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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 76 of 1991

Date of Decision: 24.6.94

Prafulla Ch. Mohapatra

Applicant(s)

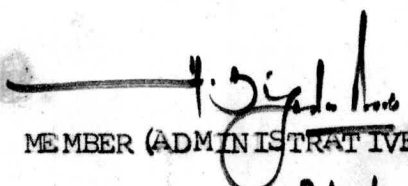
Versus

Union of India & Others


Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *yes*


MEMBER (ADMINISTRATIVE)

24 JUN 94

 24.6.94
VICE-CHAIRMAN

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Respondents

For the applicant

M/s. M.M. Basu
D.K. Patnaik
Advocates

For the respondents

Mr. D.N. Mishra,
Standing Counsel
(Rly. Administration)

C O R A M:

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

AND

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

JUDGMENT

MR. K.P. ACHARYA, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order of punishment passed against the petitioner removing him from service resulting from a disciplinary enquiry contained in Annexure-13, covering Memo No. WA/Admn/Msc. 4/PCM/1646 dated 13.6.1990.

2. Shortly stated the case of the petitioner is that while he was functioning as a Section Officer in the Office of the Divisional Accounts Officer, S.E. Railway, Khurda Road, demanded a bribe of Rs. 350/- from the complainant Shri M. Punaya for showing official favour to Shri Punaya by getting the pending enquiry against Shri Punaya dropped, and in pursuance to the demand the petitioner, Shri P.C. Mohapatra had accepted illegal gratification to the extent of Rs. 350/- and after accepting this amount he was caught and



handed by the trap party constituted by the members of Central Bureau of Investigation. Hence a charge-sheet was delivered to the petitioner, Shri Mohapatra to face ^athe disciplinary enquiry. After fulfilled enquiry was conducted the enquiry officer came to the conclusion that the charge-sheet has been brought home against the delinquent officer, i.e. petitioner Shri Mohapatra, and accordingly submitted his findings to the disciplinary authority, who in his turn confirmed the findings arrived at by the enquiry officer and ultimately ordered removal of the petitioner from service which is under challenge. Appeal preferred by the petitioner not having yielded any fruitful result this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties maintain that the case is involved with overwhelming and fulfilled evidence clinching the issue that the petitioner had accepted illegal gratification from the complainant Shri M. Punaya in order to show ~~him~~ some official favour to the said Punaya and further more the principles of natural justice having been strictly complied with, the case is devoid of merit ^{and} is liable to be dismissed, upholding the order of conviction. In a crux it is maintained that the ~~case~~ being devoid of merit is liable to be dismissed.

4. We have heard Mr. M. M. Basu, learned counsel for the petitioner and Mr. D. N. Mishra, learned Standing Counsel, appearing for the Railway Administration, on the merits of the case. Though several points were urged by



Mr. Basu assailing the findings of the enquiry officer and that of the disciplinary authority including the question that the Deputy F.A.C.O. was not the disciplinary authority of the petitioner, the first and foremost question which needs serious consideration is as to whether principle of natural justice has been violated in the present case thereby denying reasonable opportunity to the petitioner to adequately defend himself. Mr. Basu urged that the petitioner made a prayer on 20.11.1987, contained in Annexure-6 that he should be supplied with the copies of the documents listed in Annexure - 3 of the charge sheet and also copies of the statement of witnesses mentioned in Annexure-4. The Deputy F. A. C. O., while delivering the copies of the documents listed against items 1,2,3,8, 10,11,12 and 14 of Annexure-3 of the charge-sheet, further stated that the petitioner ^{is} at liberty to take extract from the originals of other documents mentioned against serial nos. 4,6,7,9 and 13 pertaining to the proceedings relating to the Selection Board containing 5 sheets, 11 answer papers of appendix, interval training examination, departmental enquiry file of Shri M. Pannayya etc. It was further mentioned in Annexure-7, that the statement of witnesses recorded during the preliminary enquiry, as per Annexure-4 to the charge-sheet are not available in the office of the Deputy F.A.C.O., and therefore, copies of such statements cannot be supplied to the delinquent officer. Nothing was mentioned regarding the prayer of the petitioner to serve a copy of the preliminary enquiry report on the petitioner.



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Basing on these replies given by the disciplinary authority contained in Annexure-7, it was vehemently urged by Mr.M.M. Basu that reasonable opportunity to defend himself has been denied to the petitioner thereby violating the principles of natural justice and hence the disciplinary proceedings should be quashed. In addition to the above, it was contended by Mr.Basu that statement of witnesses recorded during the preliminary enquiry and a copy of the preliminary enquiry report not having been supplied to the petitioner, he is deprived of effectively and adequately cross-examining the witnesses, and therefore, on this account alone, the petitioner should be exonerated from the charges. In support of his contention Mr.Basu relied upon the dictum laid down by Their Lordships of the Supreme Court in the case of Kasinath Dikshita vs. Union of India reported in 1986 SCC (L&S) 502. Hon'ble Justice Mr.R.S.Pathak (as my Lord the 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 the concerned employee cannot prepare his defence, cross-examine the witness, and point out the inconsistencies with a view to show that the allegations are incredible. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental enquiry depends on the facts of each case. In the facts and circumstances of the present case the appellants had been prejudiced in regard

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to his defence on account of the non-supply of the statements and documents".

On the other hand Mr.D.N.Mishra, learned Standing Counsel urged that principle of natural justice has not been violated, because, copies of most of the important documents have been served on the petitioner, and therefore, the overwhelming evidence appearing against the petitioner should not be brushed aside on this minor of technicality of law. We are unable to agree with Mr.D.N. Mishra that this is a minor technicality of law. In our opinion the principles laid down by Their Lordships in the case of Kasinath Dikishta vs. Union of India (Supra) if applied to the facts of the present case, not only the principles apply in full force to the facts of the present case, but it cuts at the root of the matter. Non supply of copies of the statement of witness has definitely deprived the petitioner to effectively cross-examine the witnesses, and therefore, there is no escape from the conclusion that on this account, the principles of natural justice has been violated. The order of the appellate authority suffers from an incurable infirmity. The order of the appellate authority does not contain any reasons for having concurred with the views of the disciplinary authority. The appellate authority remains satisfied by saying that it could not be agreed with the delinquent officer to alter the punishment imposed by the disciplinary authority as the disciplinary authority had acted on specific instructions of the Railway Board, and therefore, there is no scope to review the punishment. This order of the appellate authority



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is directly against the dictum laid down by Their Lordships of the Supreme Court in the case of Ram Chander v. Union of India reported in AIR 1986 SC 1173. The Railway Board, while disposing of the appeal preferred by the petitioner, Ram Chander, did not assign any reasons as to why the appellate authority, i.e. the Railway Board concurs with the findings of the disciplinary authority. Due to absence of reasons assigned by the appellate authority, i.e. the Railway Board, Their Lordships were pleased to observe as follows :

"...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."

Not only Their Lordships expressed the stringent view quoted above, but on that account the punishment imposed on Ram Chander was also quashed.

5. In the circumstances stated above and in view of the discussions made on these two important points, there is no necessity of dwelling upon other points urged by Mr. Basu. Having come to the conclusion that principle of natural justice has been violated depriving the petitioner to effectively and adequately defend himself, we do hereby quash the order of



the appellate authority confirming the order of punishment passed by the disciplinary authority and we also quash the order passed by the disciplinary authority. We further hold that the prosecution has signally failed to bring home the charges against the delinquent officer who is exonerated from the charges and stands acquitted. The petitioner be reinstated to service within three weeks from the date of receipt of a copy of the judgment, and in case the petitioner has retired on superannuation, in the meanwhile, it is deemed that the petitioner is continuing in service with effect from the date of suspension/date of removal from service, and the petitioner is entitled to arrear emoluments to which he would have ordinarily been entitled as per rules, and the amount to which the petitioner is entitled be calculated and paid to him within 90 days from the date of receipt of a copy of the judgment; failing which the defaulting officer will be personally liable to pay interest on the total amount at the rate of 12 per cent per annum. Thus the application stands allowed. No costs.

MEMBER (ADMINISTRATIVE)

VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 1994/ B.K. Sahoo

