

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.231 OF 1995.
CUTTACK, this the *30th* day of June, 1999.

DOLAGOVINDA BEHERA.

...

APPLICANT.

- Versus -

UNION OF INDIA & OTHERS.

...

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? *NO.*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
30.6.99

30-6-99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 231 OF 1995.

CUTTACK, this the 30th day of June, 1999.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).
.....

DOLAGOVINDA BEHERA,
Ex-E.D. Branch Postmaster,
Gopei, via-Korilopatna,
District-Kendrapara-754 223.

... APPLICANT.

By legal Practitioner: MR. D. P. DHALSAMANT, Advocate.

- VERSUS -

1. Union of India represented through
CHIEF POSTMASTER GENERAL, Orissa
Circle, Bhubaneswar, Dist. Khurda,
PIN-751 001.
2. DIRECTOR OF POSTAL SERVICES,
Office of the Chief Postmaster General,
Orissa Circle, Bhubaneswar, Dist. Khurda,
PIN-751 001.
3. SUPERINTENDENT OF POST OFFICES,
Cuttack North Division, Cuttack
PIN-753 001.

... RESPONDENTS.

By legal Practitioner : Mr. ASHOK MISHRA, SENIOR (PANEL) COUNSEL.

.....

O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :

Applicant who was serving as Extra Departmental Branch Post Master, Gopei Branch Post Office, in the district of Kendrapara was ultimately removed from service by the order dated 09-06-1994 (Annexure-4) of the Disciplinary Authority i.e. Superintendent of Post Offices Cuttack North Division, Cuttack, Respondent No. 3 in a Departmental proceeding initiated against him. He has preferred an appeal on 26-7-1994 to the Appellate Authority i.e. Director of Postal Services, Orissa, Bhubaneswar, Respondent No. 2. As the appeal remained un-disposed of, he preferred this Original Application, on 17th April, 1995 for quashing the order of removal and the Memo of Charges and for treating the period of put off duty as regular duty and for other consequential financial benefits. This application was admitted on 12-5-1995. Hence, the appellate order, if any, will not have any legal sanctity, as per Sec. 19(4) of the Administrative Tribunals Act, 1985 which provides that such appeal would abate if an O.A. is admitted on the subject. Applicant was charged under two heads. During enquiry, charge No. II could not be established. This was also agreed by the Disciplinary Authority. Charge No. I was established and on the basis of this charge, punishment for removal was passed. Hence facts relating to charge No. II need not be dealt in this order.

2. Relevant facts relating to charge No. I are as follows. On 15-9-1989, one Mr. Guru Charan Nayak, account holder of three year T.D. Account No. 13006, maintained in the Branch Post Office of Gopei, applied for final withdrawal

of the amount. This application was forwarded to the Head Office. On 22-9-1989, Head Office sanctioned Rs.10,586.15p as the final withdrawal amount. Final withdrawal was complete on 29.9.1989, though there is controversy as to the amount actually received by the depositor Shri Guru Charan Nayak from the applicant.

According to the Department, applicant instructed the depositor Shri Nayak to acknowledge an amount of Rs.10,400.15p. in figures as well as words on the relevant space of the withdrawal form telling him that the Head Office wrongly calculated the interest for five years though the term was for three years. The depositor as instructed by the applicant, acknowledged the same for an amount of Rs.10,400.15p only and received that amount. Thereafter, the amount of Rs.10,400.15p was scored through and amount of Rs.10,586.15p was written by the applicant and in this way, applicant mis-appropriated an amount of Rs.186/-. He was, at first placed under put off duty and ultimately, removed from service through Departmental Proceeding.

The version of applicant is that correct amount of Rs.10,586.15p was tendered to the depositor and there was no question of mis-appropriation.

As reveals from the charge, the original withdrawal form was sent to the handwriting expert alongwith the specimens signature of the Depositor Sh. Guru Charan Nayak. The opinion of the handwriting expert is that the figure of Rs.10,400.15p and the words to that effect were written in the hand of the depositor Guru Charan Nayak but the amount of Rs. 10,586.15p in figures and words were not in his hand. It is needless to say that this report of the handwriting expert

has not been proved during enquiry.

3. In this application, applicant takes the plea that the proceeding stands vitiated due to nonsupply of the listed documents and additional documents which amount to non-affording the reasonable opportunity. Further according to him, the findings of the Inquiring Officer and the Disciplinary Authority are erroneous and perverse as well.

4. Respondents Department in counter, justified the order of removal stating that reasonable opportunity had been afforded to applicant in his defence and there has been no violation of principle of natural justice ~~to the~~ prejudicial to ^{the} applicant. No rejoinder has been filed.

5. We have heard Mr. D. P. Dhalsamant, learned counsel for the Applicant and Mr. Ashok Mishra, learned Senior (Panel) counsel (Central) appearing for the Respondents, and also perused the records.

6. During hearing, Mr. Dhalsamant, learned counsel for the Applicant contended that the findings arrived by the Disciplinary Authority ~~is~~ based on no evidence and applicant was not supplied the documents and the additional documents relied in the charge-sheet.

At this stage, we may point out that no where in the application it has been made clear which particular document/ documents were supplied to the applicant and even if so, how he has been prejudiced and in what way. Even in this representation to Respondent No. 3, as against the enquiry report ^(Annexure-3) ~~he~~ has not spelt out these documents merely stating nonsupply of documents and Additional documents.

On perusal of the enquiry report, Annexure-2 and report of the Disciplinary Authority, Annexure-4, it is clear that before commencement of enquiry ^{the applicant took} ~~could~~ extract/copies of the documents mentioned in the charge-sheet except the documents at Sl.Nos.2,4,5,9 and 10 which could not be available. Charge-sheet, Annexure-1, contains the list of 11 documents. Documents under Sl.Nos.2 and 4 relate to the accounts dated 3.10.1989 which are connected with charge No.2 ~~with~~ which we are not concerned. Document under Sl.No.5 is dated 14.9.1989 pertaining to the deposit account of the Depositor Shri Guru Charan Nayak. This document has not been proved or relied during enquiry. Since the depositor applied for withdrawal on 15.9.1989, this document dated 14.9.1989 is no way relevant and it is also not understood how applicant is prejudiced by non-receipt the copy of this document, specially when the ^{Department} ~~document~~ had not placed any relied on it to establish the charge. Documents under Sl. 9 & 10 relate to dated 25.10.1989 which had also not been proved or relied during enquiry. These relate to charge No.2 which with we are not concerned. Thus, non-supply of these documents under Sl.Nos.2,4,5,9 & 10 of the chargesheet no way prejudiced applicant and principle of natural justice ~~is~~ not violated thereby.

As to the additional documents, as earlier stated, the Original application is conspicuously silent. From the records it reveals that these are two letters dated 19.12.1989 and 28.2.1990 of Respondent No.2 addressed to the G. E. R. D, Calcutta, the handwriting expert. As earlier stated, these documents have neither been proved nor relied during enquiry and even the

opinion of the handwriting expert, has not been proved or relied during the enquiry. Applicant in its turn could not also explain as to how he has been prejudiced due to nonsupply of these two additional documents. In other words, he could not explain how he could have proved his innocence through these documents.

We are, therefore, not inclined to accept the contention of the learned counsel that due to nonsupply of documents or additional documents, the disciplinary proceeding has been vitiated.

7. The other contention advanced by learned counsel for the applicant is that the findings of the Inquiring officer and the Disciplinary Authority are based on no evidence and the findings are perverse as well. We have carefully perused the enquiry report and the report of the Disciplinary Authority which are very exhaustive and well discussed. ~~order~~ rather the oral evidence of Guru Charan Nayak and J.C. Mallik, the then Sub Divisional Inspector (Posts) were exhaustively dealt. So also the withdrawal form Exbt. S-1 and the specimen signature of the account holder, Guru Charan Nayak, Exbts. S-2, S-3 and S-4 were also well discussed. The Inquiring Officer as well as Disciplinary Authority by considering this oral and documental evidence, came to a positive conclusion that applicant was guilty of mis-appropriation of Rs. 136/- and paid Rs. 10,400.15p to the account holder instead of Rs. 10,586.15p. Discussion of this evidence would reveal that by no stretch of imagination it can be said that the findings are arrived or based on no evidence and are perverse.

Even accepting that we do not agree with the appreciation of evidence (appreciation of evidence, in fact is legally sound) we can not assume the role of the Appellate Authority to disturb the findings.

8. After conclusion of the hearing, Shri D.P. Dhalsamant, learned counsel for applicant filed a Memo dated 3.5.1999 citing some decisions reported in ATC upto the year 1995 and one case reported in Swamynews April, 1999 in support of his contention that principle of natural justice has been violated because of non-supply of documents/ additional documents. As earlier stated, documents which could not be supplied to applicant were not relied by the Department in the proceeding and some of the documents did not relate to Charge No. 1 and that the application is as completely silent to how those documents could have been helpful to the applicant in establishing his innocence.

It is, therefore, no necessary for us to go through these decisions.

Legal position is clear in view of the recent decisions of the Apex Court in B.C. CHATURVEDI'S case reported in AIR 1996 SC 484, STATE OF UP VRS. Shatrughan Lal and others reported in AIR 1998 (Suppl.) SC 3038, KULDEEP SINGH VRS. THE COMMISSIONER OF POLICE AND OTHERS reported in 1999 AIR (SCW) 129 and APPAREL EXPORT PROMOTION COUNCIL VRS. A.K. CHOPRA reported in 1999 AIR (SCW) 274 that findings of guilty in domestic proceeding can be interfered with if based on no evidence and that judicial review is not concerned with the correctness of the findings of the facts on the basis of which orders are made but the findings to the examination

of the decision making process only.

In view of this legal position, we do not see any merit in the contention advanced from the side of the applicant.

9. In the result we do not see any merit in this Original Application which is dismissed but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
30.6.99

30.6.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.