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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.413 OF 1992
Cuttack this the 8th day of September, 1998

Ghanashyam Kabat

Applicant(s)

-VERSUS-

Union of India and others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administraive Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

8-7-98
(G.NARASIMHAM)
MEMBER(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.413 OF 1992
Cuttack this the 8th day of September, 1998

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Sri Ghanashyam Kabat
aged about 35 years
S/o.Sri Narasingh Kabat
Ex-Extra Departmental Delivery Agent
At/Po:Nyagaon
Via:Eram, Dist:Balasore

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Applicant

By the Advocates:

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

-Versus-

1. Union of India represented by
Chief Postmaster General
Orissa Circle,
Bhubaneswar,- 751001
Dist: Puri
2. Superintendent of Post Offices
Bhadrak Division
At/Po:Bhadrak,
Dist:Balasore, PIN 756 100
3. Asst.Superintendent of Post Offices
I/c. Bhadrak Central Sub-Division
At/Po:Bhadrak,
Dist:Balasore, PIN 756100

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By the Advocates:

Respondents
Mr.Ashok Mishra
Sr.Standing
Counsel

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ORDER

MR.G.NARASIMHAM, MEMBER(J):Applicant Ghanashyam Kabat, while serving as Extra Departmental Delivery Agent at Nuagaon Post Office in account with Eram S.O. was entrusted with money order of Rs.150/- on 15.6.182 to be paid to one Smt.Lakhmi Pati. A disciplinary proceeding was initiated against him on 10.9.1984 vide charge-sheet(Annexure-5) on the ground that without making payment of this amount to Smt.Lakhmi Pati, he forged her L.T.I. on the M.O. coupon and misappropriated the money order. The applicant denied this charge in toto. Ultimately the disciplinary authority, i.e. Respondent 3 by his order dated 30.3.1987 held him guilty and imposed the penalty of removal from service. His appeal against this order was rejected on 10.2.1988.

Thereafter the applicant moved this Tribunal in O.A.20/88 for quashing the order of removal from service on various grounds. One of the grounds was that the M.O. voucher containing the alleged forged L.T.I. was not made available during inquiry for proper proof. This Tribunal by order dated 1.12.1988 quashed the order of removal and ordered for further inquiry with certain directions one of which was that M.O. paid voucher containing the alleged forged L.T.I. shall have to be called from the appropriate authority and shall be proved in the inquiry. Other directions of the Tribunal are not relevant for disposal of this Original Application. Pursuant to the direction of the Tribunal further inquiry was held but without the production of relevant voucher containing the

alleged forged L.T.I. On the basis of this inquiry report Respondent No.3 in order dated 7.1.1991 terminated his service(Annexure-4). Against this termination order the applicant preferred an appeal under Annexure-5 before Respondent 2. During the pendency of this appeal he preferred this application on 27.7.1992 for quashing the order of removal and for his reinstatement with all consequential service benefits. This application was admitted on 27.8.1992. These facts are not disputed.

2. In the counter the department has taken the stand that the appeal was rejected by Respondent 2 on 20.10.1992(Annexure-R/1) on the ground of limitation and that the M.O. voucher containing the alleged forged L.T.I. of the complainant Smt.Lakhmi Pati could not be produced during inquiry as it was destroyed in the ordinary course of business.

3. Shri P.V.Ramdas, learned counsel appearing for the applicant strongly contended that due to non-availability of production of the relevant M.O. voucher said to be containing false or forged L.T.I. of the payee Smt.Lakhmi Pati, the applicant has been greatly prejudiced inasmuch as he lost an opportunity to establish that the L.T.I. appearing on the voucher was in fact the L.T.I. of the payee. Had he established that the voucher containing the actual L.T.I. of the payee then the other evidence adduced during inquiry that amount of Rs.150 was not in fact paid to the payee would necessarily ^{have been} be false; because it is not the case of the department that the applicant had obtained the L.T.I. of

the payee on the M.O.Voucher and thereafter did not make any payment, in which event the oral evidence as to non-payment carried some weight. Thus the contention the the learned counsel, that due to non-availability of this M.O. voucher during inquiry principles of natural justice have been ^{grossly} ~~completed~~ violated. Further the direction of the Tribunal that this M.O.voucher shall have to be produced during inquiry having not been complied the proceeding is entirely vitiated.

The learned Senior counsel Shri Ashok Mishra appearing for the department-respondents submitted that the M.O.voucher could not be produced as it was destroyed as per departmental rules and as such non-production was not intentional or deliberate. There being other evidence before the disciplinary to prove non-payment of amount, finding the disciplinary authority in this regard is not open to challenge before the Tribunal.

4. We have carefully considered the respective contentions advanced by the learned counsel of both sides. It is true that the Tribunal is not the appellate authority and cannot sit over the ~~decision~~ ^{stnd} of the disciplinary authority. ~~Yet~~ ^{stnd} law is well settled that the Tribunal can review ~~of~~ ^{it} the manner in which the decision has been arrived at and can interfere when the disciplinary authorty holds proceedings in a manner inconsistent with natural justice orin violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding arrived at is based on no evidence. It would have been difficult on our part to interfere with the finding of the disciplinary authority

had he arrived at the guilt of the applicant after considering the relevant M.O. voucher along with other evidence adduced during inquiry. But here is a case where the most vital document over which the entire superstructure of the proceeding is based could not be made available during inquiry for consideration. Had it been available the applicant might have had the opportunity to prove the L.T.I. available thereon is in fact the L.T.I. of the payee Smt. Lakhmi Pati by comparison with her admitted L.T.I. through an expert. This opportunity was denied to the applicant obviously because the M.V. voucher has been destroyed by the department in ordinary course of business.

Question for consideration is whether the applicant is in any way responsible for the destruction of this important piece of evidence. Obviously the answer will be no. In Annexure-R/2 of the counter which reveals destruction of this most important and vital document is letter dated 11.10.1994 written by the Director of Accounts(Postal), Calcutta, addressed to the Assistant Superintendent of Post Offices, Bhadrak(Res. 3) in response to latter's Telegram dated 2.9.1993 discloses that the destruction of this M.O voucher was intimated to the Superintendent of Post Offices, Bhadrak (Res.2) in his letter dated 23.7.1984. In other words by 23.7.1984, this document was already destroyed in ordinary course of business of the department. The fact, ^{however} remains that in O.A.20/88 the respondents themselves had not taken this plea. On the other hand as the judgment(Annexure-2) reveals the stand taken in the counter that the document

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was not available. Because of this stand, this Tribunal gave a direction to procure the document from the Calcutta Office and prove the same during fresh inquiry. Hence a doubt may arise whether the document was really destroyed by the time the second inquiry had taken place as per the direction of the Tribunal. If indeed the document stood destroyed prior to 27.3.1984 as would appear from Annexure-R/2, then we have no hesitation to hold that the department was negligent in destroying this important and vital document basing on which preliminary inquiry was conducted in the year 1982 itself on the basis of a complaint(S-I) from the payee Smt.Lakhmi Pati as would be evident from the discussion as to the facts in the inquiry report under Annexure-A/3. Preliminary having been initiated in the year 1982 itself to initiate this proceeding, the department was duty bound to preserve this vital document over which the entire superstructure of the proceeding is based. The negligence or indifference of the department is still more apparent from the fact that even after the destruction of this document prior to 27.3.1984, they initiated this proceeding on 10.9.1984 by issuing charge-sheet(Annexure-A/5). Thus for the negligence or indifference of the department the delinquent applicant has lost valuable opportunity and right to establish that the L.T.I. appearing on the relevant M.O. voucher is in fact the L.T.I. of the payee. Thus the department had grossly greatly violated the principles of natural justice in not affording reasonable opportunity to the applicant under law to prove his case through the very document over

which the entire proceeding is based.

5. The expression "reasonable opportunity" has been interpreted by the Hon'ble Supreme Court in Kashinath Dikshita v. Union of India & Others (AIR 1986 SC 2118) is as follows :

"The meaning of reasonable opportunity of showing cause against the action proposed to be taken is that a Government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held."

Our discussion above would reveal that the applicant was not afforded reasonable opportunity to defend himself against the charge, ^{and} but he has obtained the L.T.I. over the M.O. voucher not belonging to the payee and thus misappropriated the amount of Rs.150/-. This is a typical case of disciplinary proceedings wherein principles of natural justice have been violated from its inception. We have, therefore, no hesitation to hold that the entire proceeding has been vitiated and the order of removal of the applicant from service by Res.3 and order of Res.2 in not interfering in appeal are hereby quashed. Since the basic document being not available on account of destruction as submitted by the respondents-department in their counter, there is no use ~~for~~ giving direction for a fresh inquiry. As the removal order is quashed the applicant is deemed to be in service with all consequential benefits.

In the result the application is allowed. But there shall be no order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 8.9.98
B.K.SAHOO, C.M.

8.9.98
(G.NARASIMHAM)
MEMBER (JUDICIAL)