

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.263 OF 1998
Cuttack this the 31st day of August/2001

Baikuntha Nath Bhei ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
31.8.2001

31.8.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.263 OF 1998
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CORAM:

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

...

Sri Baikuntha Nath Bhei
S/o. Sridhar Bhei, Vill/Post-Jhajia
Via-Barambagarh, District-Cuttack

...

Applicant

By the Advocates

M/s.C.R.Misra
G. Misra
T.K.Misra
T.K.Mandal

-VERSUS-

1. Union of India represented through Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi-110001
2. Member(Personnel), Postal Beard, Department of Posts, Ministry of Communications, Govt. of India, New Delhi
3. Chief Post Master General, Orissa Circle, Sachivalaya Marg, At/PO - Bhubaneswar, District-Khurda
4. Director of Postal Services, Bhubaneswar, Office of C.P.M.G., Orissa Circle, At/PO-Sachivalaya Marg, Bhubaneswar, District-Khurda
5. Superintendent of Post Offices, Cuttack South Division, At-P.K.Parija Marg, PO-Cuttack G.P.O., District-Cuttack-753 001
6. Sri Sankarsan Nayak presently A.S.P.Os, Sundargarh District-Sundargarh

...

Respondents

By the Advocates

Mr.B.K. Nayak, A.S.C.

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL) : Applicant, Baikuntha Nath Bhei, while serving as Extra Departmental Branch Post Master, Jhajia Branch Office, in account with Brambagarh S.O. was removed from service by order dated 30.6.1994 passed by Director of Postal Services, Bhubaneswar (Res. No. 4) vide Annexure-4. Applicant's departmental appeal under Annexure-5

was dismissed by the Appellate Authority, viz., Chief Post Master General, Orissa Circle, Bhubaneswar (Res. No.3) in order dated 9.12.1994 vide Annexure-6. Thereafter the applicant preferred revision before Member(Personnel), Postal Board (Res.No.2) vide Annexure-7. This petition was ultimately dismissed in order dated 29.10.1997 (Annexure-8). Hence this Original Application filed on 8.5.1998 praying for quashing the orders of the Disciplinary Authority, Appellate Authority and the Revisional Authority vide Annexures-4, 6 and 8, respectively.

Respondent No.5, i.e., Superintendent of Post Offices, Cuttack (S) Division in Memo dated 6.10.1993 (Annexure-1) served the charge sheet on the applicant. The charge is that on 7.11.1990 the applicant accepted Rs.182/- from the depositor of R.D.Account bearing No.18784 towards the R.D.Deposits with surcharge for the months from April to October, 1990. Again on 15.12.1990 he received further amount of Rs.50.25 from the same account holder towards the deposit for November and December, 1990. Though the applicant mentioned the receipt of these two amounts in the R.D. Passbook with his initials and the date stamps, did not make corresponding entries in any other relevant Post Office records on these two dates. But, however, on 2.4.1991 he incorporated an amount of Rs.344.50 constituting these two amounts including the surcharge amount upto April, 1991 in the Government Account. Thus, according to Department, the applicant temporarily misappropriated the amount of Rs.182/- from November, 1990 till 1.4.1991 and Rs.52.25 from 15.12.1990 till 1.4.1991, violating the provisions of Rules 131 and 174 of the Rules for Branch

Offices and in this way he failed to maintain absolute integrity and devotion to duty, as laid down under P & T S.D.A. (C&S) Rules, 1964. The applicant having denied the charges, the matter was enquired by an Officer appointed for this purpose. In his report under Annexure-2, the Inquiring Officer held that entrustment of the amounts on two occasions to the applicant by the depositor or his mother had not been proved and as such the amount accounted for on 2.4.1991 cannot be said to have been accepted by the applicant on 7.11.1990 and 15.12.1990 respectively. Accordingly he disbelieved the imputation of temporary misappropriation and held that the charge relating to infringement of Rule-174 and failure to maintain absolute integrity under Rule-~~70~~¹⁷ of the Conduct Rules had not been proved. However, he held that the charge with regard to infringement of Rule-131 in making the entries in the Passbook without actually receiving the cash had been established. Thereafter the Disciplinary Authority, i.e., Respondent No.4 sent a copy of the enquiry report to the applicant in letter dated 4.5.1994 under Annexure-2, informing him to make representation, if any, for being considered by him. In response to this, the applicant submitted representation under Annexure-3. The Disciplinary Authority, however, differed from the findings of the Inquiring Officer and held the imputation with regard to temporary misappropriation has been established and ultimately passed the order of removal from service. As already stated, this order of the Disciplinary Authority has been confirmed by the Appellate Authority as well as the Revisional Authority.

2. The grievance of the applicant is that the Disciplinary Authority ~~could~~ not have disturbed the main finding of the Inquiring Officer that imputation with regard to temporary misappropriation has not been established and so on, without issuing him a notice containing his tentative view on the findings of the Inquiring Officer on that part of the imputation. Had he given such notice, he could have had the opportunity to explain that the findings arrived at by the Inquiring Officer were not liable to be interfered with. In the absence of any such notice, the principles of natural justice have been grossly violated by the Disciplinary Authority to the prejudice of the applicant. Hence the impugned order of the Disciplinary Authority as well as the orders of the Appellate Authority and the Revisional Authority are vitiated. Moreover, the punishment imposed is grossly disproportionate to the gravity of imputations made against him.

3. The Department in their counter justified the ^{correctness and} validity of the impugned orders.

4. We have heard Shri C.R.Mishra, the learned counsel for the applicant and Shri B.K.Nayak, learned Addl. Standing Counsel for the Respondents. Also perused the records.

5. Though in the counter point of limitation was not pleaded, during hearing Shri Nayak raised the point of limitation. But the fact remains that the Revisional Authority passed the final order on 29.10.1997 (Annexure-8). This Original Application filed within one year thereafter, i.e., on 8.5.1998 is in time.

6. It is not in dispute that the Disciplinary Authority had not issued notice to the applicant conveying his tentative

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view on the imputation of temporary misappropriation and consequent infringement of Rule-174. Hence the point for determination is whether the Disciplinary Authority would have disturbed the findings of the Inquiring Officer on this part of imputation without issuing a notice to the applicant conveying his tentative decision on that imputation, in order to enable him to submit representation, if any, and the Disciplinary Authority having not observed this procedure, whether the applicant was prejudiced and thereby the proceeding is vitiated.

7. As early as 1964, a Constitution Bench of the Apex Court in the case of Union of India vs. H.C.Gel, reported in AIR 1964 SC 364, in Paragraph-11 of the judgment held as under :

" After the report is received by the Government, the Government is entitled to consider the report and the evidence led against the delinquent public servant. The Government may agree with the report or may differ, either wholly or partially, from the conclusions recorded in the report. If the report makes findings in favour of the public servant, and the Government agrees with the said findings, nothing more remains to be done, and the public servant who may have been suspended is entitled to reinstatement and consequential reliefs. If the report makes findings in favour of the public servant and the Government disagree with the said findings and holds that the charges framed against the public servant are prima facie proved, the Government should decide provisionally what punishment should be imposed on the public servant and proceed to issue a second notice against him in that behalf. If the enquiry officer makes findings, some of which are in favour of the public servant and some against him, the Government is entitled to consider the whole matter and if it holds that some or all the charges framed against the public servant are, in its opinion, prima facie established against him, then also the Government has to decide provisionally what punishment should be imposed on the public servant and give him notice accordingly. It would thus be seen that the object of the second notice is to enable the

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 public servant to satisfy the Government on both the counts, one that he is innocent of the charges framed against him and the other that even if the charges are held proved against him, the punishment proposed to be inflicted upon him is unduly severe. This position under Art. 311 of the Constitution is substantially similar to the position which governed the public servants under S. 240 of the Government of India Act, 1935. The scope and effect of the provisions of S. 240 of the Government of India Act 1935, as well as the scope and effect of Art. 311 of the Constitution have been considered by judicial decisions on several occasions and it is unnecessary to deal with this point in detail, vide Secy. of State v. I.M.Lal, 1945 FCR 103: (AIR 1945 FC 47) High Commr. for India v. I.M.Lal, 75 Ind. App 225: (AIR 1948 PC 121) and Khem Chand v. Union of India, 1958 SCR 1080 (AIR 1958 SC 300)"

The same view has been reiterated by the Apex Court in Kunja Bihari Mishra case reported in 1998 (2) SCSLJ 117. Again in Yeginath D.Gagade vs. State of Maharashtra reported in 1995 (5) SLR 248, the Apex Court, while reiterating this view held that delinquent's right to be heard under such circumstances is a constitutional right provided under Art. 311(2) and by non issue of such notice indicating the tentative decision of the Disciplinary Authority would violate the principles of natural justice. Even in the absence of specific provisions under the relevant disciplinary proceedings rules, rules of natural justice are to be read into the rules.

¶. In view of this well established legal principle enunciated by the Apex Court now and then, we have no hesitation to hold that the Disciplinary Authority grossly violated the principles of natural justice by disagreeing with the findings of the Inquiring Officer and holding that the applicant had committed temporary misappropriation of the amounts, as indicated in the charge sheet, without giving him a reasonable opportunity to have his say in the

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matter by issuing a notice indicating his tentative decision thereon. Hence the findings of the Disciplinary Authority, Appellate Authority, so also the Revisional Authority that the applicant committed temporary misappropriation of the amounts and thereby infringed Rule-174 and consequently failed to maintain absolute integrity and due devotion to duty cannot but be set aside. However, we see no reason to set aside the finding with regard to infringement of Rule-131 in incorporating entries in the passbook without actually receiving the cash.

4. Question now arises for determination is whether punishment of removal from service will be justified simply because the applicant, without actually receiving the amount on two occasions made entries in the passbook. We feel, ^{trial} punishment of removal from service for such ~~simple~~ negligence on the part of the applicant cannot but shock our judicial conscience, specially when the enquiry report reveals bonafides of the applicant by bringing this to the notice of the higher authority subsequently, whereafter the disciplinary proceedings was contemplated and ultimately culminated ~~by~~ removing the applicant from service. It is true that a Court/Tribunal cannot substitute its view on the punishment imposed by the Disciplinary Authority. Yet if the punishment imposed is shockingly disproportionate to the charges established the same can be interfered with. Under such circumstances, as has been laid down by the Apex Court in B.C.Chaturvedi's case reported in (1995) 6 SCC 749, the Tribunal can appropriately mould the relief either by directing the authority to reconsider the penalty or

to shorten the litigation in rare and exceptional cases impose appropriate punishment with cogent reasons. The applicant, as the record reveals, had been put under off duty in the year 1993. As per rules prevalent then, E.D. Agents under put off duty were not being paid any allowance. In other words, the applicant has been without receipt of any allowance all these years. Hence remanding the matter at this stage to the Disciplinary Authority with a direction to impose appropriate punishment in respect of the formal infringement of Rule-131 as mentioned under Rule-7 of E.D. Agents (Conduct & Service) Rules, 1964, would further prolong the conclusion of the proceedings. We, therefore, considered six categories of penalties, as mentioned under Rule-7. Clauses 5 and 6~~7~~ relating to removal and dismissal, which as already discussed would not at all be appropriate in the facts and circumstances of the case. Clause-IV relates to recovery from the delinquent for any pecuniary loss caused to the Government by negligence or breach of its order. This type of punishment would not also apply since there is no pecuniary loss caused to the Department. Clauses-II and II~~1~~ relate to debarring the E.D. Agent(s) from appearing in recruitment for the posts of Postman/Postal Assistants/Group-D posts. As of to-day the applicant is more than 50 years of age, as would be evident from the verification statement made by him in the Original Application. Hence the punishment of penalty of debarring him from appearing in these recruitments will not carry any meaning. The only subsisting one "censure" will be appropriate punishment in our considered view. In the result, while setting aside the findings of the Disciplinary Authority, Appellate Authority and the Revisional Authority as to the

commission of temporary misappropriation by the applicant established and consequent infringement of Rule-174 and thereby failure to maintain absolute integrity and devotion to duty, we uphold the finding with regard to infringement of Rule-131 in incorporating the entries in the passbook without actually receiving the cash and accordingly while quashing the impugned orders of removal from service, we impose the penalty "censure" on the applicant with direction to departmental authorities to reinstate the applicant in service forthwith by making it clear that he would not be entitled to backwages till the date of his reinstatement.

10. With the above observations and directions, Original Application is disposed off leaving the parties to bear their own costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
31.8.1961

31-8-61
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//