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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 140 OF 1998
Cuttack this the 26th day of Sept./2003

Gunanidhi Singh Rajput ... 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*

Mohanty
(M.R. MOHANTY)
MEMBER (JUDICIAL)

S. N. Som
(B.N. SOM)
VICE-CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.140 OF 1998
Cuttack this the 26th day of Sept./2003

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

Gunanidhi Singh Rajput,
S/o. Late Gaur Chandra Singh Rajput
Village-Surgiguda, PS-Koksara
District-Kalahandi

Applicant

Mr. D. P. Dhalasamant

—VERSUS—

1. Union of India represented through Chief Post Master General, Orissa Circle, Bhubaneswar-751 001
2. Director of Postal Services, Berhampur Region, Berhampur-760 001
3. Superintendent of Post Offices, Kalahandi Division, Bhawanipatna-766 001

By the Advocates

Respondents

Mr. U. B. Mohapatra
Mr. S. B. Jena

ORDER

MR. B.N.SOM, VICE-CHAIRMAN: Shri Gunanishi Singh Rajput (applicant) has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, assailing the order dated 24.1.1997(Annexure-4) removing him from service under Rule-8 of P & T E.D.Aagents (Conduct and Service) Rules, 1964. He has also prayed the Tribunal to quash the impugned order dated 24.1.1997(Annexure-4), the impugned order dated 17.12.1997(Annexure-5) passed by the appellate authority and also the charge sheet issued by the disciplinary authority vide Annexure-1. It is his further prayer that the Tribunal may direct the Respondents

-Department to reinstate him in service and to pay him the wages for the period during which he was kept out of service.

2. The brief facts of the case, according to applicant, are that in the year 1992 he was put off duty and proceeded against under Rule-8 of the P & T E.D. Agents (Conduct & Service) Rules, 1965 (in short Rules) by issuing a charge memo on 23.9.1993. The disciplinary authority appointed the Inquiring Officer to inquire into the matter. The applicant alleges that although the disciplinary authority had agreed to produce certain documents as additional documents, these documents were never produced during the inquiry. Similarly, one Rusikesh Panda was alleged to be produced as defence witness, but the Inquiring Officer did not allow him to be examined as defence witness on 20.7.1996 on the plea that the said witness could not establish his identity. His allegation is that the inquiry was concluded without production of the additional documents and without examination of defence witness, as a result of which he was seriously prejudiced in defending his case. The applicant had also submitted a detailed appeal against the order dated 24.1.1997 of the disciplinary authority, but the said appeal was rejected by the appellate authority on 17.12.1997. He further submitted that the quantum of punishment imposed on him was disproportionate to the gravity of the charge levelled against him, by ~~mentioning~~ stating that "the punishment of removal is quite disproportionate to the charge, even if the charges are found to have been established". On these grounds the applicant has approached



the Tribunal for redressal of his grievance.

3. The Respondents-Department have contested the application and have submitted that the applicant is not entitled to any of the reliefs sought for in Paras-8.1 and 8.2 of the Original Application. In support of their submission they have pointed out in the counter that the applicant, during his incumbency as Branch Post Master, misappropriated Surugiguda Branch Office had ~~misappropriated~~ money, which was entrusted to him by the concerned depositors for paying monthly instalments in various recurring deposit accounts. The allegation against the applicant is that he had misappropriated (before depositing the same in the respective accounts) for several months and that he had used the money for his personal use. They have also stated that some of these accounts belong to the miners. Refuting the allegation of denial of certain additional documents for examination, the Respondents-Department have submitted that only one document, i.e., tour diary of the Sub Divisional Inspector was not made available to him as that document had ~~no~~ no relation to the facts of the transactions made by the applicant in respect of certain recurring deposit accounts. With regard to other allegation of disallowing his defence witness to be examined during prosecution, the Respondents have stated that Shri Rusikesh Panda, who was allowed as his defence witness to be examined in fact did not attend the inquiry and the person who came before the Inquiring Officer was in fact impersonating the said Rusikesh Panda and on being asked by the Inquiring Officer to establish his identity he failed to do so and

therefore, he was disallowed to give evidence of defence in respect of the applicant. They have stated that in all the applicant was afforded full opportunity by the Inquiring Officer to defend his case. The Respondents have defended the punishment of removal from service imposed on the applicant on the ground that by misappropriating money deposited by the public in their R.D. Accounts in good faith not only caused harassment to the public, but also tarnished the image of the Department and in the process the faith of the public. ~~in respect of the Department and in the process~~ They have argued that the amount involved in the matter of misappropriation was immaterial as the conduct of the applicant in handling these financial transactions with regard to certain R.D. Accounts casts serious doubt on his integrity and a person, who does not bear unimpeachable integrity he is not fit to be retained in service any more and therefore, the punishment as imposed on the applicant is not at all disproportionate to the gravity of the charges levelled against him, which were established during the inquiry.

4. We have heard Shri D.P.Dhalasamant, the learned counsel for the applicant and Shri U.B.Mehapatra, the learned Addl. Standing Counsel appearing on behalf of the Respondents - Department and also perused the records placed before us. The learned counsel for the applicant had argued that the non-production of certain additional document and disallowing examination of one defence witness had crippled the applicant from defending his case properly.
also
He ~~therefore~~ stated that the act of commission and omission



on the part of the applicant did not warrant a severe punishment, as in the instant case, removal from service. Shri Dhalasamant also argued that the appellate authority did not consider disproportionate character of the punishment with reference to the offence alleged. On the other hand, the learned Addl. Standing Counsel Shri U.B.Mohapatra contended that the applicant was afforded full opportunity to go through the documents and to cross-examine the witness. He also pointed out that the Respondent-Department in their counter had already clarified that the document, which did not have any bearing with the inquiry, was disallowed to the applicant as well as one witness, who was not able to establish his identity was not allowed by the Inquiring Officer as defence witness of the applicant. The Respondents cannot be faulted on either of these two decisions, he submitted. We would like to note here that the learned counsel for the applicant, however, did not refute the said arguments nor did he file any rejoinder repudiating the stand taken by the Respondents-Department.

5. After hearing the rival contentions, we would like to observe that it is well settled principle of law that even though the onus of proving the charge lies with the disciplinary authority, it is enough if the evidence led in is sufficient to prove the facts of the charge as alleged. This view was taken by the Ernakulam Bench of this Tribunal in the case of one K.N.Chillama (Smt.) vrs. Union of India and others (OA No. 851 of 1993). The Tribunal in that case further held that once the facts are proved, the delinquent officer cannot take the plea of benefit of doubt as in the criminal proceedings. In the instant

case, however, there is no doubt that the charge of temporary misappropriation of money in respect of certain recurring deposit accounts maintained in the Post Office has been admitted by the applicant in his application itself (at Para-5.3), which reads as follows:

" That the amount involved is so small that it does not carry any sense to impose the punishment of removal, if punishment, quite disproportionate to the charge, even if the charges are found to have been established".

6. There is no question of any benefit of doubt in this case, because, the transactions are based on documentary evidence and as the documents/records maintained in the Post Office clearly showed that the applicant, as the Post Master had received money from the depositors/accounts holders of R.D.A/c. Nos. 70901684, 70901695, 7090171, 7090172, and 7090176 against which he had issued receipts to the depositors/representative of the A/C. holders, but the said amounts ~~were~~ ^{not} credited into the Account of the Post Office, the misconduct was proved without any doubt. The Respondents have very emphatically stated in their counter the justification for imposing on him/applicant the penalty of removal from service, because, they stated that they ~~redeem~~ did it to ~~redeem~~ the image of the Department and to restore the faith of the people in the Post Office. The appellate authority, while concurring with the order of the disciplinary authority had said that the applicant after having admitted that he had spent the Govt. money for his personal use for reasons, whatsoever, he had committed a great offence and had betrayed the faith bestowed on him as a Govt. Agent, for which he deserved to be declared unfit to continue in

Govt. service.

7. For the reasons which have been discussed above, we see no lacuna in the orders passed either by the disciplinary authority or the appellate authority, and therefore, this original Application lacks merit and accordingly, we dismiss the same leaving the parties to bear their own costs.

Mohanty
26/09/03
(M.R. MOHANTY)
MEMBER (JUDICIAL)

S. N. S. S.
B.N. S. S.
VICE-CHAIRMAN

By