

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A.NO. 637 OF 2004

Cuttack, this the *16th* day of July 2008

Kapilendra Tripathy Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be circulated to the Principal Bench or not?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

11
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A.NO. 637 OF 2004

Cuttack, this the 16th day of July 2008

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

.....

Kapilendra Tripathy, At/PO-Haladia, Via-Ghanteswar, District Bhadrak

..... Applicant

For applicant - Mr.T.Rath, Advocate

Vrs.

1. Union of India, represented through the Chief Post Master General, Orissa Circle, Bhubaneswar, Dist. Khurda.
2. Director of Postal Services (Hqrs), in the office of the C.P.M.G., Orissa Circle, Bhubaneswar, Orissa.
3. Superintendent of Post Offices, Bhadrak Division, Bhadrak

..... Respondents

For respondents - Mr.U.B.Mohapatra, SCGSC

.....

ORDER

K.THANKAPPAN, JUDICIAL MEMBER

The interesting question coming for decision before this Tribunal in this Original Application is, whether the appellate authority can differ from the findings ended by the inquiry officer in a departmental enquiry once the facts are concurred by the disciplinary authority?



2. The brief factual matrix of the case is as follows. The applicant was appointed as Extra Departmental Branch Post Master(EDBPM)/Gramin Dak Sevak Branch Post Master(GDSBPM) on 20.4.1979. While he was performing as such, it was alleged, in the charge memo filed against him, that on 23.6.1979 the applicant had accepted a sum of Rs.6,000/- from one Smt. Jashamati Nayak for opening a Time Deposit Account (T.D.Account) in her name. But on accepting the amount from the depositor, without depositing Rs.6,000/- in T.D.Account in the name of Smt. Jashamati Nayak, the applicant accounted for only Rs.60/- in Savings Bank Deposit in the name of said Smt. Jashamati Nayak. The further allegation in the charge memo was that the applicant prepared S.B. Receipt for Rs.60/- in the name of the depositor. But no receipt was given to the depositor for that amount and while she returned the Pass Book, the applicant added two zeros and without remitting the amount into the account kept in the post office. On the above allegations, an inquiry was conducted. The applicant participated and evidence was collected by the inquiry officer. As per the inquiry report, the inquiry officer found that the charges levelled against the applicant were not proved. However, though on concurring with the findings ended by the inquiry officer, the disciplinary authority imposed a penalty of debarring the applicant of "promotion for 3 (three) years" on the grounds of the applicant being responsible for such unnecessary staging of drama involving the department for incurring a good amount of expenditure, the said order of penalty passed by the disciplinary authority was challenged before the appellate authority. While considering the appeal, the appellate authority, though fully agreed with the grounds urged in the appeal memo, in disagreement with the



findings ended by the inquiry officer, set aside the punishment order and remanded the matter back for de novo proceeding from the stage of supplying a copy of the inquiry report. Subsequent to the remand made by the appellate authority, the disciplinary authority, on the grounds of disagreement recorded by the appellate authority, reconsidered the entire matter and passed an order finding the applicant guilty of the charge and imposed on the applicant the penalty of removal from service. Aggrieved by the removal order, the applicant approached this Tribunal.

3. This Tribunal heard Shri T.Rath, the learned counsel appearing for the applicant, and Shri U.B.Mohapatra, the learned Senior Central Government Standing Counsel appearing for the respondents. This Tribunal also perused the records produced along with the O.A.

4. At the outset, it is reported that on the basis of the remand order made by the appellate authority, the Superintendent of Post Offices, i.e., the disciplinary authority had issued Annexure A/10 notice to the applicant along with his finding that the charge against the applicant was proved under preponderance of probability. Thereafter the disciplinary authority passed the order of penalty (Annexure A/11) on 30.5.2003. Though an appeal (Annexure A/12) was filed by him against the penalty order, the applicant approached this Tribunal in this O.A. before disposal of the appeal. As the applicant has already filed an appeal, the very filing of the O.A. itself by him invoking the jurisdiction of this Tribunal was objected to by the learned Standing Counsel appearing for the respondents. To this contention, the learned counsel appearing for the applicant submitted that since the orders now under challenge have been passed without any authority of law and in



total violation of the principles of natural justice and not in accordance with the procedure to be followed in a departmental inquiry, this Tribunal has got ample power to entertain the Original Application. On the above rival contentions regarding the jurisdiction of this Tribunal, we are of the view that though an appeal has already been filed before the appellate authority, the orders against which the appeal has been filed being against the principles of natural justice and even not in accordance with the procedure followed in departmental enquiry, the applicant is justified in approaching this Tribunal for getting his grievances redressed.

5. The question now raised in the O.A. has to be considered on the principles laid down by the Hon'ble Apex Court in the matter of disciplinary inquiry and the power of the disciplinary authority to conduct the departmental enquiry. Admittedly, the applicant was working as EDBPM/GDSBPM in Haladia GDSBO in account with Ghanteswar Sub Office from 20.4.1979. As per Annexure A/1 charge memo it is alleged that while the applicant was working at the above station, on 23.6.1999 Smt. Jashamati Nayak entrusted him Rs.6,000/- for opening a T.D.Account. But without depositing the entire amount with the account of the said depositor, the applicant only deposited Rs.60/- in the Pass Book bearing Account No.1008710 and at the same time when the Pass Book was returned subsequently, the applicant falsely recorded the balance of the account of Smt. Jashamati Nayak as Rs.6000/-. But actually as per the accounts kept in the post office, the account in the name of the depositor was opened only for Rs.60/- and thereby the applicant misappropriated the balance amount. According to the above charge, it is alleged that manipulating the type of account from S.B. to T.D.



the applicant violated the provisions of Rules 129, 173 and 174 of the Rules for Branch Offices and thereby committed grave misconduct for not maintaining absolute integrity and devotion to duty as required of him under the provisions of the EDAs (Conduct & Service) Rules, 1964. On the above allegations, the inquiry officer was appointed and the inquiry was conducted on getting the statement of defence from the applicant and on taking documentary and oral evidence from the witnesses including the depositor Smt. Jashamati Nayak and officials of the Department. The inquiry officer also perused the evidence collected during the preliminary inquiry conducted by the S.D.I.(P), Bhadrak. After analyzing the entire evidence collected, as per the inquiry report Annexure A/6 the inquiry officer reported that the charge levelled against the applicant has not been proved. Though the fact finding inquiry made by the inquiry officer was concurred by the disciplinary authority, a penalty of debarring the applicant of promotion for three years was imposed by the disciplinary authority on the grounds that the applicant was responsible for staging a drama which caused monetary loss to the Department,

6. With regard to the inquiry report this Tribunal though is not expected to go through the inquiry report at this stage, the learned counsel appearing for the applicant invited our attention to the oral evidence of the witnesses including the depositor Smt. Jashamati Nayak. The same Smt. Jashamati Nayak had a definite case before the inquiry officer that she had only deposited Rs.60/- as per her S.B.Pass Book which was marked as Ext.S-4 during enquiry. She was also cross-examined by the presenting officer for and on behalf of the Department as she did

B

not support the charge levelled against the applicant. It is worth noting that even in the cross-examination she maintained the fact that when she received S-4 S.B.Pass Book the amount recorded was only Rs.60/-. The evidence of this witness is further fortified by D.W.2, one Kalandi Nayak, the brother of husband of Smt. Jashamati Nayak. He had also given evidence before inquiry officer that his brother was working in Bombay and once his brother had sent Rs.6000/-. But he had utilized that amount for his own purpose and deposited only Rs.60/- in the name of Smt. Jashamati Nayak. Even though this witness was cross-examined, nothing was brought out to discredit his evidence. The evidence of this witness is again supported by another witness who was examined as a supportive witness of the evidence of both Smt. Jashamati Nayak and S.W.2. Another aspect to which the learned counsel for the applicant invited the attention of the Tribunal is that though Smt. Jashamati Nayak was questioned by the Inspector and her statement was recorded during the preliminary inquiry, the said statement was not read over to her before she was asked to sign the same. In this context, this Tribunal perused the statement of Smt. Jashamita Nayak recorded during the preliminary inquiry and found that her statement was not attested by anybody. Apart from the evidence of this witness, the case set up by the applicant in his statement was that actually Smt. Jashamati Nayak had deposited only Rs.60/- in S.B.Account and the allegation that Rs.6000/- had been given to him by Smt. Jashamati Nayak is false and it is the creation of the Inspector who conducted the preliminary inquiry into the matter. All this evidence was considered by the disciplinary authority who was in full agreement with the fact finding ended by the inquiry officer. If so, the order passed

by the appellate authority, viz., Annexure A/9 is not based on any evidence and disagreement with the finding ended by the inquiry officer is not based on any admissible evidence. In this context, it is advantageous to note that the appellate authority in paragraph 6 of his order Annexure A/9 recorded as follows:

“I fully agree with the above submissions of the appellant. The disc. authority has not intimated the point of disagreement, if any, on the findings of the I.O., but has imposed the punishment. As such, the action of the disc. authority is not in order. The case is, therefore, remitted back for de novo proceeding from the stage of supplying a copy of the report of the I.O. to the appellant with disagreement, if any.”

A reading of the disagreement points arrived at by the appellate authority would show that he was considering only the evidence collected at the preliminary stage of inquiry. In this context, it has to be seen that it is the well settled position of law that the evidence collected at the stage of preliminary inquiry cannot be used as substantive evidence. It can be used to see if a prima facie case is made out against the delinquent officer. The evidentiary value of the evidence collected during the preliminary inquiry is nothing but to contradict the witnesses who are subsequently examined in the fact finding inquiry. It cannot be considered as a substantive evidence to find an officer guilty of the charges. This principle has been settled by a catena of decisions by the Hon'ble Apex Court starting from AIR 1965 SC 1803, *Workmen of the Motipur Sugar Factory Private Ltd. v. The Motipur Sugar Factory Private Ltd.*, where their Lordships have held that if the enquiry is defective or if no inquiry has been held applying the principles of natural justice, the inquiry so held is no inquiry at all. Apart from the above, the appellate authority was not invited by the applicant by filing the appeal to consider the evidence accepted by

OB

the disciplinary authority or by the fact finding inquiry whereas the appeal was filed by the applicant challenging the imposition of penalty debarring him of promotion for three years without any charge being levelled against him and duly inquired into after giving him reasonable opportunity of defending himself and of being heard. For imposing upon him the aforesaid penalty the appellate authority ought to have seen that no finding ended by the inquiry officer has been challenged either before the disciplinary authority who concurred with the finding of the inquiry officer, or before the appellate authority whereas the appeal was filed only against the penalty imposed against the applicant without any charge or evidence. In the above circumstances, the exercise of power by the appellate authority for disagreeing with the finding ended by the inquiry officer is perverse and not in accordance with the principles of natural justice. All the points on which the appellate authority found in disagreement with the findings ended by the inquiry officer have been concurred, rather considered by the disciplinary authority who is under law permitted to either agree with or disagree with the fact finding ended by the inquiry officer. In the case in hand, at no point of time the applicant invited the appellate authority to consider the evidence collected against him. In this view of the matter, the appellate authority had gone beyond its power to set aside the order of the disciplinary authority on disagreeing with the fact finding ended by the inquiry officer and therefore, the remand made by the appellate authority as per Annexure A/9 order for further consideration of the fact finding ended by the inquiry officer is without any legal basis and ab initio void. In this context, it has to be borne in mind that the appellate authority ought to have considered as to

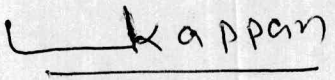
21

reinstatement of the applicant with all service benefits, as stated above, shall be issued within one month of receipt of copy of this order.

7. Thus the Original Application is allowed to the extent indicated above.

No order as to costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

PPS