

6

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 377 OF 1994
Cuttack this the 08th day September/2000

Amulya Kumar Mishra ... 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 CA
Central Administrative Tribunal or not?

S. Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

5-2-2001
(G. NARASIMHAM)
MEMBER (JUDICIAL)

6
7
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 377 OF 1994
Cuttack this the 08th day of September/2000

CORAM:

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

...

Amulya Kumar Mishra
Group 'D' Official,
Postal Store Depot,
Sambalpur - 768 001

...

Applicant

By the Advocates

Mr.D.P.Dhalasamant

-VERSUS-

1. Union of India represented
through Chief Post Master General
Orissa Circle,
Bhubaneswar - 751 001
2. Director of Postal Services (HQ)
Orissa Circle,
Bhubaneswar -751 001
3. Superintendent
Postal Store Depot.,
Sambalpur - 768 001

...

Respondents

By the Advocates

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

...

2
O R D E R

MR .G .NARASIMHAM, MEMBER (JUDICIAL): Applicant, a Group D employee of Postal Stores Depot,, Sambalpur stands punished by order dated 29.12.1993 (Annexure-5) of the Disciplinary Authority (Res. No.3) by reduction of pay to one stage from Rs.1010/- to Rs.995/- for a period of one year in the pay scale of Rs.800-1150/-. Appellate authority (Respondent No.2) by order dated 23.3.1994(Annexure-7) dismissed the appeal petition (Annexure-6) preferred by the applicant. These two orders are under challenge in this Application mainly on the ground that the principles of natural justice have been grossly violated inasmuch as the Disciplinary Authority before imposing punishment had not communicated his tentative reasons for differing from the findings of the Inquiring Authority to the prejudice of the applicant and thereby denied opportunity to the applicant to have his say in the matter.

2. Facts not in controversy are that through Memo dated 18.3.1992 issued under Rule 14 of the C.C.S.(CCA) Rules, 1965, the applicant has been charged on two counts on the ground that on 6.10.1991 might he facilitated the unauthorised removal of forms from the Store Room by allowing Waste Peper Contractor and two employees to enter inside. The applicant having denied the charge, enquiry was conducted under statutory provision under Rule-14. The Inquiring Officer held the charges not proved and submitted report to Respondent No.3, the Disciplinary authority, who in turn supplied a copy of that report to the applicant inviting representation, if any. As the report was in his favour, the applicant did not submit representation. The Disciplinary Authority ultimately through a reasoned order

dated 6.9.1993 (Annexure-2) held the charges proved and imposed punishment.

Applicant preferred appeal (Annexure-3) urging the main ground referred above as one among the other grounds. The Appellate Authority noticing some defect in the ordering portion of the punishment remitted the matter to Respondent No.3 for 'De-Novo' proceedings from the stage of issue of punishment order (Annexure-4). Respondent No.3, the Disciplinary Authority thereupon passed the impugned order (Annexure-5).

3. Respondents in their counter though prayed for dismissal of the Original Application did not deny the applicant's case about the non-communication of tentative reasons of the Respondent No.3 in differing from the findings of the Inquiring Officer.

4. We have heard Shri D.P.Dhalasamant, learned counsel for the applicant and Shri A.K.Bose, learned Sr.Standing Counsel appearing for the Department. Also perused the records.

5. There is no dispute that Disciplinary Authority did not communicate to the applicant his tentative reasons for differing from the findings of the Inquiring Officer, nor enable the applicant to have his say in the matter before passing the impugned punishment order. As early as 1964, the Apex Court in *Union of India v. H.C.Goel* reported in 1964 SC 364(Para-16), as quoted by the Ahmedbad Bench of the C.A.T. in *Prakash Sanmukilal v. Union of India* reported in (1993) 23 A.T.Cases Page 726 at Page 734 observed as follows :

"... If the report makes findings in favour of the public servant and the Government disagree with the said findings and holds that the charges framed against the public servant are *prima facie* proved, the Government should decide provisionally what punishment should be imposed on the public servant

and proceed to issue a second notice against him in that behalf. If the Enquiry Officer makes findings, some of which are in favour of the public servant and some against him, the Government is entitled to consider the whole matter and if it holds that some or all the charges framed against the public servant are, in its opinion, *prima facie* established against him, then also the Government has to decide provisionally what punishment should be imposed on the public servant and give him notice accordingly".

This apart in *Narayan Mishra v. State of Orissa* reported in AIR 1969 SC 1612 (Para-8) as quoted by the Ahmedabad Bench of the C.A.T. in *Sanmukilal case*(Supra) at Page-733 is as follows :

"Now if the Conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice. If the Conservator of Forests wanted to use them, he should have apprised him of his own attitude and given him an adequate opportunity".

Again in *State Bank of India v. D.C. Aggarwal*, reported in (1993) 23 A.T.Cases 403, (Para-4), the Supreme Court reiterated the same view with the following observation.

"Law on natural justice is so well settled from a series of decisions of this Court that it leaves one bewildered at times, that such bodies like State Bank of India, who are assisted by a hierarchy of law officers, commit such basic and fundamental procedural errors that courts are left with no option except to set aside such orders. Imposition of punishment of an employee, on material which is not only not supplied but not disclosed to him, has not been countenanced by this Court. Procedural fairness is as much essence of right and liberty as the substantive law itself".

Even during recent times, the Apex Court in *Punjab National Bank v. K.P. Mishra* reported in Judgment Today 1998 (5) SC 548 and in *Yoginath D. Bagade v. State of Maharashtra* reported

10 11

AIR 1999 SC 3734 held that Disciplinary Authority has to indicate the tentative reasons for disagreement with the findings of the Enquiry Officer to the delinquent so that the delinquent may further indicate that the reasons are not germane and findings of the Inquiring Officer are not liable to be interfered with. In Yogenath D. Bagade case the Apex Court observed that even in the absence of specific provisions rules of natural justice are to be read into the rules.

Thus it is clear from the aforesaid decision of the Apex Court that principles of natural justice are grossly violated when despite a delinquent is exonerated of the charges by the Inquiring Authority, the Disciplinary Authority punishes the delinquent holding the charges proved without communicating the delinquent the tentative reasons of his disagreement so as to give the delinquent an opportunity to indicate the reasons that the findings of the Inquiring Authority are not liable to be interfered with.

6. In view of the aforesaid legal position the impugned orders under challenge cannot be sustained under law. Hence the impugned orders, i.e. order dated 27.12.1993 (Annexure-5) and order dated 23.3.1994 (Annexure-7) are quashed. Since the punishment imposed is non est, the applicant is entitled to consequential benefits.

7. Original Application is allowed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN/TD

5.1.1994
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K. SAHOO//