officer of the Central Bureau of Investigation, Bhubaneswar that the Petitioner had demanded Rs.100/- as illegal gratification for transferring him to Cuttack and for posting him in the open line in permanent capacity. A trap was arranged and Rs.100/- said to have been paid by Shri Sahani to the Petitioner was

detected at the spot by the Officer of the Central Bureau of Investigation and ultimately the Petitioner was suspended on a contemplated proceeding and soonthereafter a chargesheet was delivered to the Petitioner with the aforesaid allegations. The Petitioner in his ~~term~~ denied the allegations and a fullfledged enquiry was conducted. The enquiry officer came to the conclusion that the charge has been partially established and the disciplinary authority in his turn concurred with the findings of the enquiry officer and imposed a penalty over the petitioner as stated above. Appeal pre-ferred by the the Petitioner did not yield any fruitful result. Therefore, this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the case being involved with overwhelming evidence and principles of natural justice having been strictly complied no prejudice having been caused to the Petitioner, the order of punishment should ~~not~~ be upheld and the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. G.A.R.Dora learned counsel appearing for the Petitioner and Mr. R.C.Rath, learned Standing Counsel(Railway) appearing for the Opposite Parties.

5. Before we proceed to adjudicate the contention raised by Counsel for both sides, it would be profitable to quote certain observations and findings of the enquiry officer and before quoting such allegations, it is worthwhile to note that in order tobring home the guilt against the petitioner two independent witnesses were examined and

they are M/s K.Unikrishnan P.W.l and Srikanta Mohanty, P.W. 6. Shri Unikrishnan is the Assistant Manager of Food Corporation of India and Shri Mohanty is a clerk attached to the office of the Income Tax Department. Both these independent witnesses denied any knowledge of any demand having been made by the Petitioner of any money to be paid as illegal gratification and equally they have no knowledge about the acceptance of the amount. The enquiry officer in his report stated as follows:

"As such none of them (trap party) can be treated as eye witness regarding acceptance of the ~~trainted~~ notes from Shri Sahani, by the C.O."

He further observed as follows:

"The allegation that the defendant accepted the five ten rupee G.C. Notes from the decoy is contradicted (emphasis is ours) by the main two independent witnesses".

Ultimately, the enquiry officer gave the following findings:

"I am of the opinion that the defendant did not demand ~~any~~ money from the complainant on 7.12.1979 as stated by both independent witnesses, Shri Sahani gave the money to Shri Sahu on his own accord. The recovery of money from his cloth bag and hand wash of Shri P.N. Sahu and evidence of witness proves that the money was accepted by him whereas the demand has not been proved during the enquiry".

Law is well settled that the initial ingredient that is required to be proved in a case under section 161 IPC or in any disciplinary proceeding involving 'giving or taking' of bribe is that there must be a demand made by the Officer who has been trapped and such demand must be accepted by the person who is giving the bribe and in

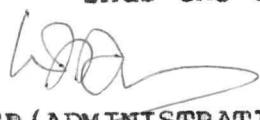
pursuant to the acceptance of bribe money it has been recovered from the delinquent officer. Mr. Rath learned Standing Counsel submitted that once red colour water has flown down from the hands of the petitioner there cannot be any escape from the conclusion that the trap money had been accepted or came into the possession of the petitioner. We have no dispute with Mr. Rath on this question. At the cost of repetition, we may say that in order to bring one within the mischief, acceptance of bribe should be proved to have resulted from the demand and thereafter it was offered and accepted. The enquiry officer categorically stated on the basis of the evidence of the independent witnesses that there was no demand for illegal gratification. Even if red coloured water has flown down from the palm of the petitioner that does not conclusively prove that there was a demand or acceptance and in pursuant there to an amount of Rs. 100/- was taken by Mr. Sahoo. Taking into consideration the cumulative effect of the entire evidence on record one may conclude that there is a strong suspicion against the petitioner but however, strong may be the suspicion it cannot take the place of proof even in a domestic enquiry as has been held by Their Lordships of the Hon'ble Supreme Court in the case of Union of India Vs. H.C. Goel reported in AIR 1964 SC 537. However, Mr. Rath argued that the case is true. We are unable to accept his contention because the ingredients have not been complied and rightly the enquiry officer came to such a conclusion. Of course we fail to understand as to how the enquiry officer came to the

conclusion that the charge had been partially established after having given a finding that there is no evidence regarding demand and acceptance. Hence we are of the firm view that prosecution has signally failed to bring home the charge against the petitioner and the petitioner stands exonerated from the charge.

6. In view of the aforesaid finding, the petitioner is deemed to be continuing in service w.e.f. the date of suspension till his reinstatement and the petitioner is entitled to full pay to which he is entitled under the rules. The petitioner has been paid some money towards subsistence allowance. The arrears to which the petitioner is entitled should be calculated and the same be paid to the petitioner (less the subsistence allowance drawn by him) within sixty days from the date of receipt of a copy of the judgment.

7. Further more it is prayed by the petitioner and it was opposed by Mr.Rath that during the intermittent period juniors of the petitioner have been promoted to the next higher rank. If that is so, the competent authority should consider the case of the petitioner and adjudicate his suitability for promotion to the next higher post and in case he is found to be suitable he should be given promotion with effect from the date his juniors were promoted.

8. Thus the application stands allowed. No costs.


MEMBER (ADMINISTRATIVE)


9-XI-92
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 9/11/1992/KN Mohanty

