

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 460 OF 1993

Cuttack, this the 9th day of September, 1999

Manohar Roy

Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*

2. Whether it be circulated to all the Benches of the
Central Administrative Tribunal or not? *No*

l. r. m.
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
9.9.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 460 OF 1993
Cuttack, this the 9th day of September, 1999

CORAM:

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

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Manohar Roy, aged about 42 years, son of late Madan
Mohan Roy, village-Chudamani, PO-Chudamani,
District-Bhadrak
Applicant

Advocates for applicant - M/s A.Deo
B.S.Tripathy
P.Panda
D.K.Sahoo.

Vrs.

1. Union of India, represented by its Secretary,
Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle,
At/PO-Bhubaneswar, District-Khurda.
3. Superintendent of Post Offices, Bhadrak Division,
PO/Dist. Bhadrak.
4. Assistant Superintendent of Post Offices, In charge
Bhadrak Central Sub-Division, PO/District-Bhadrak

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Respondents

Advocate for respondents - Mr.S.B.Jena
A.C.G.S.C.

O R D E R

S.Som
SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for quashing the order of the disciplinary
authority at Annexure-3 removing him from the post of
EDDA, Chudamani EDSO and the order of the appellate

authority at Annexure-4 rejecting his appeal. The second prayer is for a direction to the respondents to reinstate the applicant with back wages.

2. The admitted case between the parties is that while the applicant was working as EDDA, Chudamani EDSO, an enquiry under Rule 8 of P & T ED Agents (Conduct & Service) Rules, 1964 was initiated against him on two charges. The inquiring officer held both the charges as proved. The disciplinary authority after taking into account his representation imposed the impugned punishment of removal from service on the applicant. His appeal against the order of punishment was also rejected by the appellate authority in his order 19.10.1993. That is how the applicant has come up in this petition with the prayers referred to earlier.

3. The respondents have filed counter and opposed the prayers of the petitioner.

4. This 1993 matter came up for hearing from the warning list which was notified more than a month ago. When the matter was called the learned counsel for the petitioner Shri A.Deo and his associates were absent nor was any request made on their behalf seeking adjournment. As this was a 1993 matter where pleadings had been completed long ago it was not possible to drag on the matter indefinitely. We therefore heard Shri S.B.Jena, the learned Additional Standing Counsel for the respondents and perused the records and hearing was concluded.

5. The applicant has stated that documents asked for by him were not supplied to him and thereby he was denied reasonable opportunity. He has also stated that the finding of the disciplinary authority is against the material on record. Lastly, it is submitted that the disciplinary authority blindly accepted the finding of the inquiring officer without analysing the material on record.

S. S. Jena

6. The disciplinary authority in his order has mentioned about the seven documents called for by the applicant and he has held that due to non-availability six of the documents could not be supplied to him and these documents are also no way relevant to the charges. The seventh document is Money Order paid voucher No.230 dated 5.1.1984. The applicant has taken the stand that because of non-production of the voucher he could not undertake proper and reasonable cross-examination of the payee. The disciplinary authority has held that this is an afterthought as the applicant did cross-examine the payee and the payee deposed that ~~she~~ had not acknowledged the receipt of the Money order. She came to know about it when his middle son Raghunath Barik came home and enquired about payment of the Money Order. Therefore, the disciplinary authority has held that non-production of the Money Order voucher has not prejudiced the case of the applicant. As regards the other six documents these are inspection report of SDI(P), Bhadrak Central Sub-Division for 1984-85, visiting reports of Overseer, Mails; Sub-Post Office Daily accounts from 10.1.1984 to 15.1.1984, Sub-Post Office Accounts Book for January 1984, Overseer's Diary relating to January and February 1984, and the diary of SDIP(P), Bhadrak Central Sub-Division for January 1984 upto the period of inspection for 1984. The disciplinary authority has held that these documents are not relevant with regard to the ^{first} charge against the applicant which is non-payment of Money Order to the payee and the second charge about accepting money for depositing in the two S.B.Accounts but not handing over the money to the EDSPM. From the charges it is clear

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that the inspection reports and diaries of SDI(P) and Overseer, Mails and the Sub-Post Office Accounts are not relevant at all so far as these charges are concerned. Therefore, it must be held that the conclusion of the disciplinary authority that non-supply of the six documents has not prejudiced the case of the applicant because these documents were not relevant at all is reasonable and cannot be faulted. As regards the effect of non-supply of the seventh document, i.e., M.O.paid voucher, this will be considered while discussing the second submission of the applicant that the findings of the disciplinary authority are against the weight of evidence and materials on record. To consider this aspect one will have to refer to the charges and the order of the disciplinary authority. The applicant has not submitted a copy of his explanation and therefore it is not possible to refer to his explanation except insofar as this has been dealt with by the disciplinary authority in his order. It is also to be noted that in a matter of disciplinary proceeding the Tribunal can interfere only if the findings are based on no evidence and are patently perverse. The charges and the order of the disciplinary authority are being examined from this limited aspect.

7. The first charge against the applicant is that when he was working as EDDA, Chudamani EDSO, he received Money Order No.230 dated 5.1.1984 for Rs.70/- payable to Smt.Kanitamani Barik. He took four Money Orders with cash of Rs.620/- on 12.1.1984. These included Money Order No. 230 dated 5.1.1984 for Rs.70/-. The applicant showed the above Money Order as paid on 12.1.1984 in his Postman Book and accounted for

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payment of the amount to the payee without actually making payment to the payee. He later on admitted non-payment of the value of the Money Order to the payee and voluntarily credited a sum of Rs.70/- on 1.3.1984. The second charge is that he received a sum of Rs.100/- on 6.1.1984 from one Digambar Rana for deposit of Rs.50/- each in S.B.Account No.83036 of Pradeep Kumar Rana and S.B.Account No.836009 of Smt.Gourimani Rana, but he did not hand over the amount to the EDSPM for deposit in the aforesaid two S.B.Accounts. He did not enter the amount in the Pass Book or in postal record. He utilised the amount for his personal purpose. It is stated that he voluntarily credited a sum of Rs.100/- under Classified Receipts on 8.3.1984. From the order of the disciplinary authority it appears that from the Register of M.O-3 maintained in Chudamani EDSO it was proved that the applicant has received M.O.no.230 dated 5.1.1984 for Rs.70/- along with three other M.Os. together with amount of Rs.620/-. The payee Kaintamani Barik in her deposition has stated that her middle ^{25m} Raghunath Barik sent the Money Order to her in 1984. ^{15M} She came to know about the Money Order when her son came to the village and enquired about payment of the Money Order. Thereafter her son preferred a complaint and he received the amount after about one year. It has also been proved that from the evidence of Overseer, Mails, who had taken up the enquiry and collected the statement of the applicant, it has been proved that the applicant has admitted that he did not pay the amount to the payee and utilised the amount himself. The applicant has challenged this finding on the basis of the statement of the payee during her examination that she is an old

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woman and she sometimes forgets things. On this basis, it cannot be held that she received the Money Order amount and forgot all about it. In her deposition she had specifically stated that the money was not received by her. Her son later on made the complaint and thereafter after one year the money was paid. In the face of the above facts moreso when the payee has been examined and cross-examined it cannot be held that the finding of the inquiring officer with regard to the first charge is based on no evidence. It is also clear that the non-supply of the Money Receipt paid voucher has not prejudiced the case of the applicant in any way. This is because the payee has deposed that she has not received the money . The applicant has admitted that he had put his LTI instead of obtaining the LTI of the payee and therefore the showing the MO receipt to the payee could not have improved the applicant's case in any way. We therefore hold that non-supply of the Money Order receipt to the applicant has not prejudiced his case. This contention is also rejected.

8. As regards the second charge, Shri Digambar Rana, who handed over the amount of Rs.100/- to the applicant for depositing in the two SB Accounts in the names of his son and wife, preferred a complaint and the matter was enquired into. During enquiry the applicant admitted to have accepted the amount and not handed it over to the EDSPM. He also admitted that he had spent the money for his own purpose. During the disciplinary proceedings the applicant took the stand that he was not the authority to accept SB deposits. SB Pass Books were also not handed over to him. The disciplinary authority has noted that the inquiring officer has elaborately discussed the evidence and come to the finding that this charge has been proved against

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the applicant. The petitioner has not enclosed a copy of the enquiry report which has admittedly been received by him and therefore it is not possible to examine the finding of the inquiring officer. But on the basis of the order of the disciplinary authority and his finding with regard to this charge it cannot be said that the finding of the disciplinary authority is based on no evidence.

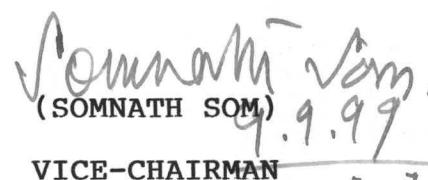
9. In consideration of all the above, we hold that the allegation of denial of reasonable opportunity has not been proved. We also hold that the two charges have been rightly held to have been proved against the applicant.

10. As regards the punishment, the charge in this case is serious in nature. The applicant was working as Extra-Departmental Delivery Agent and it was his duty to pay Money Orders to the payee. But instead of doing that he had misappropriated the Money Order amount. In consideration of this, it cannot be said that the punishment imposed is excessive.

11. In the result, therefore, we hold that the applicant has not been able to make out a case for the reliefs claimed by him. The Original Application is held to be without any merit and is rejected but without any order as to costs.


(G. NARASIMHAM)

MEMBER (JUDICIAL)


(SOMNATH SOM)
9.1.99
VICE-CHAIRMAN