

6 2

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.814 OF 1994
Cuttack this the 20th day of November/2000

Ganesh Biswal

...

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

(G.NARASIMHAM)
MEMBER (JUDICIAL)

SOMNATH SOM
VICE-CHAIRMAN
20.11.2000

8

X

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.814 OF 1994
Cuttack this the 20th day of November/2000

CORAM:

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

...
Sri Ganesh Biswal, S/o. Bhagaban Biswal
Vill/PO - Areigudi, Dist - Bargarh

...

Applicant

By the Advocates

M/s. J.N. Acharya
B.B. Mishra

-VERSUS-

1. Union of India represented by the
Chief Post Master General, Orissa
Bhubaneswar
2. Senior Superintendent of Post Offices,
Sambalpur Division, Sambalpur
At/PO & Dist - Sambalpur
3. Asst. Superintendent of Post Offices,
Bargarh Sub-Division, At/PO & Dist-Bargarh

...

Respondents

By the Advocates

Mr. B. Dash
Addl. Standing Counsel
(Central)

O R D E R

JSom

MR. SOMNATH SOM, VICE-CHAIRMAN: In this Application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 12.1.1994 vide Annexure-12 of the Disciplinary Authority imposing on him the punishment of removal from service and the order dated 19.9.1994 of the Appellate Authority vide Annexure-14 rejecting his appeal. Respondents have filed their counter opposing the prayer of the applicant.

2. In this 1994 matter learned counsel for the petitioner and his Associates were not present when the matter was called for hearing. On the last two occasions also learned counsel for the petitioner was not present. As this is a matter of 1994 where the pleadings have been completed long ago the matter cannot be

allowed to drag on indefinitely. We have therefore, heard Shri B.Dash, the learned Addl.Standing Counsel appearing for the Respondents and have perused the records.

3. For the purpose of considering this petition it is not necessary to go into too many facts of this case. The admitted position is that the applicant was removed from service by the order of the Disciplinary Authority on completion of a disciplinary proceedings against him. The applicant thereupon filed an appeal before the Appellate Authority which has also been rejected. The applicant in this Application has challenged the orders of the Disciplinary Authority and the Appellate Authority. Law is well settled that in a disciplinary proceedings the Tribunal does not act as an appellate authority and cannot reappraise evidence and substitute its findings in place of the findings arrived at by the Inquiring Officer, Disciplinary Authority and/or the Appellate Authority. The Tribunal can interfere only if reasonable opportunity has not been given to the applicant and the principles of natural justice have been violated. Interference by the Court/Tribunal is also possible if the findings are based on no evidence and/or patently perverse. The grounds urged by the petitioner in his application challenging the impugned orders are being considered in the context of the ^{above} well settled position of law. ^{Idem.}

4. The applicant was working as Extra Departmental Branch Post Master, Areigudi Branch Post Office in account with Bheden Sub Office. He was put off duty on 13.3.1992 and disciplinary proceedings were initiated against him. The first point urged by the applicant is that charges were framed against him nine months after he was put off duty and there was avoidable delay. Respondents have stated in Para-3 of their counter that there

9 10
was no avoidable delay and the time was taken for verification of the records of the Branch Office, in view of lapses of the applicant which came into light. In view of the above, delay of nine months in framing the charge against the applicant would not in any way invalidate the proceedings.

5. The second ground urged by the applicant is that on receipt of the charges he asked the Disciplinary Authority to furnish copies of relevant documents, but this prayer was rejected in order dated 5.1.1993 (Annexure-8), in which he was informed that copies of the statement of witnesses could not be supplied to him and he would be given reasonable opportunity at the proper stage of the of inquiry. The Respondents have stated that written statement of one witness viz., Shri S.N.Kar was shown to the applicant and the applicant perused the same with his assisting Government servant (A.G.S.) and took extract of the statement on 8.7.1993. Applicant has stated that in his letter dated 15.12.1992 he had asked for supply of copies of the documents, but these have not been given to him. This letter is at Annexure-7. From this we find that the applicant has not indicated precisely as to the documents which he wanted to be supplied to him. In the Original Application also he has not mentioned about the nature of the documents which he wanted and he was denied and as to how by such denial he was prejudiced. In view of this it cannot be held that the specific document asked for by the applicant was denied and he was thereby prejudiced. The only mention made by the applicant is regarding statement of one S.N.Kar and Respondents have adequately replied to this point. In view of this we hold that this contention is without any merit and the same is, therefore, rejected.

J. Som.

6. Before proceeding further, it would be necessary to note the two charges which were alleged against the applicant. The 1st charge is that the applicant fraudulently withdrew Rs.500/-, Rs.300/- and Rs.50/- on 10.9.1991, 20.9.1991 and 28.9.1991, respectively from the Savings Bank Account No.10222146 of one Jaga Pradhan and thereby violated the provision of Rule-133(1) and Rule 134(iv). The 2nd charge is that he made fraudulent withdrawal of Rs.1600/- on 10.2.1992 from Savings Bank Account No.10222807 standing in the name of one Gokul Dash and thereby violated the departmental rules and instructions. The applicant denied the charges and therefore, Inquiring Officer and the Presenting Officer were appointed. The applicant has taken the stand that the Disciplinary Authority appointed the Inquiring Officer and the Presenting Officer on 23.2.1993, after the applicant filed Original Application No.329/92. Respondents have denied this and have stated that ⁱⁿ O.A.329/92 the applicant had prayed for quashing the order of put off duty. In any case, the charge sheet was issued on 15.12.1992 and the applicant was given 10 days time to file his explanation/written statement and the Inquiring Officer and the Presenting Officer were appointed after this period of 10 days was over. In view of this no illegality is involved in this. With regard to 1st charge, the applicant has stated that the deponent Jaga Pradhan was examined by the prosecution, but he was not available on the next day for cross-examination. After several adjournments the Presenting Officer indicated that he was not in a position to produce Jaga Pradhan for cross-examination. Applicant has stated that as Jaga Pradhan was not produced for cross examination his evidence should have been ignored for the purpose of coming to a finding

J Sam

with regard to charge No.1. Respondents in Para-12 of their counter have stated that the stand of the applicant that Japa Pradhan's evidence in chief should have been ignored is untenable, because Japa Pradhan had disowned his signature on the withdrawal while he was examining by the prosecution. From the counter of the Respondents it does appear as if the evidence of Japa Pradhan was taken into consideration even though he was not subjected to cross examination. On this point we have gone through the inquiry report carefully and we find that Inquiring Officer in Para-6 of his report has indicated that as Japa Pradhan was dropped from cross examination his deposition is not being discussed. In view of this it is clear that the Inquiring Officer has not taken into consideration the evidence given by Japa Pradhan in course of his examination in chief. This contention of the petitioner is also therefore, held to be without any merit. On this point it has to be noted that the charge against the applicant was for fraudulent withdrawal of Rs.850/- on three dates as indicated in the charge sheet. It is also on the record that on 28.9.1991 the applicant paid Rs.850/-, i.e., the total of the three withdrawal amount to the Account Holder. In the context of this the point for consideration before the Inquiring Officer is whether the applicant has fraudulently withdrawn the above said amount on the three dates as mentioned in the charge sheet. The Inquiring Officer after examining the withdrawal slips, purportedly signed by Japa Pradhan was of the view that discrepancy in the signatures is quite apparent and Japa Pradhan could not have signed on those slips. In view of this it cannot be said that the findings of the Inquiring Officer that the applicant has withdrawn those amounts of Rs.850/- is based on no evidence.

12

13

The applicant has made a point that those withdrawal slips were not sent for opinion of the Handwriting Expert and therefore, these should not have been brought on record. We are not inclined to accept this contention, because in a departmental proceedings strict rules of evidence are not applicable and when the Inquiring Officer has come to a finding that the withdrawal slips have been made out by the applicant and the Disciplinary Authority has also accepted the same findings, we see no reason to differ from the above findings. The contention of the applicant with regard to 1st charge is therefore, held to be without any merit and the same is, therefore, rejected.

As regards the 2nd charge, Inquiring Officer has noted that the applicant deposited the amount of Rs.1600/- along with interest (In total Rs.1650/-) later on voluntarily. He has also disbelieved the stand of the applicant that this amount was deposited surreptitiously by the E.D.D.A. one Lingaraju in order to concoct evidence against the applicant. He has also rejected ^{J.Jam} the stand of the applicant that an amount of Rs.1700/- was paid to one Gokul Pradhan, which the applicant has stated that on his threatening he has done so without obtaining the receipt and the Enquiring Officer came to a finding holding the applicant guilty of the charge. From these it is held that the Disciplinary Authority has examined the evidence and the findings of the Inquiring Officer in detail and has come to his independent finding supported by elaborate reasonings. In view of this we find no reason to interfere with the findings of the Disciplinary Authority.

J.Jam

The last point urged by the petitioner is that the punishment imposed is disproportionate and therefore,

13 7 14

the same should be quashed. Considering the facts and circumstances of the case, we do not think that the punishment imposed on the applicant is in any way disproportionate. We note that the applicant had been appointed as E.D.B.P.M. only in 1990 and these lapses came to the notice of the departmental authorities almost within a year of his joining a responsible post at a position of trust. In consideration of the above this contention is also rejected.

In the result therefore, we hold that the applicant has not been able to make out a case for any of the reliefs prayed for. The O.A. is therefore, held to be without any merit and the same is therefore, rejected, but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 20/11.2000