(15)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.673 OF 1992
Cuttack this the 15th day of October, 1999

Bhaktabandhu Mohanta — 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 Tribunal or not ? NO.

Somnath Som 15.10.99
(SOMNATH SOM)
VICE-CHAIRMAN

15.10.99.
(G.NARASIMHAM)
MEMBER(JUDICIAL)

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(16)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.673 OF 1992
Cuttack this the day of October, 1999

CORAM:

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

...

Bhaktabandhu Mohanta
At/PO: Ektali, Via: Khairi Jashipur
District : Mayurbhanj

... Applicant

By the Advocates : Mr.D.P.Dhalasamant

-Versus-

1. Union of India represented through
Chief Post Master General,
Orissa Circle, Bhubaneswar-751001

2. Director of Postal Services
Sambalpur Region,
Sambalpur - 768001

3. Superintendent of Post Offices,
Mayurbhanj Division,
Baripada- 757 001

... Respondents

By the Advocates : Mr.B.Das,
Addl.Standing Counsel
(Central)

...

ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, Bhaktabandhu Mohanta, while serving as Extra Departmental Branch Post Master, Ektali Branch Office has beenremoved from service in a disciplinary proceding initiated by Respondent 3 in Memo dated 20.8.1990 under Annexure-1. Order of punishment of removal was passed on 29.5.1991 under Annexure-4. On appeal, appellate authority (Res.2) confirmed the order of removal passed by the disciplinary authority (Annexure-A/6). This application has been filed with a prayer for quashing these orders and his consequent reinstatement along with back wages.

The applicant was placed under put off duty on 28.3.1990 on the ground of detection of fraud in respect of some deposits and withdrawals of savings deposits accounts. The matter was reported to Police on 19.7.1991. G.R.case 169/91 registered in this connection ultimately ended in acquittal of the applicant through judgment dated 31.1.1994, pronounced by learned S. D. J. M. Karanjia. These facts are not in controversy.

In the Original Application the applicant states that though he asked for supply of copy of preliminary enquiry report, the same was not supplied to him. Also documents as many as 10 in number although permitted by the Inquiring Officer to be produced were held back by some pretext or the other. Due to non-supply of copy of the preliminary enquiry report and non-production of documents, he was denied reasonable opportunity to defend his case and thereby violated the principles of natural justice.

2. In the counter filed by the respondents it has been averred that copy of the preliminary report was not supplied to the applicant since the relevancy of the same can be established by him by crossexamining the witnesses. As to the non-supply of documents, the version of the Department is that the enquiring authority altogether allowed 12 documents, out of which document at Sl.12 remained with one of the depositors and documents at Sl.Nos.1, 2, 3, 4, 6, 7, 8, 9 and 10 were not available with the respondents. Thus the respondents in general have denied violation of principles of natural justice and prayed for dismissal of this application.

3. We have heard Shri D.P.Dhalasamant, learned counsel for the applicant and Shri B.Das, learned Addl.Standing Counsel for the respondents. Also perused the records. During hearing learned counsel for the applicant also filed xerox copy of judgment in G.R.Case 169/91.

Shri Dhalasamant, learned counsel for the applicant raised the following three contentions in support of the plea for quashing the order of removal.

a) Non-supply of copy of preliminary enquiry report violates the principles of natural justice;

b) Documents relied by the applicant not having been supplied the applicant could not make effective defence; and

c) for self-same charge criminal case ended in acquittal

4. The ground as to non-supply of copy of preliminary report has been mentioned in Para-5.1 of the application. In that para decision reported in 1988(3)SLR(CAT) 17 finds mention in respect of the ground

averred. However, the names of the parties have not been mentioned. This decision has also not been placed before us at the time of hearing. S.L.R. of this part is not even available in our Library as reported by the Librarian. At least xerox copy of this decision should have been filed by the applicant. Evidently, the applicant, at the time of hearing did not feel that this decision would support his contention. This decision appears to have been pronounced by certain Bench of the Central Administrative Tribunal and not by the Supreme Court. The point of non supply of preliminary enquiry report has been discussed by the Hon'ble Supreme Court in **Vijaya Kumar Nigam vs. State of M.P. reported in 1997 SCC(L&S) 489**, wherein it has been held that preliminary report is only to decide and assess whether it would be necessary to take any action against the delinquent officer and it does not ~~confirm~~ form any foundation for passing the order of dismissal against the employee and as such non supply of preliminary report by itself would not violate the principles of natural justice. What is necessary is that the statements of persons that formed the basis of the report has to be supplied. It is not the case of the applicant in this case that copies of statements of witnesses during preliminary enquiry were not supplied. This being the position, we are not inclined to accept the contention of Shri Dhalasamant raised in this connection.

5. In ~~respect~~ regard of contention as to non-supply of documents, Shri Dhalasamant placed reliance on the decision in the case of **State of Uttar Pradesh vs. Satrughan Lal** reported in 1998 SCC(L&S) 1635. In this reported case copies of statement of witnesses during

preliminary enquiry were not supplied to the charged employee. It was held that if charged employee is required to submit reply to the charge sheet without having copies of statements, he is deprived of an opportunity of effective hearing and further supply of these copies is also necessary where witnesses making the statements are intended to be examined against him during regular enquiry. As earlier stated, it is not the case averred in the application that copies of statement of witnesses referred during preliminary had not been supplied to the applicant. In this connection we may as well quote the relevant averment made in Para-5.2 of the application which runs thus :

> "The documents as many as 10 in numbers although permitted by the Inquiring Officer to be produced were held back on some pretext or the other resulting in denial of reasonable opportunity and as such the entire proceeding has been vitiated".

Again in Para -4.3 of the O.A. it has been mentioned that the applicant had also prayed for production of certain documents which was allowed by the Inquring Officer in order dated 13.11.1990(Annexure-2), but were not available to the applicant on some pretext or the other. The copy of the order dated 7.1.1992 indicating the position has been annexed as Annexure-3. Annexure-2 reveals that in letter dated 3.11.1990, the applicant prayed for production of documents under Sl. Nos. 1 to 19 (this letter has not been annexed to make us understand the particulars of those documents), out of which the Inquiring Officer did not consider for production of the documents under Sl. Nos. 1 to 15. Documents under Sl.16 to 19 were not considered relevant by the Inquiring Officer. These documents are: preliminary report of the Investigating Officer, seizure

list of documents, statement as to mortgage of land after giving loan of Rs.5400/- and receipt of Bhaktabandhu Mohanta given to Daka H.O. on 30.6.1989. Supply of these four documents were disallowed by the Inquiring Officer, because charges were not based on them. Annexure-3 reveals that documents under Sl. Nos., 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 11 could not be produced. None of these documents is a statement made by any witness relied in the charge sheet as ~~the~~ witness in the proceeding. These documents which are mostly counterfoils, some withdrawal forms and so on were not available with the disciplinary authority for production. Hence it is necessary for the applicant to explain as to how those documents were relevant for his defence and how he was prejudiced by their non-production. In this connection the Hon'ble Supreme Court in the case of **State of Tamil Nadu vs. Thiru K.V.Perumal** reported in **1996 SCC(L&S) 1280** held that it is the duty of the authority only to supply relevant documents and not each and every document as asked for by the delinquent and it is for the delinquent to show the relevancy of the documents asked for by him and the manner in which non-supply thereof is prejudicial to his case. In an earlier decision in the case of **State Bank of Patiala vs. S.K.Sharma** reported in **1996 SCC(L&S) 717** it was held that in the absence of pleading as to how prejudice resulted, assertion of violation of principles of natural justice will be of no use and if no prejudice is caused, no interference would be called for. As already stated, the application is conspicuously silent as to the particulars of documents and as to how they are

relevant for the purpose of his defence and how he was prejudiced by their non production. In view of this legal position, contention of Shri Dhalasamant in this regard also fails.

6. The other contention raised from the side of the applicant is that charges in the disciplinary proceeding and criminal trial being same, punishment imposed in the disciplinary proceeding cannot further stand once criminal case ended in acquittal. There is no decision direct on this point cited by Shri Dhalasamant, learned counsel for the applicant. At this stage, we may mention that during hearing Shri Dhalasamant, learned counsel for the applicant cited the following three decisions :

1. 1998 SCC(L&S) 1635 (State of U.P. vs. Satrughan Lal)
2. 1999 (July) Swamy's News 85, case under Sl.153(Varadwaj R. Vs. Union of India)
3. AIR 1999 SC 1416; Capt.M.Paul Anthony vs. Bharat Coal Mines Ltd.

Satrughan Lal case has already been dealt while dealing with contention as to non supply of documents. This is not relevant in regard to contention as to similarity of charges. Sl. No.153 of Swamy's News of July Part at Page 85 relates to case of Sampuram Singh vs. Lt. Governor of Govt. of N.C.T. and not Bharadwaj R. vs. Union of India as cited and mentioned in the Memo of citation filed by Shri Dhalasamant. In this decision the Criminal Court honourably acquitted the delinquent employee and the Tribunal observed that he cannot be punished for the same charge in the disciplinary proceeding. Yet, the Principal Bench did not quash the

punishment on the ground of acquittal, because, as in the present case before us, the impugned order of punishment was passed earlier than the order passed in the criminal case, but on the ground that punishment order was passed on no evidence. Hence this decision will be of no help to Shri Dhalasamant. Further, interpretation of Shri Dhalasamant as to the principle in this Principal Bench case is contrary to the ruling of the Hon'ble Supreme Court in **Senior Superintendent of Post Offices vs. A.Gopalan reported in 1999(Lab. I.C) 234** wherein it has been held that acquittal of delinquent official by the Criminal Court on the same charge involved in the disciplinary proceeding does not conclude the disciplinary proceeding. **AIR 1999 SC 1416 (Capt. M.Paul Anthony)** case as cited by the learned counsel for the applicant nowhere lays down that acquittal in criminal case in respect of the charge which is also involved in the disciplinary proceeding has necessarily to be quashed as also the punishment imposed in the disciplinary proceeding. What this decision says is, if the evidence in the criminal case and in the disciplinary proceeding is same, acquittal in the criminal case can conclude the departmental proceeding. Hence, it is necessary to see whether the evidence led in the criminal case is the very same evidence in which the disciplinary proceeding is based. On comarison of xerox copy of the Criminal Court judgment with the charge memo, it is noticed that at least two witnesses relied in the disciplinary proceeding, viz., Aswini Kumar Nayak and Rasananda Mohanta have not been examined during criminal trial and documents under Sl. Nos. 4, 5, and 15 to 24 referred

under Annexure-3 of the charge memo were also not exhibited in the criminal case. Hence it cannot be said that the Department placed reliance on the very same evidence whichhad been adduced in the criminal case. In other words, the evidence led in the disciplinary proceeding is not identical with the evidence led in the criminal case. Hence this decision will be of no help to the applicant.

Moreover, charges are not the same. The disciplinary proceeding is based on violation of Rule-17 of E.D.A.(Conduct & Service) Rules, 1964 which requires maintenance of absolute integrity and devotion to duty. Nature and quality of evidence required to be proved in a disciplinary proceeding is different from the evidence required to be proved in ~~the~~ a criminal case. Law is well settled that technical rules of evidence and proof beyond reasonable doubt are not applicable to departmental enquiries as per decision in the case of **High Court of Bombay vs. Udai Singh reported in 1997 SCC(L&S) 1132.**This has also been reiterated in Senior Superintendent of Post Offices case (Supra) wherein in Para-6 of that decision it has been clearly observed that in criminal case charge has to be proved by the standard of proof beyond reasonable doubt while in departmental proceeding the standard of proof for proving the charge is pre-ponderance of probabilities. Hence acquittal in a criminal case would not necessarily disprove the charges in a disciplinary proceeding based more or less on similar facts.

7. Having regard to the charges that have been established, we do not see that the order of punishment

of removal from service is in any way dispropertionate. Thus interference on the quantum of punishment is not warranted.

8. In the result, we do not see any merit in this application which is accordingly dismissed, but without any order as to costs.

9. Before we part with this case, we would like to touch on one request made by the learned counsel for the applicant. After the conclusion of arguments when we were about to dictate the order adjourning the case to this day for pronouncement of the judgment, Shri Dhalasamant requested particulars of reference of three decisions cited by him during arguments shouldfind place in our order.This request was made by him, despite simultaneously, filing a memo containing the references of those three decisions. Barring orders disposing of the cases finally and orders disposing of interim prayers, other orders are not expected to disclose the entire gamut of submissions made by the counsels. Such orders are dictated only to indicate day to day progress of the concerned cases. In case of arguments are avanced, the points are some, usually jotted down by us in separate papers to be attached to the concerned record. Infact in this particular case points of arguments advanced along with the reference of cases cited were so jotted down. Yet, on account of pressure of time in order to avoid debate and arguments onthis issue, we acceded to the request of Shri Dhalasamant and made note of the reference of those three decisions in the order-sheet. However, we make it clear that this shall not be cited as a precedent in future. We hope Shri Dhalasamant will not make such a request in

future.

(SOMNATH SOM)
VICE-CHAIRMAN

(G.NARASIMHAM)
MEMBER(JUDICIAL)

B.K.SAHOO