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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 77 OF 1999
Cuttack, this the 26th day of May, 2000

Basanta Kumar Jena

APPLICANT


Vrs.

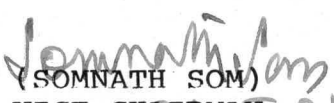
The Union of India and others ...

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.


(J.S. DHALI WAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI J.S.DHALIWAL, MEMBER(JUDICIAL)

.....
Basanta Kumar Jena, aged about 39 years, son of Krushna
Chandra Jena, At/PO-Khamareddy, Via-Badakodanda,
PS-Bhanjanagar, Dist.Ganjam..... Applicant

vrs.

1. The Union of India, represented through its Secretary,
Ministry of Department of Posts &Telegraphs, Dak Tar
Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle,
At/PO/PS-Bhubaneswar, Dist.Khurda.
3. Post Master General, Berhampur Region,
At/PO/PS-Berhampur, Dist.Ganjam.
4. Superintendent of Post Offices, At/PO/PS-Aska,
Dist.Ganjam

.....Respondents

Advocates for applicant - M/s S.K.Mandal
B.K.Mohanty

Advocate for respondents-Mr.S.B.Jena
ACGSC.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J Som .
In this application the petitioner has
prayed for quashing the order dated 31.12.1997 (Annexure-5)
removing him from the post of EDBPM, Khamareddy B.O. and the
order dated 30.12.1998 of the appellate authority rejecting
his appeal. He has also prayed for a direction to the
respondents to allow him to join in his post with all
financial benefits from the date he was put off duty.

2. The respondents have filed counter opposing the prayers of the applicant.

3. We have heard Shri S.B.Jena, the learned Additional Standing Counsel for the respondents. The learned counsel for the petitioner has filed a written note of submission which has also been taken note of.

4. The applicant's case is that he is a physically handicapped person and has been working in the post of EDBPM, Khamareddy B.O. from 12.10.1982. In order dated 14.11.1995 disciplinary proceeding was drawn up against him with two charges. The applicant denied the charges, and the inquiring officer after enquiry held that the first charge is not proved and the second charge is partially proved. The inquiring officer submitted his report on 23.7.1997. The applicant has stated that there was no evidence of misappropriation nor was there any intention of misappropriation. The applicant was put off duty on 29.11.1994. He has stated that the report of the inquiring officer was sent to him in letter dated 5.8.1997. This letter was later on cancelled and in letter dated 11.12.1997 (Annexure-3/i) the disciplinary authority communicated to him the reasons for disagreeing with the findings of the inquiring officer and asked the applicant to show cause. The applicant accordingly submitted his representation on 21.12.1997 inconsideration of which the impugned order dated 31.12.1997 removing the applicant from service was passed. His appeal against the order of punishment was also rejected, as mentioned earlier.

5. Before considering the grounds on which the applicant has made the above prayers referred to above and the averments and submissions of the respondents opposing the prayers, it is to be mentioned that in a departmental

proceeding the Tribunal does not act as an appellate authority and cannot reappraise evidence and substitute its finding in place of findings arrived at by the inquiring officer, disciplinary authority and the appellate authority. The Tribunal can only interfere if reasonable opportunity has been denied to the delinquent officer or there has been violation of principles of natural justice, or if the findings are based on no evidence or are patently perverse. The grounds urged by the applicant have to be considered in the context of the above well settled position of law.

6. The applicant has stated that he was denied reasonable opportunity in defending his case and the principles of natural justice have been violated. The only ground urged by the applicant is that he was denied the assistance of an advocate in course of the enquiry. The law is well settled that in a departmental proceeding engagement of an advocate can be allowed at the discretion of the inquiring officer only if the prosecuting officer is a person specially trained for prosecuting the delinquent official so as to provide the delinquent official a level playing field. The other ground on which the engagement of legal counsel can be allowed to the delinquent official is where the charges are so complicated that in the absence of assistance of a person trained in niceties of law and evidence, the delinquent official would not be in a position to defend his case properly. In this case Sub-Divisional Inspector (Postal) was appointed as the presenting officer. It has not been stated by the applicant that the presenting officer has been specially trained for conducting cases before the inquiring officer against delinquent public servants. The applicant from his side had nominated a retired Post Master to act as

assisting government servant. In view of this, it cannot be held that on this ground the applicant has been denied reasonable opportunity. The inquiring officer has also stated that the applicant perused the listed documents on 27.2.1996 with help of assisting Government servant and took extracts. Xerox copies of the same were also supplied to him. The inquiring officer has noted that no additional document was requisitioned either by presenting officer or the charged official, i.e., the applicant. In view of this, it cannot be said that in the process of enquiry the applicant has been denied reasonable opportunity or the principles of natural justice have been violated. These contentions are therefore held to be without any merit and are rejected.

6. The next contention of the petitioner is that the inquiring officer has misappreciated the evidence and found that charge no.2 is partially proved. Except this bland assertion by the petitioner that the inquiring officer has misappreciated the evidence, no specific point in support of this contention has been urged either in the OA or in the written note of submission. In view of this, it must be held that the contention of the applicant that the inquiring officer has misappreciated the evidence is without any basis. On the contrary we find that the inquiring officer has examined the matter with considerable degree of thoroughness and has analysed all aspects of both the charges. This contention of the applicant is accordingly rejected.

7. The last contention of the learned counsel for the petitioner is that the disciplinary authority has misread and misunderstood the inquiring officer's report and has wrongly held that the inquiring officer is wrong in holding that charge no.1 is not proved. For considering this

contention it is necessary to refer to the two charges against the applicant and the findings of the inquiring officer. But this exercise is being undertaken only for the limited purpose of determining if the disciplinary authority did actually apply his mind to the facts of the case and the report of the inquiring officer before coming to his findings.

8. The first charge against the applicant is that while he was working as EDBPM, Khamareddy EDBO during the period from 21.9.1993 to 26.10.1993 he received Rs.1200/- on 21.9.1993 from Bhima Behera, the depositor of S.B. Account No. 942374. The allegation is that the applicant entered the deposit in the concerned Pass Book on 21.9.1993, initialled the entry, and impressed the Date Stamp of that date but did not enter the transaction in Savings Bank Journal or take it into Branch Office account on that day. He accounted for the transaction on 30.9.1993, after 9 days, in contravention of the departmental rules. The inquiring officer has discussed this charge in great detail. He has noted that this charge consists of three parts. The first aspect is whether the delinquent officer, i.e., the applicant received Rs.1200/- on 21.9.1993 from Bhima Behera for deposit of the amount in his Savings Bank Account. The second aspect is whether the charged official entered the deposit of Rs.1200/- in the concerned Pass Book on 21.9.1993, initially the entry and impressed the date stamp of that date, but did not take the amount in the Branch Office account on that day. The third aspect is whether the charged official, i.e., the applicant accounted for the same on 30.9.1993 after nine days of the actual deposit on 21.9.1993. The inquiring officer has noted that Bhima Behera, the depositor has stated during the enquiry that he did not come to the Post Office to deposit the

above amount on 21.9.1993. He sent the amount through one Jagannath Dakua who, as it appears from the enquiry report, was the son of the then EDDA. Bhima Behera stated that he could not remember when the amount was sent. He is also not literate enough to write the pay-in-slip but is able to sign his name only. From the pay-in-slip the inquiring officer found that the deposit was made by one Jagannath Dakua who has put his signature and date as 30.9.1993 though this date is overwritten. In the space provided for date of deposit, the date has been mentioned as 21.9.1993 which again is corrected and overwritten. But the inquiring officer has found that the Date Stamp is very clear and there is no overwriting and the date stamp is of 30.9.1993. It is also written that in the S.B.Pass Book in the space provided for S.B.Clerk the date mentioned is 30.9.1993. The date of deposit in S.B.Pass Book is mentioned in an overwritten manner as 31.9.1993 but the date stamp impression is found as of 30.9.1993. Thus, the inquiring officer has taken note of the fact that in the pay-in-slip the date is noted as 21.9.1993 in a corrected and overwritten manner. But in the pay-in-slip the date stamp is very clear and it is 30.9.1993. But in the Pass Book, in the space provided for the date to be mentioned by the S.B.Clerk the date given is 30.9.1993 and the date has been overwritten as 31.9.1993. The inquiring officer has also noted that in the Pass Book the date stamp impression is of 21.9.1993. The inquiring officer has stated that as the month of September is of 30 days, the stamp of 31.9.1993 is obviously wrong. He has also noted that Jagannath Dakua, the person who actually has made the deposit has not been examined and therefore the inquiring officer held that ^{the charge that} ~~the~~ applicant received Rs.1200/- from Bhima Behera

on 21.9.1993 is not proved. As regards the stamping the date in the SB Pass Book as also in the pay-in-slip the inquiring officer has come to the conclusion that if the deposit was actually made on 30.9.1993, then the date stamp should not have been given in the Pass Book as 21.9.1993 and therefore, this part of the charge is partially proved. The third aspect of this charge is whether the applicant accounted for this amount on 30.9.1993. The inquiring officer has held that he had actually taken this amount into Branch Office account on 30.9.1993. He has specifically held that the deposit was actually made on 30.9.1993 and the charge that he has taken the amount into account after 9 days of actual deposit is not proved. On that basis it is said that the third aspect of taking the amount into account on 30.9.1993 is proved. But on the basis of his findings on the first two aspects, the inquiring officer has held that this charge is not proved. The disciplinary authority while communicating his reasons for disagreement with the inquiring officer's findings on this charge, has stated that the inquiring officer in his enquiry report has held in paragraph 9.3 that the charge is partially proved but he has concluded in paragraph 9.5 of his report that the charge is not proved. It is stated that the inquiring officer has not properly assessed the evidence adduced during enquiry and different entries in the connected records have not been properly appreciated by the inquiring officer and above all the deposition of depositor Bhima Behera confirming the transaction and balance in the Pass Book has been ignored and therefore the inquiring officer's finding that this charge is not proved is not based on facts and is not reasonable. From the report of the inquiring officer it appears that there was a preliminary enquiry in

this matter because he has referred to the preliminary enquiry in page 5 of his enquiry report. After the preliminary enquiry the charge has been framed that the charged official has received Rs.1200/- on 21.9.1993 from Bhima Behera. It has been brought on record that Bhima Behera did not deposit the amount. He sent the amount through one Jagannath Dakua, the son of the then EDDA, who has not been examined. The finding of the inquiring officer that the date stamp on the pay-in-slip is clear and the date shown is 30.9.1993. But in the SB Pass Book at one place the date stamp was put on 21.9.1993. The inquiring officer has come to the finding that the amount was actually tendered on 30.9.1993 and he has held that the charged official, i.e., the applicant has taken it into account on 30.9.1993. He has found fault with the applicant only to the extent that in the SB Pass Book at one place the date stamp was put as 21.9.1993. The disciplinary authority has, however, come to the finding that since the date stamp was of 21.9.1993 the amount was actually tendered on 21.9.1993 and therefore he has held the charge of non-crediting of the amount for nine days, as proved.

9. The second charge is that the applicant received a sum of Rs.1000/- from Bhima Behera, depositor of SB Account No. 942374 on 26.10.1993. He entered the deposit in the concerned Pass Book, initialled the entry and impressed the DateStamp of the BranchOffice of 26.10.1993, but he did not enter the transaction in the Branch Office Journal on that day nor did he account for the amount in the Branch Office Account on 26.10.1993 or thereafter. The inquiring officer has again examined this charge in detail. He has held that this charge consists of two aspects. The first aspect is

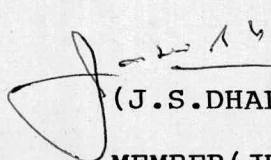
whether the applicant accepted Rs.1000/- from Bhima Behera on 26.10.1993 for deposit. The second aspect is whether the applicant entered the amount in the concerned Pass Book, initialled the entry and impressed the Date Stamp of the Branch Office of 26.10.1993 but didnot account for the same on 26.10.1993 or thereafter. The inquiring officer has come to the clear finding that Bhima Behera did not personally deposit the amount. He stated that he deposited the amount through one Jagannath Dakua, the son of the then EDDA, but Jagannath Dakua was not examined. The counterfoil of the deposit was also not obtained and produced, and on that ground the inquiring officer held that this aspect of the charge has not been proved. As regards the second aspect the inquiring officer has noted that the applicant admitted that Jagannath Dakua produced the Pass Book with the pay-in-slip on 26.10.1993 and he had initialled the entry of deposit in the Pass Book and also put the date stamp of 26.10.1993 in the Pass Book, but Jagannath dakua did not hand over the amount. He also took away the pay-in-slip with the money and didnot submit the same again. The applicant hasstated that during this period apart from his own work he was also working as EDDA and because of village litigation he was taken into custody in the meantime and therefore this amount couldnot be taken from the depositor and accounted for. The inquiring officer has ultimately found that the applicant had entered this amount in the SB Pass Book of Bhima Behera and he held that second aspect of this charge has been proved. He also noted that the applicant had in the meantime deposited the amount through his brother.

10. In case of both the charges the specific charge is that the applicant received both the amounts from Bhima Behera, the depositor, but the inquiring officer has

held in both the cases that the amounts were not deposited by Bhima Behera but by one Jagannath Dakua, son of the then EDDA. A charge has to be specific and since here the charge is that the applicant has received the amounts from Bhima Behera, there is absolutely no evidence that the amounts have been received from Bhima Behera. The most important person Jagannath Dakua who is stated to have deposited the amounts on 21.9.1993 and 26.10.1993 hasnot been examined. The inquiring officer has also taken note of the fact that with regard to the first charge that in the pay-in-slip a clear date stamp of 30.9.1993 has been put and where the date 21.9.1993 has been mentioned in the pay-in-slip the date has been corrected and overwritten. In view of the above and other facts, the inquiring officer has held with regard to the first charge that the amount has not been deposited on 21.9.1993 but on 30.9.1993. The disciplinary authority in his order at Annexure-5 has not examined at all the points in favour of the charged official noted by the inquiring officer in his report with regard to the first charge. In view of this, it is clear that the disciplinary authority has come to the finding with regard to the first charge without proper application of mind. With regard to both the charges the fact that the charge is that the money has been received from Bhima Behera and the finding is that the amounts were actually deposited by Jagannath Dakua, has also not been taken into consideration. In view of this, it must be held that the order of punishment issued by the disciplinary authority basing on such appreciation of evidence as above is not sustainable.

11. As we have already mentioned it is not open for the Tribunal to re-assess the evidence and come to a different finding. This is for the departmental authorities only. We have examined the evidence in this case only for ascertaining if the findings given by the disciplinary authority are based on no evidence or are patently perverse. In the light of our above discussions the orders of the disciplinary authority and appellate authority are set aside and the matter is remanded to the disciplinary authority with a direction that he should examine the entire case afresh, come to a fresh finding on the basis of evidence recorded, and take further action in the matter. This process should be completed within a period of 120 days from the date of receipt of copy of this order. The applicant would be deemed to be continuing under suspension from the date of issue of this order till the above exercise is completed. As regards the intervening period from the date of removal from service till the date of issue of this order, this will be decided on the basis of final orders which the disciplinary authority will pass in pursuance of our order.

12. In the result, therefore, the Original Application is allowed in terms of the observation and direction above but without any order as to costs.


(J.S. DHALI WAL)

MEMBER (JUDICIAL)

26.5.2000


(SOMNATH SOM)

26.5.2000
VICE-CHAIRMAN