

8

9

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 530 OF 1994
Cuttack this the 28th day of ~~July~~, 1999
June,

Bipin Behari Pattnaik

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
(SOMNATH SOM)
VICE-CHAIRMAN
28.6.99

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

9

10

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.530 OF 1994

Cuttack this the ~~28th~~ day of ~~July~~, 1999
June,

CORAM:

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

...

Bipin Behari Pattnaik,
aged about 34 years,
S/o. Jadumani Pattnaik,
at present working as
Asst.Station Master,
S.E.Railway, Chilka,
At/PO: Chilka,
Dist: Khurda

...

Applicant

By the Advocates : M/s.B.S.Tripathy,
K.P.Mishra
A.Das

-Versus-

1. Union of India
represented through Manager,
South Eastern Railway,
Garden Reach,
Calcutta-43
2. Divisional Railway Manager(O)
S.E.Rly., Khurda Road, Jatni,
Puri
3. Divisional Operating Superintendent,
Khurda Road,
Jatni, Puri

...

Respondents

By the Advocates : Mr.B.Pal

...

2
ORDER

MR.G.NARASIMHAM, MEMBER(J): Applicant, who was serving as Assistant Station Master at Kuhuri, during the year 1985, in a disciplinary proceeding involving four charges under misappropriation, receiving of illegal gratifications, forging of documents etc., has been awarded punishment of reduction of pay at Rs.1200/- in the lowest stage of time scale of Rs.1200-2040/- for a period of 15 years effective from 1.2.1993 by order dated 30.12.1992 of the disciplinary authority (Annexure-12). His appeal under Annexure-13 to the appellate authority ^{was dismissed} under Annexure-14 dated 12.5.1992. In this application prayer has been made for quashing the punishment orders and other consequential service and financial benefits.

2. Charge sheet in memo dated 24.10.1985 (Annexure-2) was issued with imputations under four heads in regard to receipt of illegal gratifications from Fish Booking Merchants, who, through Secretary, Soram Chilika Fisherman Primary Cooperative Society Ltd., complained before the higher authorities for misappropriation, forging and tampering of records and so on as per Annexure-3 attached to the charge sheet. The charge sheet is based on 10 documents and statements of six persons including the applicant. Applicant submitted written statement on 21.11.1985 under Annexure-4. The inquiring authority held the charges to be proved in his detailed report under Annexure-A/7. Thereafter the disciplinary authority by his order dated 9.12.1987 (Annexure-A/8) imposed penalty fixing his pay at Rs.1200/- in the lowest stage in the time scale of Rs.1200-2040/- for a period of 15 years with effect from 1.2.1988 with an observation that period of punishment shall not

operate postponing future increments on restoration. The applicant having appealed dated 17.1.1988 under Annexure-9, the appellate authority under Annexure-10 by order dated 30.3.1988 dismissed the appeal. Thereafter the applicant approached this Tribunal in Original Application No.205/88 for quashing the orders of punishment urging various grounds, the main being, he has not been supplied with copies of documents and statement of witnesses mentioned under Annexure-A/3 (which is also Annexure-A/3 in the present application) in spite of request and these documents and statements of witnesses forming the basis of charge sheet, he could not effectively defend his case, which amounted that principles of natural justices were violated by not affording him reasonable opportunity to defend himself. After hearing both sides, this Tribunal in order dated 21.3.1992(Annexure-R/1) quashed the punishment orders and remitted the matter to the disciplinary authority with a direction to supply copy of the inquiry report to the applicant in order to enable him to represent and thereafter on hearing and considering the representation pass orders according to law. The Tribunal also made it clear that the applicant can agitate before the disciplinary authority as to non-supply of copies of the documents and statement of witnesses by the Department during inquiry. As against this order, the Department filed S.L.P.(Civil) bearing No.12138/93(Annexure-15) before the Hon'ble Supreme Court which was dismissed during the pendency of the present application before this Bench. No stay order was ever passed by the Hon'ble

13
Supreme Court in the S.L.P. The applicant approached this Tribunal again in O.A. No.209/91 for direction in the matter of payment of emoluments to him and to drop the departmental proceeding. This application was disposed of by order dated 4.11.1992 with a direction to dispose of the disciplinary proceeding within 30 days and to pay arrear emoluments within 60 days since the earlier orders of punishment imposed by the Department were no longer in existence. While disposing of so, this Tribunal remarked that stoppage of increments for 15 years as earlier passed was very shocking. Thereafter in response to supply of copies of inquiry report, the applicant on 30.11.1992 represented to the disciplinary authority. The disciplinary authority then passed the impugned order under Annexure-A/12 followed by the impugned appellate order under Annexure-A/14. These facts are not in controversy.

3. In the present application, while denying the imputations made against him in the charge sheet and while urging that the findings arrived at by the inquiring authority before the disciplinary authority and the appellate authority are of misappreciation of evidence and that the impugned orders of the disciplinary authority and the appellate authority being not speaking orders, the applicant vehemently urged that principles of natural justice have been grossly violated in the disciplinary proceeding inasmuch as he has not been supplied with copies of documents and statements of witnesses as mentioned in the representation dated 16.11.1985 under Annexure-A/3 requesting for supply of

the same inasmuch as these documents and statements of witnesses formed the very basis of charge sheet.

14
4. Respondents in their counter take the stand that the applicant submitted an application on 29.10.1985 to verify documents which was agreed to and he had verified the relevant records on the same date as per his endorsement on that application. Subsequently the applicant submitted another application to take further extracts which was also complied and the applicant had taken the extracts. Thereafter there was no further request from the applicant and Annexure-A/3 dated 16.11.1985 was never received. Thus there was no violation of principles of natural justice. The impugned orders of punishment by the disciplinary authority and the appellate authority were passed after compliance of the direction of this Tribunal in O.A. 205/88. Thus the respondents pray for dismissal of this application.

No rejoinder has been filed.

5. We have heard Shri B.S.Tripathy, learned counsel for the applicant and Shri B.Pal, learned senior counsel appearing for the respondents. During hearing Shri Pal filed a file said to be the proceeding file. At the request of both sides, after hearing was concluded, time was allowed for filing written note of submissions. Shri Tripathy filed written note of submission along with a typed application marking the same as Annexure-16 and telling the same to be the representation dated 30.11.1992 of the applicant before the disciplinary authority in response to the show cause notice received along with copy of the inquiry report.

6. In the Original Application documents marked as Annexures- 1 to 16 have been attached. Yet this typed application dated 30.11.1992 filed along with notes of argument after conclusion of the hearing has been marked as Annexure-16. Of course the denomination of the number is not so important. Question is whether this typed application can be accepted as an additional annexure without any prayer for amendment of pleadings. We are aware that though a mention has been made that the applicant submitted representation dated 30.11.1992 to the disciplinary authority, but copy of that representation has not been annexed. The same having ^{not} been annexed to the Original Application, the respondents could ^{not} have ample opportunity to reply to the contents as to whether copies so annexed were in fact the copy of the original representation submitted to the Department or not. Hence at this belated stage, that too without any prayer for amendment of pleading, this typed application attached to the written note of submission cannot be taken into account, more so, when it does not form part of the pleading in the Original Application. We have, therefore, no hesitation to ignore this typed copy of the application dated 30.11.1992 marked as Annexure-16 to the written note of submission altogether.

7. Law is well settled that the Court or the Tribunal cannot sit in appeal over the orders passed by the disciplinary authority or the appellate authority. What is more concerned ^{by} of the Court or Tribunal is to see whether the procedure adopted in the disciplinary proceeding to arrive at the findings is legal and

tenable, i.e., whether it has not violated the principles of natural justice to the prejudice of the delinquent official. Hence averment in the pleadings ^{with regard to} ~~misappreciation~~ of evidence cannot be taken into account.

Before proceeding to discuss as to whether the principles of natural justice have been violated or not, we may deal with the argument advanced from the side of the applicant that punishment imposed on him is grossly disproportionate to the imputations alleged and ~~doing~~ ^{being} harsh, the same needs to be interfered. In this connection, our attention has been invited to the remark of the then Division Bench of this Tribunal in judgment dated 4.11.1992 passed in O.A. 209/91 (Annexure-11) filed by the applicant. The Tribunal in concluding paragraph of the judgment made the following remark :

" We must express our surprise by the order passed by the disciplinary authority, i.e., stoppage of increments for 15 years which is very shocking".

Mainly relying on this remark, the aforesaid contention as to the harshness of punishment was advanced. We would like to point out that Original Application No.209/91 was not filed on the ground as to harshness of punishment. In fact whether punishment imposed was harsh or severe was not at all an issue to be decided in that Original Application and as the judgment reveals, no such contention was ever advanced by the applicant. Hence this remark of then Bench is nothing but a passing remark and as such does not bind us. Recently a Special Bench of Hon'ble Supreme Court in the case of **Sanchalakshri vs. Vijay Kumar Raghubir Meheta** reported in 1999(2) All India Services Law Journal Page 75 observed

that if imputations in the disciplinary proceeding would also constitute serious penal offence, interference with the order of punishment should not be made. In the application before us imputations are : misappropriation of cash, receipt of illegal gratifications and tampering of records, which undoubtedly would constitute serious penal offence. We are therefore, not inclined to agree with the contention that order of punishment, if any, needs to be interfered on the ground the same being harshed or shocking to conscience.

8. Question, however, is whether disciplinary proceeding is vitiated on account of non-observance of principles of natural justice causing prejudice to the delinquent. In Original Application 205/88 and so also in this application, the applicant's ~~case~~ comes up with a definite pleading that ~~by~~ representation dated 16.11.1985 (marked as Annexure-3 in both the cases) addressed to the disciplinary authority, he requested for supply of copies of statements of six witnesses and one document. Statements of these six witnesses and the document, as is evident from the imputations mentioned in the charge sheet and also facts discussed in the inquiry report, have been prepared during preliminary inquiry. It is not the case of the Department that during preliminary inquiry and recording of statements of these witnesses the applicant was very much ^{present} aware. This apart, as observed by the Hon'ble Apex Court in **Satrughan Lal** case reported in 1998(5) SCALE Page 1, that preliminary inquiry is invariably conducted on the back of the delinquent employee. Annexure-3 mentions the following documents:

- a) Statement of Rajan Behera as mentioned in the charge sheet

- b) Statement of Ch. S. Rao
c) Statement of Shri S.A.Jabbar
d) Statement of G.B.R. Murty
e) Statement of Shri G.C.Acharya
f) Statement of Shri U.S.N.Rao
f) Copy of accounts maintained by S.C.F.C.S. Sorem for the month of April, 1985

The ~~above~~ statements of witnesses and document of account formed part of the list of documents and witnesses mentioned in the charge sheet. As the facts in the inquiry report reveal, copies of this accounts document for April, 1985 and statement of Shri Rajan Behera are the basis of the charge in regard to receipt of illegal gratifications and statements of other witnesses relating to misappropriation and tampering of records. It is true that witness Shri S.A.Jabbar and G.B.R.Murty have not been examined during inquiry, but other witnesses were examined and the Accounts S.C.F.C.S. was also dealt and relied during inquiry. Hence, if inspite of request for supply of copies of those documents, the department did not supply the same, it could not be said that principles of natural justice have not been grossly violated during inquiry. Legal position in this regard has been settled in Kashinath Dikshita case reported in AIR 1986 SC 2118 and also Chandrama Tiwari case reported in AIR 1988 SC 117. Recently in Satruganlal case (supra) the Hon'ble Apex Court reiterated the same principle making the following observation in para-4 of the judgment.

19
"4. Now, one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not mere pretence. In departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him".

Further in para 6 of that judgment the Hon'ble Apex Court held that preliminary inquiry which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of the charge sheet and that before a person is called upon to submit his reply to the charge sheet, he must, on a request made by him in that behalf should be supplied the copies of statement of witnesses recorded during the preliminary inquiry, particularly of those witnesses proposed to be examined at the departmental trial. Further in *High Court of Punjab and Haryana vs. Amrik Singh*, reported in 199⁵(Supp) 1 SCC 321 as quoted in para-5 of *Satrughanlal Case*, it was indicated that the delinquent official must be supplied copies of documents relied upon in support of the charges. It was further indicated that if the documents are voluminous and copies cannot be supplied, then such official must be given an opportunity to inspect the same, or else, the principles of natural justice would be violative.

In view of this legal position it is clear that in case the applicant applied for copies of the papers as mentioned under Annexure-A/3 and if the same have not been supplied to him, the entire proceeding stands vitiated for violation of principles of natural justice.

Question then arises whether the applicant made such request as mentioned under Annexure-3. As earlier stated, in Original Application No.205/88, ~~also~~ the applicant also took the very same ground. Hence we have verified the records in O.A. 205/88. In the counter in that O.A. also the Department denied the applicant having addressed such an application. In the present application before us, the Department in para 15 of the counter disputed the correctness of the claim of the applicant in this regard. We may as well quote the relevant sub-para of 15 of the counter hereunder:

" The applicant submitted an application on 29.10.1985 (Annexure-B) to verify documents which was agreed to and he verified the relevant records on the same date as per his endorsement on the said annexures. Subsequently, the applicant submitted Annexure-C to take further extracts which was also agreed to vide Annexure-D and as per the applicant's endorsement on Annexure-D he has received the relevant extracts. There was no further request from him and Annexure-3 was never submitted to this office. Thus the averments in paragraph-4.7 are not correct and are denied"

It will be interesting to note, no document with regarding to Annexures-B, C and D as mentioned in that sub-para have been annexed to the counter, which even does not contain Index as required under the rules. If Annexures-B, C and D have indeed been filed, then in normal course, there must have been a reference to document marked as Annexure-A. In fact the entire counter is conspicuously silent in this connection. On the other hand, in para-8 (Page-7 of the counter) there has been mention of Annexure-R/1 representing judgment in O.A. 205/88. Again in para 17 (Page-14 of the counter) letter dated 3.2.1992 of the Sr. D.E.N. addressed to the applicant described to have been marked as Annexure-R/2.

There is no mention of any other Annexure(s) in the counter. Yet, Annexure-R/2, on verification at page 26 of the counter, ~~it~~ is not the letter dated 3.2.1992 of the Sr.D.E.N., but typed copy of letter dated 29.4.1993 of Hon'ble Supreme Court in S.L.P. filed against order dated 15.7.1992 of this Bench in O.A.401/88. Thus the conclusion is irresistible that the facts mentioned in sub-para 15 of the counter, as quoted above with reference to Annexures-B, C and D, if not false, are far from truth.

Since in earlier Original Application No.205/88 the applicant had taken this ground of request for supply of copies of documents as mentioned under Annexure-A/3, we have verified the records in that case to understand the stand of the Department in that case. In para-6.7 of O.A.205/88, a mention with regard to Annexure-A/3 has been made. The Department in para-11 of the counter in that O.A. ~~as~~ replied to this averment is as follows :

"11. That in reply to the averments made in paragraph-6.7 of the application it is submitted that the applicant submitted an application on 29.10.1985, copy of which is annexed to this counter as Annexure-R/2, to verify the documents which was allowed and accordingly the applicant verified the relevant records which is evident from the endorsement made by the applicant in Annexure-R/2 itself. Subsequently the applicant submitted Annexure-R/3 to take further extracts from the some of the documents which was allowed as per Annexure-R/4 and this fact is evident from the endorsement of the applicant on Annexure-R/4. There was no further request from the applicant and the allegation that Annexure-3 was submitted to the respondent No.4 is not correct."

We have also verified Annexures-A/2, R/3 and R/4 as mentioned in the counter to O.A. 205/88. All these

21

annexures are typed copies and not photo copies. Annexure-R/2 is dated Nil. There is no endorsement of the applicant in that annexure that he had verified the relevant records averred in the counter. Similarly there is also no endorsement of the applicant as mentioned in the counter in Annexure-R/4. It is, therefore, clear even in O.A.²⁰⁵~~25~~/88, the version of the Department in the counter is open to doubt.

At this stage, it would be relevant to go through the file~~d~~ produced by the learned senior counsel Shri B.Pal appearing for the respondents stating to be the proceeding file. This file is termed as **CONFIDENTIAL** bearing the name, B.B.Patnaik, A.S.M./Clka. This file consists of 305 ^{papers}~~papers~~. The typed index attached reveals that it consists of 305 items constituting various letters, orders and so on. But it does not contain the inquiry proceeding as such though it contains the report of the inquiring authority. In other words, the perusal of the file would not at all throw any light as to how the inquiry was conducted, whether the principles of natural justice were in fact followed. Even the originals of Annexure-R/2, R/3 and R/5 mentioned in O.A.25/88 and so called letters described as Annexures-B, C and D in para-15 of the counter to present O.A. do not find place in this file. Thus, this file, according to us, being not the actual proceeding file will not in any way support the contentions of the Department that the applicant has not made any such request for supply of copies as mentioned under Annexure-R/3. It is obvious that the applicant addressed the letter under Annexure-A/3

22

23

requesting for supply of copies of most essential documents on which charges are based and the same have not been supplied to him. In view of the legal position as discussed above, we have no hesitation to observe that principles of natural justice to the prejudice of the delinquent official have been grossly violated and therefore, the entire proceeding stands vitiated.

Now coming to the averment that the impugned orders of the disciplinary authority under Annexure-12 and the appellate authority under Annexure-14 are non-speaking orders, we may say that on verification of these impugned orders, we do not agree that the orders are legally defective, though cryptic. As we have already held that the proceeding is vitiated for non-observance of principles of natural justice, the impugned orders of the disciplinary authority and the appellate authority and also the report of the inquiring authority cannot but be quashed. The incident relates to year 1985 and within last 14 years, this Tribunal has had occasion to deal with the same in three different cases. In this view of the matter, we are not inclined to direct the respondents to proceed with the inquiry afresh, because period of 14 years is not so ^{long} ~~small~~ to be lightly overlooked during service career of an employee.

9. In the result, we quash the disciplinary proceeding as well as orders of punishment imposed on the applicant and direct the respondents to give consequential service benefits, if any, as well as financial to the applicant within a period of 90(Ninety) days from the date of receipt of this order. The

23

24

application is allowed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
28.6.99

B.K.SAHOO

28.6.99
(G.NARASIMHAM)
MEMBER (JUDICIAL)