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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 356 OF 1994
Cuttack this the 20th day of February/2001

Mahadev Harpal

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 356 OF 1994
Cuttack this the 20th day of February/2001

CORAM:

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

...

Sri Mahadev Harpal, Ex-S.D. Packer,
S/o. Baya Harpal, At/PO-Guintala,
Via-Rajendra College, Dist-Bolangir

...

Applicant

By the Advocates

Mr. P. K. Padhi

-VERSUS-

1. Union of India through it's Secretary,
Ministry of Communication, Dak Bhawan,
New Delhi-110001
2. Director of Postal Services, O/O. the
Post Master General, Berhampur Region
At/PO-Berhampur (GM) (O) 760001
3. Superintendent of Post Offices,
Bolangir Division, At/PO/Dist-Bolangir

...

Respondents

By the Advocates

Mr. A. K. Bose,
Sr. Standing Counsel
(Central)

ORDER

MR. G. NARASIMHAM, MEMBER (JUDICIAL): Order of dismissal of the applicant, an E.D. Packer in S.B. Section of Bolangir, Head Post Office, passed by the Disciplinary Authority (Respondent No. 3) on 13.8.1991 (Annexure-1) and its confirmation order dated 20.2.1992 (Annexure-2) of the Appellate Authority are under challenge in this Original Application.

Charges in Memo dated 30.1.1989 (Annexure-6) indicate that the applicant opened S.B. Account 969207 in that Head Office and surreptitiously inflated the figures in the Pass-book and the ledger and had withdrawn those inflated amounts to a tune of Rs. 13,000/-. Further he had misappropriated Rs. 6465/- belonging

to some S.E. Account holder, who had deposited the amounts with him on different dates though refunded the amounts ^{voluntarily} surreptitiously on being directed.

2. The grievance of the applicant is that for very same allegations ^{earlier} certain charges in Memo dated 24.4.1987 were framed and he had engaged G. Padhi, a Postal employee of Berhampur H.C. as defence assistant. But the charges were dropped on 8.6.1988 and charges afresh under Annexure-6 were served. As there was no progress in the inquiry, the defence assistant withdrew from the inquiry. As he was left without any defence assistant, as he was not supplied documents mentioned in Para-4 (VIII) of the Application and as he fell ill he did not participate in the inquiry. In other words, his plea is that he was not afforded reasonable opportunity to defend himself.

3. In this connection the stand of the Department is that after framing charges in 1987, the matter was intimated to the C.B.I. which investigated. Since the applicant refunded the misappropriated amounts, a decision was taken not to prosecute and charges under Annexure-6 were issued. As the defence assistant on several occasions took time, proceeding in the inquiry was held up. After he withdrew his consent, the applicant was asked to engage another defence assistant in letter dated 10.7.1990 (Annexure-R/6) and the inquiry was fixed to 22.8.1990. Though the applicant sought time for 3/4 months in letter dated 6.9.1990 (Annexure-R/7), he was intimated by letter dated 7.9.1990 (Annexure-R/3) that inquiry could not be postponed failing which inquiry would proceed ex parte. Out of the three documents mentioned in Para-4 (VIII) of the O.A., except the report of G.E.Q.D. the applicant perused the other three documents and had taken extracts of the same, vide inquiry

order sheet dated 20.4.1990 (Annexure-R/3). Report of the G.E.Q.D. was not relied ^{on} during the inquiry. Thus no prejudice caused to the applicant. The applicant deliberately remained exparte. Yet copies of the deposition, of witnesses were sent to him by Regd. Post on each day of inquiry vide Annexures-R/5 to R-5(VI). Yet the applicant did not cooperate ^{and} by ~~sending~~ ⁱⁿ a Medical Certificate on the ground of illness.

4. In the rejoinder the applicant reiterated the averments in the Original Application.

5. At the outset it needs to be mentioned that the applicant has deliberately suppressed in the Original Application that the disposal of O.A.214/90 on 24.6.1993 relating to these charges filed by him. Annexure-R/2 of the Department discloses that in that O.A. the applicant made an attempt for quashing of the present charges on the ground ^{earlier} certain charges were dropped but without success. Hence his grievance in this O.A. in this regard is without any substance.

6. In the rejoinder there is no denial that at the instance of the defence assistant the inquiry was held up on several occasions and that he was given opportunity to engage another defence assistant. There is also no denial that opportunity was provided to him to peruse the documents and take extracts. Further there is no denial that inquiry date was intimated to him intimating him that no further adjournment would be given and that on each date of inquiry copies of the deposition of witnesses were sent to him by Regd. Post. Thus principles of natural justice were in no way vitiated.

7. It is true that he sent a Medical Certificate dated 10.9.1990 (Annexure-4) in support of his illness. But this

certificate was received on 14.9.1990 wide order sheet dated 14.9.1990 (Annexure-R/5(v)). By then the inquiry was at the closing stage as witnesses were already examined on 10.9.90, 11.9.90, 12.9.90 and 13.9.90. Hence the Inquiring Officer did not consider the medical certificate to be relevant specially when the inquiry was taking place at Bolangir where the applicant was residing. Thus absence of the applicant was deliberate.

8. We have also carefully perused the orders of the Disciplinary Authority and Appellate Authority which are well discussed and based on evidence, and ^{do} not suffer from any legal infirmity. Punishment of dismissal is in no way disproportionate to the gravity of charges.

9. We do not find any merit in this O.A. which is dismissed. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

20.2.201
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//