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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.978 OF 2002
Cuttack this the 12th day of May 2005

Niranjan Mishra ... Applicant(s)

VERSUS

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

FOR INSTRUCTIONS

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

10/01/05
(M.R.MOHANTY)
MEMBER (JUDICIAL)

10/01/05
(B.N. SOR)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.978 OF 2002
Cuttack this the 12th day of May, 2005

CORAM:

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

...

Sri Niranjan Mishra, aged about 43 years,
Son of Sri Sudarshan Mishra, Resident of
Vill/PO-Sankhameri, PS-Baramba, Dist-Cuttack
presently residing at House No.203 of
Sector-3, Niladri Bihar, PO-Sailashree Vihar,
PS-Chandrasekharpur, Bhubaneswar, Dist-Khurda

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Applicant

By the Advocates

M/s. K.C.Kanunge
H.K.Swain
B.D.Reut
S.Behera
R.N.Singh

- VERSUS -

1. Central Provident Fund Commissioner, 14,
Vikaji Cama Palace, New Delhi, PIN-110066
2. Additional Provident Fund Commissioner,
East Zone, Kolkata, Employees Provident Fund
Organization, DK Block, Sector-II, Salt Lake
City, Kolkata-700 091
3. Regional Provident Fund Commissioner, Orissa,
Bhavishyanidhi Bhawan, Janpath, Unit-9,
Bhubaneswar-22, Dist-Khurda

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Respondents

By the Advocates

Mr.S.S.Mehanty

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: This Original Application
has been filed by Shri Niranjan Mishra (applicant)
being aggrieved by the order of the Disciplinary
Authority (in short D.A.) (Respondent No.3) imposing
on him the punishment of compulsory retirement from
service and the order passed by the Appellate Authority
(in short A.A.) (Res. No.2) confirming the said order

of punishment. He has, therefore, prayed for a direction be issued to the Respondents to reinstate him in service treating the period of suspension from 26.5.1995 to 5.3.2002 as on duty and also to order his reinstatement in service with all consequential service benefits.

2. The undisputed facts of the case are that the applicant was appointed under the Respondents-Organization as Lower Division Clerk(in short LDC) on 16.1.1981 and was promoted to the grade of Upper Division Clerk (in short U.D.C.) on 28.11.1983. While he was working as UDC, in Accounts Group, Respondent No.3 suspended him from service by his order dated 26.5.1995for lack of maintenance of provident fund accounts ledger and also settlement of claims of some employees. Therefore, Respondent No.3, on 30.8.1996, initiated disciplinary proceeding against him under Rule - 10 of the E.P.F. Staff (CCA) Rules, 1971 (hereinafter referred to as Rules, 1971) on the ground that the applicant had committed serious irregularities in the matter of sanction of advance from the individual account-s to the subscribers. The applicant had requested the D.A. for inspection of documents/records required for submission of written statement of defence, but the said authority declined to accede to his request and without considering his representation, appointed both the Inquiring Officer (in short I.O.) and the Presenting Officer (in short P.O.). The charge-sheet was modified on 4.6.1977 by adding a corrigendum. The D.A. went on changing the I.O. as well as P.O. and at last in

August, 1999, appointed a new set of I.O. and P.O., who conducted the inquiry till the proceeding was finalized. For this reason alone, the inquiry prolonged to his detriment. The inquiry after its start was closed hastily on 26.10.1999. On 2.3.2000 the P.O. submitted his written brief to the I.O. giving a copy to the applicant without signing the document. The I.O. submitted his report on 19.9.2000 holding the charges proved. The D.A. accepted the report of the I.O. and finally imposed penalty as referred to earlier, ignoring the objections raised by the applicant in his representation with regard to the procedure followed by the I.O. and lack of fairness in the whole proceedings. The appellate authority also dealt with the matter in a mechanical manner without application of mind. He even ignored the vital objection raised before him that a number essential documents, like special audit report has been denied to him although one of the members of the special audit party was an witness during inquiry and on whose evidence both the IO and the D.A. heavily depended ⁱⁿ to take adverse view against the applicant.

3. The applicant has assailed the report of the I.O., the orders of the D.A. and the A.A. both on the grounds of law and also facts. On the point of law, it is the case of the applicant that the allegation against him is one of no evidence. Secondly, it is fraught with violation of the principles of natural justice and fair play as he has been denied reasonable

opportunity all through the disciplinary proceeding. It has also been alleged by him that he was denied access to vital documents to defend his case and that the I.O's findings are such that no reasonable man could come to such a conclusion, since no documents based on which charges were framed were taken to record during inquiry.

4. The learned counsel for the applicant repeatedly drew our notice to the findings of the I.O., which run thus :

" As for the other charges, the photocopies of the prosecution documents were submitted to this Inquiry Authority along with prosecution brief. The copies of the same documents were also handed over to the Charged Officer. However, the Charged Officer has not defended himself on the allegations made against him basing on those documents in his written brief. Rather, he has appealed for not taking them into consideration since the said documents were not produced during the course of inquiry and were not examined before the witnesses and further, he was not given reasonable opportunity to defend himself. The technical points raised, as mentioned above, by Shri Mishra prima facie appears to hold good. Since the Presenting Officer did not produce the said documents during the course of inquiry and examined before the witnesses, it will be technically improper to base a conclusion on such evidences. However, this Inquiry Authority is of the opinion that the spirit of the inquiry will not be violated if a charge wise examination of documents are conducted and if the findings are recorded in this report. After all, one has to keep in mind that since the Presenting Officer has put forward his arguments basing on these documents (which were supplied to Shri Niranjan Mishra), the latter could very well have put forward his argument in the defence brief".

5. The learned counsel for the applicant has submitted that from a plain reading of the report of the I.O., it is apparent that the conclusions arrived at by him are contrary to law. The I.O. after having admitted that the applicant did point out that the documents based on which the allegations levelled against him were sought to be proved were not produced during the course of inquiry and were not produced before the witnesses and that these contentions of the applicant were true and accepting that the P.O did not produce the said documents during the course of inquiry or thereafter, he could not have concluded that notwithstanding these procedural lapses, the applicant could have put forward his argument in support of his defence. The learned counsel for the applicant has repeatedly canvassed before us that it is unimaginable that the I.O. could find the charges proved after admitting that no documents had been exhibited or led as evidence by the P.O. during inquiry or that the reliance on the xerex copies of the documents were good enough to convince the I.O. that the charges against the delinquent are proved. Lastly, that the IO could not have appreciated or reprobated at the same time. Referring to Rule 14 of the Rules, 1971, he pointed out that the Rules laid down that "on the date fixed for inquiry, the oral and documentary evidence by which articles of charge-sheet proposed to be proved shall be produced by and/or on behalf of the disciplinary authority. The witnesses shall be examined by/or on behalf of the employee ..." 2

However, as the listed documents relied on by the prosecution were not presented/produced before the I.O. as documentary evidence nor testified through the prosecution witnesses, the whole inquiry stands vitiated. It is also his submission that only the photocopies of the documents as mentioned at Annexure-A to the inquiry report were annexed with the written brief of the P.O. and that the applicant had lodged his protest then and there regarding use of photocopies instead of the originals in evidence.

6. He has also assailed the inquiry report on the ground that although each of the articles of charge had several components, like Article - I consisted of 25 elements, Article - II, 10 elements, Article - III, 9 elements etc., he has not given his finding separately against each of the elements. He has alleged that the I.O. completed the inquiry report by stating as follows :

" The charges were based on 63 documents and 5 witnesses (two were examined) but the I.O. completed hastily the enquiry in 4 sittings without the documents having exhibited and laid as evidence by the P.O. The PWs (Prosecution Witnesses) did not have any specific statement against the applicant. When the documents were not exhibited or laid as evidence by PO and when the prosecution witnesses did not whisper anything against, it becomes a case of no evidence".

7. He has further stated that the IO's report is highly subjective and surely a case of non-application of mind. He has also assailed the report

as contradictory and therefore, illogical and improper. In this background, he has drawn our attention to the findings of the IO as follows:

" The technical points raised, as mentioned above, by Shri Mishra prima facie appear to hold good. Since the Presenting Officer did not produce the said documents during the course of inquiry and examined before the witnesses, it will be technically improper to base conclusion on such evidences. However, this Inquiry Authority is of the opinion that the spirit of the inquiry will not be violated if a chargewise examination of documents are conducted and if the findings are recorded in this report. After all, one has to keep in mind that since the Presenting Officer has put forward his arguments basing on these documents (which were supplied to Shri Niranjan Mishra), the latter could very well have put forward his argument in the defence brief".

8. With regard to his allegation of denial of reasonable opportunity, he has drawn our notice to the lacunae in the inquiry procedure and the reluctance of the disciplinary authority in responding to the points raised by him in his representation dated 24.12.2001 (Annexure-5).

9. The applicant has relied on the following case laws in support of his contention that it was a case of no evidence, that the report of the IO was illogical, that he failed to act judicially, that the inquiry was neither fair nor reasonable, that non supply of the documents vital for his defence made the proceedings ab initio void.

1. Kashinath Dikshita vs. Union of India (AIR 1986 SC 2118)
2. Anil Kumar vs. Presiding Officer & Ors. (AIR 1985 SC 1121)
3. C.L.Subramaniam vs. Collector of Customs (AIR 1972 SC 2178)
4. Committee of Management Kisan Degree College vs. Shambhu Saran Pandey (1995 SCC 404)
5. A.K.Venkatraman vs. Union of India (1986) 6 ATC 176
6. C.B.I. vs. D.C. Aggrawal (AIR 1993 SC 1197)

10. The Respondents have contested the application on the ground that he was provided sufficient and reasonable opportunity to defend his case during the course of inquiry, that photo copies of the documents were supplied to him, that he was given opportunity to examine the original documents, but he did not avail of the said opportunity, that he was allowed to cross-examine the prosecution witness, that the inquiry officer had submitted the report after following laid down all the procedures, that the disciplinary authority had not only applied his mind, but had taken a lenient view in the matter of imposing punishment on the applicant.

11. We have heard the learned counsel for the rival parties and have perused the records placed before us.

12. The applicant has assailed the disciplinary proceedings on several grounds as stated in Paras- 4 to 9 above. We are aware that the scope of judicial intervention in a disciplinary matter by the Tribunal is very limited. It is hardly necessary to reiterate here

that Tribunal is not a court of appeal in so far as disciplinary matters are concerned. It would be profitable to quote here what their Lordships have held in B.C.Chaturvedi case (1996 SCC(L&S) 80).

"In the matter of disciplinary proceedings, the Tribunal is concerned as to whether the applicant/delinquent official had been afforded reasonable opportunities to defend his case and/or the principles of natural justice had been complied with and whether the decision taken by the disciplinary authority was based on materials available on record and proper procedure of law/rules had been observed in each and every sphere of the proceeding till it culminated in passing of the order of the disciplinary authority".

In other words, the Court can intervene in case there has been denial of reasonable opportunity/natural justice, the findings are perverse or the case is of no evidence or the punishment is shockingly disproportionate to the charges and the case is one of mala fide. As we have observed at Para 9 above, the case of the applicant centres round the allegation that he was denied the benefit of principles of natural justice and that the report of the IO is perverse. Thus, there appears to be a *prima facie* case for going to his allegations, in the interest of justice.

13. In the case of Kashinath Dixita (supra) it has been held that where the Government refused to its employees the copies of the statement of witnesses examined at the stage of preliminary inquiry preceding the commencement of the inquiry and the copies of the documents said to have been relied upon by the disciplinary authority in order to establish

the charges against the employee, it was held that prejudice was caused to the employee on account of non supply of copies of documents. The Apex Court in that case held that the order of dismissal rendered by the Disciplinary Authority against the employee was violative of Article 311(2) inasmuch as the employee had been denied reasonable opportunity to defend himself. In this case, it is not disputed that a special audit was conducted by the Respondents to look into the allegations of mismanaging the provident fund accounts maintained by the applicant. That special audit party had submitted its report to the Respondents. It is not disputed that the applicant though had repeatedly asked for supply of copy of that report, the said audit report was not produced. It is also admitted by the I.O. in his report that the P.O. did not produce the documents relying on which the charges were sought to be proved during the course of inquiry and examined before the witnesses. He had in fact gone to the extent of observing ^{in his report} that it would be improper "to base a conclusion on such evidence". It is also an admitted fact that only xerox copies of the listed documents were produced by the P.O. before the I.O. along with his prosecution brief. The Respondents have submitted that as the original documents were lying in the custody of C.B.I., they had permitted the applicant to visit CBI office and to inspect the

original documents, which he declined to make use of. They have, therefore, taken the stand that it was the applicant, who was responsible for refusing to inspect the original documents by visiting office of CBI. The inquiry officer in his report has also referred to the reluctance on the part of the applicant to visit CBI office to examine the original documents and he noted that "his reluctance created unnecessary complications in the course of inspection of documents".

14. With regard to non supply of special audit report, it is admitted by the Respondents that the I.O. did not allow the production of documents on the ground that it had no relevance. The Respondents have supported the decision of the I.O. by stating that "inquiring authority has the right to decide which document called for by the charged official is relevant for the purpose of inquiry and which is not". We are not impressed by this argument, because, the decision of the I.O. has to be reasonable in the matter of determining relevancy of a document during inquiry, the IO/DA has to examine the matter from the view point of the charged official and if there is any possible line of defence to which the document, though it seems to be relevant, the relevancy is not clear to the disciplinary authority at the time when the request is made, the request for access should not be rejected. This instruction is contained in the Govt. of India O.M. No.F.30/5/61-AVD dated 25.8.1961 (Below Rule 14 of CCS(CCA) Rules, 1964) Decision No.22. This being the instruction laid down

by the Government, we are unable to see any reason that weighed either with the IO or with the DA in refusing the access to the document to the applicant when that document undisputedly was the crux of initiating action against the applicant. We also agree with the argument put forward by the learned counsel for the applicant that one of the two prosecution witnesses, (viz. S/Shri R.K.Mishra and D.Mehapatra) was a member of the special audit group, who deposed during inquiry that the work of determining irregularities committed in the seat of the applicant was assigned to the audit party.

15. From the above facts of the case, it is crystal clear that the special audit party had carried out the preliminary inquiry preceding the commencement of the disciplinary action against the applicant, and therefore, he was within his right to have full access not only to that document, but also to the statements of witnesses examined at the stage of preliminary inquiry. As admitted by the Respondents that neither the special audit report was supplied to him nor was he given access to the original documents as listed in the charge memo and as they have failed to show that no prejudice was occasioned to the applicant on account of non-supply of the copies of documents, there has been a serious violation of Article 311(2) the Constitution and the allegation that he has been denied reasonable opportunity is proved to the hilt.

16. We have also carefully perused the report of the

I.O. and we do have no hesitation to hold that the P.O. did not produce the documentary evidence and witness, during the course of inquiry and the applicant having been denied the opportunity of cross-examination of witnesses, the allegation that the I.O's report is perverse or based on no evidence cannot be brushed aside. We would also like to observe here that the I.O's report is full of subjective comments and contradicting prepositions. It appears that he was short of time though not devoid of thinking and understanding.

reply

17. In the counter/the Respondents have also referred to the statements made by the applicant before the CBI under Section 161 Cr.P.C. We are unable to appreciate the reason that weighed with the Respondents to produce before us the statement made by the applicant under Section 161 Cr.P.C. We find it necessary to dilate here that any statement made by any individual before the Police officer under Section 161 cannot be used as evidence against that individual in a Court of Law. We have, therefore, no option but to ignore the submission made by the Respondents in this regard in the counter.

18. With regard to inspection of documents, the Respondents have repeatedly canvassed before us that as the original documents had been seized by the CBI and were in their custody, the applicant was given opportunity to inspect these documents in the CBI office, but he failed to avail of this opportunity and therefore, he could not have any grievance in this regard.

19. The applicant was reluctant to inspect the 2

documents by visiting CBI office and this, he had made known both to the I.O and to the DA. The I.O. did not give his clear verdict in the matter, more than saying reluctance of the applicant to inspect the original documents by visiting CBI office was creating 'unnecessary complicity'. The Respondents have, however, put the whole blame on the applicant that he refused to inspect the original documents. We, however, feel that the applicant having expressed his reservation in the matter, the disciplinary authority should have considered his difficulties and should have taken alternative steps to ensure that the applicant felt free to inspect the original documents. The reason for the hesitation to visit CBI office is not difficult to guess. Otherwise also, duties are cast on the D.A. to ensure that all reasonable opportunities are given to the charged official to prepare his defence. It was not wise on the part of the Respondents to have ignored the psychological impact of asking him to visit another office and to that extent they had denied him the reasonable opportunity to defend his case.

19. In the case of Kashinath Dixita (supra) as stated earlier, the Hon'ble Apex Court had allowed relief to the applicant on the ground that he was denied the protection that he enjoyed under Article-311(2) of the Constitution. In that case also the infirmity in the disciplinary proceeding was the denial of reasonable opportunity to the Govt. servant of defending himself. We have, therefore, no hesitation to hold, 4

relying on the decision in Kashinath Dixita case (supra) that the order of the disciplinary authority under Annexure-6 dated 5.3.2002 and the order passed by the appellate authority upholding the punishment order (as contained in Annexure-10 dated 10.10.2000) are liable to be quashed. We have also held that the report of the IO is perverse. Hence the orders passed by the D.A. and A.O. suffer from severe legal infirmities and are to be quashed. Ordered accordingly. The Respondents are directed to reinstate the applicant in service and restore him to the position as it existed at the time of his compulsory retirement from service. Liberty is granted to the Respondents to take such action as deemed necessary in the light of the audit objection raised in the special audit report after providing full opportunity to the applicant to defend himself.

In the result, the O.A. succeeds to the extent indicated above. No costs.

Mohanty
12/03/05
(M.R.MOHANTY)
MEMBER (JUDICIAL)

BJY

Sinha
(B.N. SINHA)
VICE-CHAIRMAN