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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 725 OF 2002
Cuttack this the 17th day of Dec. 2004

Chintamani Behera ... Applicant(s)

- VERSUS -

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

FOR INSTRUCTIONS

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

Signature
(M.R. MOHANTY)
MEMBER (JUDICIAL)

Signature
(B.N. SOM)
VICE-CHAIRMAN

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CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.725 OF 2002
Cuttack this the 17th day of Dec. 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

...

Sri Chintamani Behera, 40 yrs..
S/o. Sri Somanath Behera, Vill - Haripur
Post - Gopalpur on Sea, Dist-Ganjam(Orissa)

...

Applicant

By the Advocates

Mr.P.K.Padhi

- VERSUS -

1. Union of India represented by it's Director General of Posts, Dak Bhawan Sansad Marg, New Delhi-110001
2. Post Master General, Berhampur Region At/PO-Berhampur, Dist-Ganjam (Orissa)
3. Superintendent of Post Offices, Phulbani Division, At/PO-Phulbani Dist-Kandhamal - 762 001
4. Assistant Superintendent of Post Offices In charge, Phulbani Sub Division, At/PO-Phulbani, Dist-Kandhamal-762001

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Respondents

By the Advocates

Mr.U.B.Mohapatra, SSC

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: In this Original Application under Section 19 of the A.T.Act,1985, applicant, Shri Chintamani Behera, formerly Extra Departmental Packer-cum-M.C. (in short EDMC) of Ollen Bech Nagar Sub Post Office (under Phulbani Division) has challenged the order dated 25.10.1999 (Annexure-7) passed by Res. No.4 imposing punishment of removal from service and the order dated 20.12.2000 (Annexure-9) passed by Res. No.3 confirming the said punishment in response to the appeal filed by

the applicant.

2. The facts in brief leading to filing of this O.A. are that the applicant, while working as E.D.Packer, O.B. Nagar N.D.T.S.O. was charge-sheeted under Rule-8 of EDAS (Conduct & Service)Rules, 1965 on the allegation of having misused the oblong stamp of the post office and having issued two bogus money orders. The applicant, on the basis of a preliminary inquiry was put off duty with effect from 12.11.1996. It has been submitted by him that he was not supplied with a copy of the preliminary inquiry report although the same was asked for. After the detailed inquiry, the Inquiry Officer (in short I.O) submitted his report holding the charges proved, based on which, the Disciplinary Authority (in short D.A.) imposed the penalty removing the applicant from service vide his order dated 25.10.1999 (Annexure-7). The appeal preferred by the applicant against the said order of punishment was also rejected by the Appellate Authority vide his order dated 20.12.2000 (Annexure-9). In this backdrop, the applicant had approached the Respondent No. 2 by filing a petition dated 9.1.2001, the result of which not being palatable, he has moved the Tribunal seeking the following reliefs:

"...to quash Annexure-7, 9 & 11 and further be pleased to direct the Respondents to reinstate the applicant with all consequential benefits including back wages

And to quash the entire proceeding.

And further to direct the Respondents to refund the deducted amount of Rs.1150/- or any amount as the Hon'ble Tribunal deem just and proper in the interest of justice".

3. The applicant has assailed the punishment order under Annexure-7 on the ground that he was denied access

to certain documents by the I.O. for the reason that those were not relevant and that the prosecution had not examined one witness listed to be examined for proving the charge and that they did not produce the payee of money orders alleged to have been issued fraudulently. Because of non-supply of those documents and non-production of those witnesses, the applicant was seriously prejudiced in defending his case. Apart from the above, as stated earlier, it has been alleged by the applicant that he was not supplied with a copy of the preliminary inquiry report. He has submitted that the inquiry report supplied to him was not readable and he has not been able to annex the same to the O.A. He has also ventilated his grievance that the Respondents had recovered Rs.1150/- from him, although according to the charge-memo, the amount involved in those two bogus money orders was to the tune of Rs.650/-, but the excess amount has not been returned to him so far.

4. The Respondents have rebutted the allegations by filing a detailed counter. They have pointed out that the I.O. refused the request of the applicant for supply of preliminary inquiry report as there was no mention of this report made in the charge memo and therefore, in terms of Rule 14 (22) of CCS(CCA)Rules, the preliminary inquiry report is not to be supplied unless the same was referred to in the charge-memo.

Secondly, they have pointed out that one of the listed witnesses, viz., Chaudhury Behera, who was the remitter of one of the bogus money orders did not appear inspite of repeated summons being sent to him by the I.O.

In the circumstances, the I.O. had dispensed with his witness. Regarding non-production of Shri Debasis Patra as the witness, they have pointed out that Shri Patra was supposed to be the recipient of one of the bogus money orders. But as the allegation against the applicant was issue of bogus money orders, the disciplinary authority did not deem it necessary to examine the payee of the money order as he was not a witness to the charges framed against the applicant and therefore, his name had not been included in Annexure-4 to the memo of charges. The Respondents have also stated that the applicant's request for supply of written statement of one Shri Somnath Behera and one Shri D.Mohan Rao was rejected by ~~the authority~~ on the ground that those were not relevant for the purpose of inquiry. The Respondents have also disputed the contention of the applicant that the punishment of removal ^{from service} awarded to him was disproportionate to the charges and that such a punishment has been given by ^{without} proving the case beyond doubt. They have referred to the opinion of the hand-writing expert, who had held that the charged official (applicant) was responsible for writing a certain portion of the money order which led to the issue of ^{the} ~~these~~ bogus money orders. With these submissions, the Respondents have prayed for dismissal of this O.A. being devoid of merit.

5. We have heard the learned counsel of both the sides and perused the materials placed before us.

The learned counsel for the applicant, in support

of his contention, has relied on the following case laws.

- 1) Gunanidhi Sahu vs. Union of India & Ors.
(A.T.R. 1988(1) C.A.T. 371
- 2) Laxman Dass & Ors. vs. Union of India & Ors.
A.T.R. 1988(1) C.A.T. 375
- 3) Kashinath Dikshita vs. Union of India
AIR 1986 SC 2118
- 4) B.K.Naik v. Coal India Ltd.,
AIR 1986 SC 2123
- 5) Shri Hari Giri vs. Union of India through
Secy. Miny. of Labour
1991(2) A.T.J. 581
- 6) K.Ramakrishna v. Union of India & Ors.
1991(2) ATJ 585
- 7) State of U.P. vs. Satrughan Lal & another
AIR 1998 SC 3038
- 8) Committee of Management, Kisan Degree
College vs. Shambhu Saran Pandey & ors.
1995(1) S.C.Services Law Judgments 152

We have perused those case laws. In the case of Gunanidhi Sahoo it was held by this Tribunal that the preliminary inquiry being the basis of the disciplinary proceeding, copy of the same should have been delivered to the petitioner when asked for, so that the petitioner could have effectively defended himself. The Tribunal, based on the case of Kashinath Dikshita(supra) held that copies of the relevant documents to be used against him were to be supplied to the charged officials.

6. In the case of Hari Giri (supra) Their Lordships held that if the key witness is not produced in evidence and not available for cross-examination by the charged employee, that constitutes a serious lacuna vitiating the entire proceedings.

7. In the case of Committee of Management, Kisan Degree College (supra), the Hon'ble Apex Court, held

that if the delinquent employee is denied opportunity to inspect the documents, it tantamounts to denial of the principles of natural justice, on ground of which the disciplinary proceedings are liable to be quashed.

8. However, the question to be answered in this O.A. is whether this type of infraction of law had at all taken place. On examination of the facts of the case, we find that the applicant had asked for certain additional documents from the I.O. The allegation is not that the documents listed in the charge-memo were not supplied to the applicant. But the allegation is that additional documents sought for by him from the I.O. vide his letter 8.3.1999 were not supplied to him. We have perused the order dated 11.4.1999 passed by the I.O. vide Annexure-5, wherein the I.O. had assigned detailed reasons, while disallowing access to the documents including the preliminary inquiry report. We have found the reasons adduced by the I.O. wholesome. As regards the non supply of copy of the preliminary inquiry report, the I.O. had held that in terms of Rule-14(22) of CCS(CCA) Rules, 1965, preliminary inquiry report was to be served only if the charge-memo is based on the findings arrived at in the preliminary inquiry report. The disciplinary authority as well as the appellate authority have also in their order given reasons upholding the stand taken by the I.O.

9. It is in this background, we would like to quote the dictum of their Lordships of the Hon'ble Supreme Court in the case of *Vijaya Kr.Nigam vs. State of M.P.* (AIR 1997 SCC(L&S) 489, with regard to non supply of

preliminary inquiry report, observed, is as under :

"...Preliminary inquiry report is only to decide the issues whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation of passing the order of dismissal against the employee and as such, non-supply of preliminary inquiry report by itself would not violate the principles of natural justice".

From the above quoted decision of the Hon'ble Supreme Court, we are of the view that the applicant in no way has been prejudiced by the non-supply of preliminary report and therefore, the action taken by the Respondents in this regard is unassailable. We are also of the view that the applicant was not denied access to any of the documents listed in the Annexures to the charge memo, on the basis of which charges were to be proved. Besides, as per settled position of law, the applicant has not made any specific averment as to how he was prejudiced by the non-supply of those documents, if at all. We also see no valid reasons to over-rule the decision taken by the I.O. as well as D.A. that it was not necessary to produce Debasis Patra as witness as the charge levelled against the applicant was that he was responsible for issue of bogus money order and not made payment of the money. The crux of the Respondents' case is that the involvement/responsibility of the charged official (applicant herein) has been unquestionably proved by the opinion of the hand-writing experts, who held that the applicant had written certain portion of the address in the money order form, which made the money order bogus. The applicant has also not been able to repudiate the allegation

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that he had misused the oblong stamp of the office, because, the Sub Post Master of the office had admitted before the I.O. that he (S.P.M.) was in ^{the} habit of leaving the oblong stamp in the custody of the applicant, which only facilitated the perpetration of fraud.

10. Having regard to the above facts and circumstances of the case and having regard to the position of law on the subject, we are of the view that the applicant has not been able to make out a case for any of the reliefs prayed for. In the result, the O.A. fails. No costs.

Yashpal
(M.R.MOHANTY) 17/12/04
MEMBER (JUDICIAL)

BJY

Sunder
B.N. SOM
VICE-CHAIRMAN