

7
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK

ORIGINAL APPLICATION NO.491 of 2001
Cuttack, this the 7th day of Jan. 2005


Gangadhar Nayak Applicant

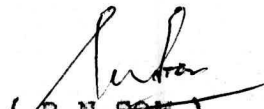
-VERSUS-

Union of India & others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not ? 7th
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 7th


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 491 of 2001
Cuttack, this the 7th day of Jan. 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI M.R.NOHANTY, MEMBER (JUDICIAL)

...

Shri Gangadhar Nayak, aged about 45 years S/o. Gopinath Nayak,
at present working as Postal Assistant, Cuttack GPO, Cuttack.

..... Applicant

Advocates for the applicant

..... M/s. Akhil Mohapatra
L. Dash,
R.C. Sahoo,
B. Mallick &
J.M. Rout.

Versus-

1. Union of India represented by Chief Post Master General, Orissa, Bhubaneswar, Dist. Khurda.
2. Director, of Postal Services, (Head Quarter) Office of the Chief Post Master General, Orissa, Bhubaneswar, Dist. Khurda.
3. Senior Superintendent of Post Offices, Cuttack City Division, Cantonment road, Cuttack-1.
4. Senior Post Master, Cuttack G.P.O., Cuttack-1.
5. Vigilance Officer, Office of the Chief Post Master General, Orissa, Bhubaneswar, Dist. Khurda.

..... Respondents

Advocates for the Respondents

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

.....

O R D E R

SHRI B.N.SOM, VICE-CHAIRMAN: Shri Gangadhar Nayak has filed this O.A. being aggrieved by the order of the Disciplinary Authority imposing punishment of reduction to the minimum of the time scale on the allegation of violation of Rule-3(I) (i) and (iii) of C.C.S.(Conduct) Rules 1964. He has inter-alia prayed for quashing the orders of the Disc.Authority and the Appellate Authority at Annexure-6 and 1 respectively.

2. The charge framed against the applicant was that while working as postal assistant, parcel delivery Branch, Cuttack GPO on 28.10.91, he abstracted the contents of a foreign parcel addressed to Sister Dayashrama, Cuttack and took away the contents of the parcel for personal benefit. As the applicant denied the charge, an enquiry was held into the matter by appointing an Inquiry Officer (IO in short) and the said IO submitted his report on 26.9.97 stating that the charge of abstraction from parcel was not proved due to lack of definite evidence. The Disc.Authority did not agree with this finding of the IO, communicated the reasons of his dis-agreement with the IO to the charged official by his letter dt.1.12.99. The charged official was also given opportunity to submit his written statement which he did vide his representation dt.28.12.99. The Disc.Authority (DA in short), after going through the pleas taken by the applicant in his defence, by a detailed/reasoned order imposed on him the penalty of reduction to the minimum of the time-scale i.e. Rs.4,000/- in the time scale of pay of Rs.4000-100-6000 for a period of five years with immediate

effect. It was also directed that the applicant would not earn increments of pay during the period of reduction which would have the effect of postponing his future increments.

3. Being aggrieved by the said order of the DA he filed an appeal before the Appellate Authority (AA in short) who by passing a detailed and reasoned order dt.30.3.01 rejected the contentions of the applicant made in his defence. However, taking a lenient view of the matter he modified the order of punishment from reduction to the minimum of time-scale of pay for 5 years to 2 years. Other aspects of the punishment order remained operative.

4. The applicant being aggrieved by the order of the AA has come up in this O.A. stating that the said authority also has not appreciated the objections raised by him regarding denial of natural justice to him during enquiry. In this regard, he has referred to absence of one Sk.Mumtaz Ahmed as a prosecution witness during enquiry though he was summoned and the main complainant Sister Nitividad was not produced before the IO although her statement was the foundation of the prosecution case. Failure of the prosecution to produce her vitally affected his case. He has, further, stated because of the absence of the addressee i.e. Sister Nitividad, the complainant's statement could not be corroborated and the same could not have been used by the prosecution to prove its case. He could not have been denied his fundamental right to cross-examine the key witness. He has also stated that in the absence of any complaint made by the addressee or in the absence of any evidence that he had abstracted the

M

contents of the parcel, he could not have been made accountable and did not deserve such a harsh treatment. Finally, he has said that certain items which were found in his possession and were the contents of the foreign parcel were gifted to him by Sister Nitividad but she was not produced for cross-examination to enable him to prove his side of the case.

5. The Respondents by filing a counter have disclosed that the applicant was given full and reasonable opportunity to defend his case and the technical/legal objections raised by him were also answered adequately by the concerned authority. They have denied that the applicant was a victim of vindictiveness on the part of some of his colleagues and that the case was ^{not} proved against him. They have pointed out that the applicant is infact responsible for his failure to examine Sk. Mumtaz Ahmed as defence witness. They have also submitted that as the Respondent Department itself had detected the case of abstraction in the foreign parcel, it was not necessary on the part of the addressee to file a formal complaint to initiate action against the official at fault. Their plea is that the applicant is repeatedly harping on this aspect of the case only to divert the attention of this Tribunal from his misdeed. The fact of the matter is that he was responsible for the safe upkeep of the parcel as the custodian of the foreign parcel and while processing the article for delivery, it is ^{he} who committed the abstraction of the contents of the parcel.

6. We have heard the Id. Counsel for both the parties and have perused the records placed before us.

7. We are conscious that the Court/Tribunal has got limited scope to interfere in the disciplinary proceedings/ order passed by the Disc-Authority except when an instance of arbitrariness or malice or denial of natural justice or a case of no evidence is brought to its notice. In this case the applicant has brought the allegation of denial of natural justice to him during enquiry by not producing some vital witnesses and denying him opportunity to cross-examine them which is his fundamental right. We have gone through the enquiry report to find out the truth of the allegation regarding denial of natural justice to the applicant. The Inquiry Officer in his report at para 22 observed as follows:-

"The C.O. desired to produce two defence witnesses namely Ranjit Biswas and Kaibalya Swain on 6.3.92. Simultaneously, he declared not to examine any defence witness and to examine any additional document. While perusing listed documents the fact was recorded in Daily order sheet dated 6.3.92. The plea of non-production of SW due to delay is not acceptable. Sister Nitividad appeared on 12.12.93 but the C.O. did not avail the opportunity to get his document proved on the plea of absence of AGS."

However in para 28 (page 36 of the report) he has observed that the charged official did not, while cross-examining the said witness-5, illicit confirmation of his claim that the articles which were found in his possession were gifted to him by the addressee of the parcel. He has, further, observed that almost all the facts narrated by Sister Nitividad were confirmed by the charged official through his written defence statement and deposition given by SW-4 during enquiry. The charged official on his

13

own admission, had visited Sister Nitividad and obtained a receipt on request. The IO has further observed as follows in his report:-

"The charged official stated not to have got opportunity to examine the addressee. If the charged official had in mind to establish/extract any more clue in support of his defence, he could have claimed to call her as DW when PO had dropped her."

The IO has also observed in his report that the CO has weakened his own version "by telling date of acceptance of so-called gift", and, thereafter he has observed that "the so-called gifts are not donated to CO but that he managed to collect them without the knowledge of the addressee". He has also, however, observed that the prosecution had "miserably failed" to establish/prove the allegation brought against the applicant by identifying the parcel from which abstraction was made. He has also stated that the prosecution had failed to prove that Ext/S-4 to Ext/S-7 were actually due to be received by the addresses or that those were received short. He, however, concludes that the suspicion rests on the CO although he could not be held guilty of abstraction from any parcel as that could not prove beyond doubt was not.


8. The report of the IO although very exhaustive does suffer from certain ambiguities/contradictions as discussed above. On the one breath, he has stated that the prosecution failed to prove the allegation of abstraction; on the other hand, his finding is that the story of the CO that he had received those articles as gifts from the addressee is also


✓

not true. However, we are not inclined to set aside the report of the IO on that ground because in any domestic enquiry the same rigor of evidence as enshrined in the Evidence Act is not required to be applied and charge(s) can be treated as proved on the principle of preponderance of probabilities.

9. It is not disputed that the applicant had admitted ^{were} that certain foreign articles ~~found~~ found in his possession. That being the admitted fact of the case, even if obtained as gifts as that was obtained from a customer without prior permission of the controlling authority/Disc. Authority as per rule constituted violation of ^{the} conduct rules for which he is liable to disciplinary action. The Disc. Authority has gone into this aspect of the matter in great details in his order dt. 3.2.2000 (Annexure-6) and has also answered each of the issues raised by the applicant in his report dt. 28.12.99. We find no room to disagree with him.

10. In the aforesaid circumstances, we see no merit in the case and there is no scope of judicial intervention in the matter. Accordingly this O.A. must fail. We order accordingly. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

SAN/