

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 517 OF 1998
Cuttack this the 10th day of May, 2001

Sunaram Munda

• • •

Applicant(s)

-VER SU S-

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 N^o. Central Administrative Tribunal or not ?

Somnath Shom
(SOMNATH SHOM)
VICE-CHAIRMAN
0.5.2001

(G.NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 517 OF 1998
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CORAM:

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

...

Shri Sunaram Munda, aged about 43 years,
Son of Late Gopinath Munda, Ex-Postal Assistant,
At/PO - Keonjhargarh, Dist-Keonjhar, PIN-758001

...

Applicant

By the Advocates

M/s.Ganeswar Rath
A.K.Panda
S.R.Mohanty
T.K.Prahraj

-VERSUS-

1. Union of India represented by the Director General, Department of Posts, Dak Bhawan, New Delhi
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist - Khurda
3. Post Master General, Sambalpur, At/PO/Dist - Sambalpur
4. Superintendent of Post Offices, Keonjhar Division, At/PO/Dist-Keonjhargarh

...

Respondents

By the Advocates

Mr.A.K. Bose
Sr.Standing Counsel
(Central)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL) : In this application the applicant challenges the penalty of compulsory retirement imposed by the Disciplinary Authority (Respondent No.4) vide Annexure-5 dated 21.8.1996 and confirmed by the Appellate Authority (Respondent No.3) vide Annexure-7 dated 20.12.1996, mainly on the following grounds.

- i) Superintendent of Post Offices, Keonjhar Division, who was an witness to raid on 20.2.1992, on the basis of which the disciplinary proceedings have been initiated, not only framed the charges, but also ultimately imposed the penalty;

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- ii) Principles of natural justice have been grossly violated by non-supply of copies of documents required by the applicant for his defence;
- iii) No case of misappropriation has been made out as the shortage of cash detected on 20.2.1992 was made good on 22.2.1992; and
- iv) Penalty of compulsory retirement is excessively harsh and disproportionate to the charges made out and was also imposed by taking into account previous misconduct of the applicant, which did not find mention in the charge

2. While the applicant was serving as Sub Post Master, Karanjia, his office was raided by the then Superintendent and Assistant Superintendent of Post Offices, Keonjhar Division, along with S.D.I.(P), Champua on 20.2.1992. After completion of preliminary enquiry, on the basis of the facts detected during the raid, the following charges were framed vide Annexure-1 dated 5.5.1993 for violation of Rule-3 of the CCS(Conduct) Rules, 1964 (in short Rules, 1964) in not maintaining absolute integrity and devotion to duty,

- a) Non-accounting of stamp remittances received by the applicant from 28.11.1991 to 3.12.1991, violating the provisions of Rule-596(2) of the P & T Manual;
- b) Showing of bogus liabilities in the Sub Office daily accounts from 6.1.1992 to 19.1.1992 to justify retention of heavy excess cash in violation of Rule-605(1) of P & T Manual;
- c) Non-sending of Money Orders received from 11.2.1992 to 20.2.1992 for payment to the payees in violation of Rule-24 of P & T Manual;
- d) Unnecessary obtaining of huge cash by requisitioning from cash office on various dates from 6.1.1992 to 4.2.1992, violating Rule-58 of P & T Manual;
- e) Non-preparation and sending of E.C.B. Memos from 6.1.1992 to 19.2.1992 in spite of cash balances on these dates where more than the maximum authorised cash balance of Rs.2000/-, contrary to Rule-677(b) of P & T Manual; and
- f) Detection of shortage of post office cash of Rs.31,990.45 on 20.2.1992

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All these charges have been held to be proved by the Department.

3. Respondents (Department) in their counter justify the penalty awarded on the applicant by taking the stand that principles of natural justice have not been violated to the prejudice of the applicant and that no irregularity and/or illegality has been committed in conducting the disciplinary proceedings.

4. No rejoinder has been filed by the applicant.

5. We have heard Shri Ganeswar Rath, the learned counsel for the applicant and Shri A.K.Bose, learned Senior Standing Counsel appearing for the Respondents (Department). Also perused the records.

6. In course of hearing Shri Rath fairly conceded that his first ground of attack that the Superintendent of Post Offices, who conducted the raid had issued the charge sheet and imposed the penalty is not correct. This is also clear from the averments in Paras-12 and 13 of the counter, which have not been denied.

7. Regarding non supply of copies of documents, barring mention of preliminary enquiry report, Paras-5.5 and 5.6 of the Original Application dealing on this subject are too vague in the absence of mention of particulars of the documents. Yet, we have taken the pains to go through the enquiry report (Annexure-4) and the order sheet dated 7.6.1994 of the Inquiring Officer (Annexure-5). These documents would disclose that out of the 16 documents requisitioned by the applicant during the enquiry, only four were allowed. Out of the remaining 12, 3 documents were never in existence at all and this fact has

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not been disputed by the applicant in the rejoinder. Five of the remaining nine documents including statement of five officials, alleged to have been recorded during preliminary enquiry, in the list of witnesses and documents appended to the charge-sheet, names of those five witnesses do not find place. The remaining four documents as requisitioned by the applicant are copies of error book extract submitted to the Superintendent of Post Offices, Keonjhar Division by Post Master, Keonjhar during 6.1.1991 to 22.2.1991, copy of rough account maintained by the Sub Post Master, Keonjhar from 6.1.1991 to 22.2.1991, ledgers of Karanjia Savings Bank Account, along with the concerned Guard Files and preliminary enquiry report. In Para 3.3 of the enquiry report, the Inquiring Officer gave a reasoned order by not allowing these documents. We do not see any infirmity in this reasoning. Excepting in case of preliminary enquiry report, Shri Rath, the learned counsel for the applicant also did not highlight as to how the applicant was prejudiced by non supply of copies of the remaining three documents. Even, in his representation vide Annexure-R/1, with reference to the report of the Inquiring Officer and also in the Memo of Appeal (Annexure-6), the applicant did not at all indicate as to how he was prejudiced by non supply of these four documents.

Shri Rath, the learned counsel for the applicant, however, vehemently contended that by non supply of copy of preliminary enquiry report the applicant was greatly prejudiced. Though in the Memo of Citation filed on 5.4.2001, long after the conclusion of the arguments, it was mentioned that the Inquiring Officer relied on the preliminary enquiry

report, neither such an argument was advanced nor any averment has been made to that effect in the Original Application. We have also carefully gone through the ~~pre~~ enquiry report. This preliminary enquiry report has not been marked as Exhibit during the enquiry and no reliance was placed thereon.

Still Shri Rath submitted that ^{Non supply report by} the basic document on which the entire proceeding is based, prejudice is implicit when copy of the same was not supplied to the delinquent. We are not at all impressed with this submission of Shri Rath, the learned counsel for the applicant. In the Memo of Citation, decision of the C.A.T. Ahmedabad Bench in the case of T.A.Pawadai vs. Union of India reported in (1988) 8 A.T.C. 297 finds mention in support of this contention. This is not a case of non-supply of copy of preliminary enquiry report. On the other hand, it is a case for non supply of the report of the regular enquiry after initiation of departmental proceedings. Hence this decision will not be of any advantage to the applicant. Even the decision of the Apex Court in Kashinath Dixita case, reported in AIR 1986 SC 2118, referred to by Shri Rath during hearing, though not cited in the subsequent Memo filed, nowhere lays down that simply because copy of the ^{preliminary} enquiry report was not supplied to the delinquent, the entire proceedings stood vitiated. The Apex Court only held that when the Department failed to supply of the statement of witnesses recorded during preliminary enquiry which ~~was~~ relied on by the Department to establish the charge, then prejudice is implicit. On the other hand, the Apex Court in Vijaya Kumar Nigam vs.

State of Madhya Pradesh reported in 1997 SCC(L&S) 489 held that preliminary enquiry report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order of dismissal against the employee and accordingly held non supply of copy of such report would not violate the principles of natural justice. This has been reiterated by the Apex Court in Superintendent, Govt. T.V. Sanitorium vs. S.J. Srinivasan reported in 1998 SC(L&S) 1722. In this case the Apex Court specifically held that there is no rule requiring that preliminary enquiry report should be served on the delinquent officer/employee before commencing the enquiry. Even ^{as} _{in} early ^{as} _{in} 1974 the Apex Court in Krushna Chandra Tandon vs. Union of India reported in 1974 SC 1589 (Para-16) clearly observed that when neither the Inquiring Officer nor the Punishing Authority relied on the report made against the delinquent servant for arriving at the conclusion, the servant cannot make a grievance of the denial of reasonable opportunity on the ground of non supply of copy of that report.

Thus, we are not convinced that principles of natural justice were in any way violated for non supply of the documents requisitioned by the applicant.

¶ It has been contended that there is absolutely no evidence in regard to case of misappropriation. Law is well settled that a Tribunal/Court cannot assume the role of an Appellate Authority to reassess the evidence to examine whether the conclusion arrived at by the Disciplinary Authority

is correct. Of course, in case of no evidence, the Tribunal will be justified in quashing those findings.

There is evidence that on the date of raid on 20.2.1992 there was shortage of cash amounting to Rs.31,990.45. Evidence on this charge was thoroughly and elaborately dealt by the Inquiring Officer in ~~Paras~~ 9.7.1 to 9.7.11, i.e. from Page 26 to 31 of his report. Even the Disciplinary Authority and the Appellate Authority had exhaustively dealt this aspect of the evidence in their orders and held the charge has been established. After going through these materials, we are not inclined to agree with the learned counsel for the applicant that this is a case of no evidence.

9. It has been lastly contended that the punishment imposed on the delinquent with respect to previous misconduct could not have been taken into consideration while imposing the penalty of compulsory retirement as in the charge memo these instances of past misconduct did not find place. However, in the Original Application there is no denial about this past misconduct of the applicant. The enquiry report reveals that Exhibit S-98, i.e. punishment order dated 3.3.1986 of the Superintendent of Post Offices, Keonjhar imposed on the applicant as Sub Post Master, Banaikela was taken into account during enquiry. A copy of the enquiry report was supplied to the delinquent in order to enable him to submit representation, if any, to the Disciplinary Authority, before the latter arrived at his findings. In *State of Mysore vs. K.M.Gowda*, reported in AIR 1964 SC 506 (cited on behalf of the applicant) a Constitution Bench of the Apex Court held that if the proposed punishment under the Article 311(2)

(prior to 42nd Amendment) of the Constitution is based mainly on the previous record of the Govt. servant, the 2nd notice to Govt. servant must disclose this, because, if that fact was brought to his notice, he might explain that he had no knowledge of the remarks given by his superiors, that he had adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. In the case before us though the applicant was aware that Exhibit S.98 relating to punishment imposed on him in a previous disciplinary proceedings found mention in the enquiry report, still he did not at all make any reference to this in his representation to the Disciplinary Authority under Annexure-6. Even his appeal (Memo Annexure-6) is also conspicuously silent in this regard. We, therefore, do not see any illegality in taking applicant's past misconduct into account while imposing the penalty. We are also not inclined to accept the contentions advanced by the learned counsel for the applicant that the punishment of compulsory retirement is indeed harsh, because, as the charges reveal, the applicant was in the habit of keeping huge cash at his disposal without duly accounting for the same and even he was in the habit of keeping cash to be paid to the payees of the M.Os.

In the result, we do not see any merit in this application which is accordingly dismissed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO//

10-5-87
(G.NARASIMHAM)
MEMBER (JUDICIAL)