

2. 5

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 126 OF 1996.

Cuttack this the 30th day of June, 1999.

Nabakishore Pradhan.

....

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

2.1.1 30.6.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 126 OF 1996.

Cuttack this the 30th day of June, 1999.

CORAM:

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

....

Nabakishore Pradhan, aged about 52 years,
S/o. late Brahmachari Pradhan, At/Po.
Jaganath Prasad, Via. Bolagada, Dist. Nayagarh. ... Applicant.

By legal practitioner: Dr. Dinabandhu Mishra, Advocate.

-Versus-

1. Union of India represented through its Secretary, Department of Post-Cum-Director General (P), Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar-751 001.
3. Senior Superintendent of Post Offices, Puri Division, Puri-752 001. ... Respondents.

By legal practitioner: Mr. Anup Kumar Bose, Senior Standing Counsel (Central).

O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL):

Applicant Nabakishore Pradhan, who joined as Extra Departmental Branch Post Master, Jagannath Prasad Branch Post Office on 04-05-1962, has been removed from service in a disciplinary proceeding by order dated 25-1-1996 of Senior Superintendent of Post Office, Puri, Respondent No. 3. This application has been preferred for quashing the said order of removal dated 25-1-1996 under Annexure-4/5.

2. Only one charge has been framed against him (in memo dated 15-8-1995) under Annexure-A/2. It is stated that on 12-8-1993, applicant received Bantalab MO No. 4158, dated 4-8-1993 for Rs.600/- payable to Shri Arjun Pradhan of Jagannath Prasad. Applicant showed the MO as paid on 13-8-1993 to Arjun Pradhan without actually paying that amount. The purported signature of the payee on the MO Voucher was not the signature of the payee. On 19-8-1995, applicant, under Annexure-A/3 admitted the charge. Basing on this admission, the impugned order of removal was passed.

3. In this application, it is the case of applicant that pursuant to the charge communicated to him under Annexure-A/2 in Memo dated 16-8-1995, he submitted the reply on 19.8.1995 under Annexure-A/3 to the dictation of Respondent No.3 admitting the allegation so that no punitive measures will be taken and he will be pardoned more so when he refunded the amount voluntarily to the Government on 11-8-1994. In fact the MO amount of Rs.600/- was paid to Shri Arjun Pradhan on 13-8-1993 itself after obtaining signature and the complaint of another Arjun Pradhan to Respondent No.3 in this regard is not genuine. However, in order to avoid further complication and litigation, he deposited the amount of Rs.600/- to Govt. on 11.8.1994. He was removed from service without ^{affording} getting reasonable opportunity of being heard or without any enquiry being conducted and as such, the order of removal is violative of Article 311 of the constitution.

8

2

4. Department in counter submit that on receipt of complaint from Arjun Pradhan as to the non-receipt of MO amount of Rs.600/-, the matter was preliminarily enquired. There applicant admitted in his statement dated 25-7-1995 before the Sub-Divisional Inspector of Post Offices, Nayagarh that he had voluntarily credited Rs.600/- at Manikagoda Post Office on 11-8-1994 (Annexure-R/4). Speciman signature of the payee Arjun Pradhan and the signature appearing in the MO Voucher as Arjun Pradhan, (Annexure-R/1) were sent to the Government examiner of Questioned Documents for comparison of signature of the payee. The GEQD opined in his letter dated 11.11.1994 that ⁱⁿ the signature appearing/ the name of Arjun Pradhan at Annexure-R/1 is not the actual payee Shri Arjun Pradhan. Accordingly, charge was framed and applicant admitted the charge. Since charge has been admitted, there is no necessity for further enquiry. In other words, the stand of the Department is that no assurance or promise was given to applicant to admit the charge and the order of removal is valid under law.

5. In the Original Application, there has been mention that before the order of removal was passed under Annexure-A/4, i.e. notification dated 11.1.1996 was issued for filling up of the post of EDBPM, Jagannath Prasad BO. By order dated 14-2-1996, selection for the post pursuant to that notification has been stayed.

6. We have heard Dr. Dinabandhu Mishra, learned counsel for applicant and Mr. Abup Kumar Bose, learned Senior Standing Counsel (Central) appearing for the Respondents. Also perused the documents/records.

7. The main contention advanced by the learned is counsel for applicant/that even if applicant admitted the charge, extreme penalty of removal could not have been passed without enquiry. In this connection, reference has been placed on the decision of this Bench in Original Application No. 395 of 1987 (Dasarathi Kar Vrs. Union of India and others), disposed of on April 13, 1988. We have carefully perused the records of this Original Application No. 395 of 1987. It is true that this is also a case of removal of EDDA in a disciplinary proceeding but this disposed of case stands in a different footing inasmuch as in that case, the delinquent contested the charge filing written statement denying the allegations but at the stage of enquiry but before nomination of the Presenting Officer he admitted his guilty before the Inquiring Officer. Basing on this admission, the Inquiring Officer, without further enquiry, recorded his finding which was ultimately confirmed by the Disciplinary Authority and the order of removal was passed. It is, on this background, the then Division Bench of this Tribunal, quashed the order of removal. In the case before us, after receiving the Memo of charge, applicant admitted the charge. Hence under Rule 14(5) (a) of the CCS (CCA) Rules, 1965, the Disciplinary Authority shall record its findings of the charge, once the Govt. servant in his written statement admits all the Articles of charge. It is true that in this relevant provision there is discretion for the Disciplinary Authority to take such evidence as he may think fit, ^{once the} ~~then~~ factual aspect mentioned in the charges stands admitted in the written statement, there is no necessity further to take the evidence on such factual aspect.

Evidence may be necessary, ^{to} unearth any extinguishing circumstances, that will be pleaded in the written statement by admitting the charge. Here no ^{such} circumstances ~~has~~ has been pleaded in the written statement. We, therefore, do not agree ^{with} ~~in~~ the contention of learned counsel for applicant that the order of removal is vitiated simply because the Disciplinary Authority, after receiving the written statement admitting the guilty was not further enquired the matter.

There has also been submission on the side of the learned counsel for the applicant that the order of removal is not proportionate to the charge framed.

We are aware that applicant entered service on 4.5.62 i.e. he had put in 32 years of service before the order of removal was passed, which has not been denied in counter. However, we do not like to pass any opinion in this regard because applicant before approaching this Tribunal did not prefer any appeal under the Departmental Rules. In fact, this application, on this score is not maintainable under section 20(1) of the AT Act, 1985, which lays down that the Tribunal shall not ordinarily admit an application unless it is satisfied that applicant has availed of all remedies available to him under the relevant service rules as to the redressal of the grievances. There is no mention in this Original Application that he had preferred any Departmental appeal. Even in the counter it is silent in this regard. We therefore, presume that no Departmental appeal has been filed. Hence in this application he should have urged that such special circumstances for which he did not prefer Departmental appeal. The expression 'Ordinarily', in section

20(1), as has been held by the FULL BENCH of the Tribunal in B. Parmeswar Rao Vrs. Divisional Engineer, reported in Full Bench Judgment, CAT, Vol-III, 250 (1989-91) that the discretionary power is exercised in rare and exceptional cases and not usually and casually. The Original Application is silent as to such rare and exceptional circumstance. The order of the then single Bench admitting this Original Application on 14.2.1996 is also silent as to such rare and exceptional circumstance. We therefore, hold that this application is not maintainable.

8. The fact, however, remains that applicant had not availed the facilities of Departmental Appeal under the Rules. Yet it has been contended by the learned counsel for applicant that the order of removal is harsh and dis-proportionate to the charge. Hence we feel that he should have an opportunity to prefer the Departmental Appeal, if indeed he did not prefer such an appeal.

9. In the result, while dismissing this Original Application we direct the Appellate Authority of the applicant to entertain the appeal, if applicant prefers (if not already preferred the appeal prior to filing of this Original Application) within 45 days from the date of communication of this order, irrespective of the period of limitation provided under Rules and on receipt of such appeal, the Appellate Authority is directed to dispose of the said appeal through a speaking order within 45 days thereafter under intimation to applicant.

10. With the above directions, the Original Application is disposed of. There shall be no order as to costs. Stay order passed on 14-2-1996 stands vacated.

Somnath Som
SOMNATH SOM
VICE-CHAIRMAN
30.6.99

30.6.99
(G. NAKASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.