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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 686 OF 1995
Cuttack this the 6th March, 2000

Gangadhar Pradhan

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *✓*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *✓*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
6-3-2000

6-3-2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.686 OF 1995
Cuttack this the 6th day of March, 2000

CORAM:

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

Gangadhar Pradhan,
aged about 60 years,
S/o. Late Laxman Pradhan
Village/Po: Asti, Via: Baliapal
District : Balasore

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Applicant

By the Advocates : M/s. Pradipta Mohanty
D.N. Mohapatra
G.S. Sahoo

-Versus-

1. Union of India represented by the
Director General (Posts)
Dak Bhawan,
New Delhi-110001
2. Director of Postal Services
(Headquarters)
Office of the Chief Post Master
General, Orissa,
Bhubaneswar
Dist: Khurda
3. Superintendent of Post Offices
Balasore Division,
Balasore,
At/Po/Dist: Balasore

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Respondents

By the Advocates : Mr.A.K.Bose
Sr.Standing Counsel
(Central)

...

ORDER

MR.G.NARASTHAM, MEMBER(JUDICIAL): Applicant, Gangadhar Pradhan, while serving as Extra Departmental Branch Post Master, Asti Branch Post Office was served with charges in a disciplinary proceedings and was ultimately removed from service by way of punishment. He preferred departmental appeal, but before receipt of communication of the order, if any, of the appellate authority, he preferred this Original Application No. 21.11.1995 challenging the order of removal by the disciplinary authority (Res.3). The Original Application was admitted on 6.12.1995. Hence order, if any, passed by the ~~abolished~~ appellate authority stands ~~abolished~~ under Section 19 of the A.T.Act.

2. The charges levelled against the applicant are two fold. The first charge is that in respect of S.B.Account No.141522 he had received an amount of Rs.100/- on 5.4.1988 and Rs.75/- on 14.4.1988 for deposit in that account. But he did not show these amounts in the relevant records of the Post Office Accounts on those dates and thereby failed to maintain absolute integrity and devotion to duty. The other charge is in respect of S.B.Account No.142669, He had received a sum of Rs.100/- on 17.1.1990 for deposit, but he did not show that amount in the Accounts of the Post Office on that date and thereby failed to maintain absolute integrity and devotion to duty.

The applicant having denied the charges enquiry was conducted as per rules and was ultimately ordered to be removed from service by the disciplinary authority.

The charge memo dated 31.1.1991 (Annexure-2) reveals in respect of charge No.1. The applicant had since accounted the amount of Rs.100/- received on 5.4.1988 on 13.5.1988 and the other amount of Rs.75/- on 19.5.1988. Similarly in regard to charge No.2 he had accounted the amount received on 27.1.1990 on 29.1.1990.

3. The case of the applicant is that charge memo was defective since it did not contain mention of proposed punishment. The evidence on record was not properly appreciated and finding of guilt arrived at by the enquiring authority and the disciplinary authority was not according to law. Lastly it is this case that the punishment of removal was ~~quite~~ disproportionate to the charges.

4. We have heard Shri P. Mohanty, learned counsel for the petitioner and Shri A.K. Bose, learned Senior Standing Counsel appearing for the respondents. Also perused the records.

5. Law is well settled that Court/Tribunal cannot assume the role of an appellate authority to reappraise the evidence unearthed during disciplinary enquiry. On going through the report of the disciplinary authority and the enquiring authority under Annexures-6 and 7, we are satisfied that they had taken into account the evidence on record and their findings were based on the same. It is not a case where the findings are based on no evidence. Even assuming on the basis of some evidence we would have arrived at a different finding, still we cannot interfere with the finding of the enquiring authority or the disciplinary authority in view of settled position of law.

In respect of grounds that the charge memo did not contain the proposed punishment, no authority has been cited by the applicant. Even this point was not raised during hearing.

We however, cannot overlook the submission that the punishment of removal is disproportionate to the charges. The amount of Rs.100/- received on 27.1.1990 (Charge No.2) was admittedly accounted for on 29.1.1990, i.e. two days thereafter. Similarly, in respect of charge No.1, amount of Rs.75/- received on 14.5.1988 was accounted for five days thereafter, i.e. on 19.5.1988. The other amount of Rs.100/- received on 4.4.1988 was accounted for on 13.5.1988. It is thus seen that ultimately no pecuniary loss was caused to the Department and the two amounts received have been accounted for within few days and one amount about a month thereafter. The amounts also are not that heavy to tempt an E.D.B.P.M. for committing misappropriation. The amounts are petty and only a temporary misappropriation for few days have been committed. Judged from this background we feel that the order of punishment of removal is indeed harsh. The Supreme Court in the case of B.C.Chaturvedi vs. Union of India reported in 1995(6) SCC 749 and Union of India vs. G.Ganayudham reported in 1998(2) SLJ 102 held that though a Court/Tribunal, in normal circumstances cannot substitute its own conclusion of penalty and impose some other penalty, it cannot completely overlook the Rule of Proportionality. If the punishment imposed shocks the conscience of the Tribunal it would appropriately mould the relief either directing the authority to consider the penalty or to shorten the

12 litigation in exceptional and rare cases by imposing appropriate punishment with cogent reason. In the instant case we feel punishment of removal from service is too harsh and is disproportionate to the averments made in the charge. Charges were framed on 31.1.1994. Hence provision for imposition of only two punishment, i.e. either removal or dismissal as contained in the E.D.A.(Conduct & Service) Rules, 1964 prior to 16.5.1991 cannot be the decisive factor. Even after 16.5.1991 there was further amendment on 22.4.1993. Through this amendment four punishments were added to the list.

Question then arises whether this Tribunal will direct the disciplinary authority to reconsider imposition of anyother punishment than removal/dismissal or modify the punishment in this judgment. In the Original Application filed on 21.11.1995 the applicant described himself to be aged about 60 years. This has not been disputed in the counter. Hence by now if he had not already crossed 65 years, which is the age of superannuation of E.D. Agents, would definitely cross that age shortly. This being an exceptional circumstance, we deem it fit and proper to modify the penalty.

After 22nd April, 1993 the following punishments can be imposed under Rule-7 of the E.D.A.(Conduct & Service) Rules.

7. Nature of penalties

i) Censure

ii) Debarring of ED Agents from appearing in the recruitment examination for the post of postman and/or from being considered for recruitment as Postal Assistants/Sorting Assistants for a period of one year or two years or for a period not exceeding three years;

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- iii) Debarring of ED Agents from being considered for recruitment to Group 'D' for a period not exceeding three years.
- iv) Recovery from allowance of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders;
- v) Removal from service which shall not be a disqualification for future employment;
- vi) Dismissal from service which shall ordinary be a disqualification for future employment".

In view of our discussion above, punishment under Clauses v and vi, i.e. removal and dismissal would be too harsh. There being no pecuniary loss caused to the Government, penalty under Clause-iv is also not called for. Since the applicant, if not already crossed the age of superannuation has no chance for appearing in the recruitment to the higher post, i.e. punishments under Clauses ii and iii need not also be imposed. The only other punishment is censure which in the circumstances in our view would meet the ends of justice.

6. In view of our discussion, while quashing the order of removal dated 31.8.1995 passed by the disciplinary authority under Annexure-10, we censure the applicant. In case the applicant had not crossed the age of superannuation he be reinstated forthwith. We, however, make it clear that the applicant shall not be entitled to any back wages as has been held by Gujarat High Court in Gujarat State Road Transport Corpn. vs. D.S.Kodiyan reported in 1994(2) SLJ 90 (relied by the applicant).

In the result, Original Application is

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allowed, but there shall be no order as to costs.

Registry to communicate copies of this judgment to the parties concerned forthwith.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO

6.3.2001
(G.NARASTHMAM)
MEMBER (JUDICIAL)