

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 371 OF 1994.
Cuttack, this the 08th day of February, 2000.

SHRI P. MOHAN RAO.

....

APPLICANT.

VRS.

UNION OF INDIA & ORS.

....

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?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

8-2-2000
(G. NARASIMHAM)
MEMBER (JUDICIAL).

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 371 OF 1994.

Cuttack, this the 08th day of February, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

..

SHRI P. MOHAN RAO,
Aged about 32 years,
S/o. P. Channa Bapu,
EX-EDDA, At/Po: Jalatar,
Dist. Rayagada.

...

... APPLICANT.

By legal practitioner : M/s. P. V. Ramdas, P. V. B. Rao, Advocates.

-Versus-

1. Union of India represented by the
Chief Postmaster General,
Bhubaneswar.
2. Senior Superintendent of Post Offices,
Koraput Division, Jeypore (K).
3. Sub-Divisional Inspector,
Umarkote Postal Sub Division,
Umarkota-764 073.

.... RESPONDENTS.

By legal practitioner: Mr. A. K. Bose, Senior Standing Counsel.

....

O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :

Applicant, an Extra Departmental Delivery Agent in Jalatar Branch Post Office, in account with Gunupur Sub Office was removed from service in a disciplinary proceeding initiated by the Departmental Authorities i.e. Respondent No.3. His appeal to the Appellate Authority, Respondent No.2, did not yield any result. Hence this Application, challenging the order of removal.

2. On 9.9.1991, he has been served with charge containing averment that while serving as EDDA at Jalatar Branch Post Office, he received FPO 606 Money order Number 160 dated 6.8.1991 for Rs. 300/- payable to Smt. Loyane Gomango with other articles after duly signing in the Branch Office journal on 20.8.1991 and did not turn up to office till 22.8.91 and after returning on 23.8.91 morning, he returned the FPO and MO No.160 with the LTI as paid at the place of the signature of payee in the MO form without keeping any witness in support of such payment but on verification it was found that the applicant had neither taken the LTI of the payee nor paid the amount to her and that only after the Branch Postmaster asking him regarding any witness to the payment, he had obtained the signature of Shri Biswanath Majhi later and thus the applicant by forging the LTI of the payee misappropriated the amount of Rs. 300/- without payment to the payee. On his

denial through written statement, it was enquired as per Rules. The Inquiring Officer disbelieved the charge of forgery but held that the applicant misappropriated the amount. Disciplinary Authority observed that proof of non-establishment of forgery is im^material since there is proof that applicant had mis-appropriated the money and ultimately penalty for removal from service was passed. These facts are not in controversy.

3. The case of applicant is that the evidence of payee Smt. Loyane Gamango, during enquiry that the amount was paid to her will disprove the charge of forgery and misappropriation and that once the charge of forgery was not established, consequent averments of mis-appropriation also fails.

4. In the counter, the Department justify their action.

No rejoinder has been filed.

5. We have heard Mr. P. V. Ramdas, learned counsel for the applicant and Mr. A. K. Bose, learned Senior Standing Counsel appearing for the Respondents and also perused the records.

6. As indicated above, the only point stressed by Mr. Ramdas, learned counsel for the applicant that once the charge of forgery failed, the case of alleged mis-appropriation would automatically fail and in fact the evidence of the payee before the I.O. is that she had received the money order amount.

There would have been some force in the contention raised by Mr. Ramdas, learned counsel for the applicant, had the charge been that the misappropriation was made only after forging the LTI of the payee but the charge as it stands is not to that effect. In her evidence (Annexure-A/5) the payee Smt. Lovane Gomango in chief, stated that her statement given before the SDIP Gunupur on 23.8.91 marked as S-13 (apparently during preliminary enquiry) was made voluntarily and true but in cross-examination she submitted that she had received the payment of this MO amounting to Rs. 300/- and at the time of payment, Shri Biswanath Majhi signed as a witness in the payment of MO amount in the form. On re-examination, she further clarified that she had received this payment of Rs. 300/- from the applicant two to three days after the date when S-13 was written. In other words, she had received the payment 2/3 days after she had given the statement before the SDIP during preliminary enquiry. So on her own statement which was believed by the IO and the Disciplinary Authority, a case of misappropriation by the applicant stands established.

Question for consideration is whether this Tribunal can interfere with such findings.

7. The decisions cited by Mr. Ramdas, learned counsel for the applicant, in this connection will not be of much help to him because the same lay down the well known settled legal position that a Court or Tribunal can not sit as an Appellate Authority to judge the adequacy or reliability of an evidence before the Disciplinary Authority. These are B.C. Chaturvedi's case reported in AIR 1996 SC 484 and HC Goel's case reported in AIR 1964 SC 364.

8. In the result, we do not find any merit in this Original Application which is accordingly dismissed.
No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

8.2.2007
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.