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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 171 of 1998 C.C.

1.7.99
DATE OF DECISION

Shri Bibhuti Prasad Bora,

(PETITIONER(S))

Mr. G.K. Bhattacharyya,

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Mr. B.C. Pathak, Addl. C.G.S.C.

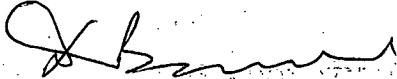
ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR. JUSTICE D.N. BARUAH, VICE-CHAIRMAN,

THE HON'BLE SRI G.L. SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Respondents may be allowed to see the Judgment ?
2. To be referred to the other or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 171 of 1998.

Date of decision : This the 1st day of July, 1999.

HON'BLE MR. JUSTICE D.N.BARUAH, VICE-CHAIRMAN.

HON'BLE SRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

Shri Bibhuti Prasad Bora,
Son of Late Bhogirath Bora,
Resident of Oakland 12,
Shillong,
Meghalaya

...Applicant.

By Advocate Mr. G.K.Bhattacharyya

-versus-

1. Union of India
(Represented by the Vice Chairman,
Central Board of Trustees,
Employees Provident Fund Organisation,
Ministry of Labour,
Govt. of India,
Sram Sakti Bhawan,
Rafi Ahmed Kidwai Marg,
New Delhi.)
2. Central Provident Fund Commissioner,
Hudco Vishala,
14 Bhikaji Cama Place
New Delhi-110 066.
3. Regional Provident Fund Commissioner,
North East Region, G.S.Road,
Bhangagarh, Guwahati-5.
4. Regional Provident Fund Commissioner,
Sub-Regional Office,
Pragati Road, Krishnagar,
Agartala-799 001
Tripura West

....Respondents

By Advocate Mr. B.C.Pathak, Addl. C.G.S.C.

O R D E R

BARUAH J.(V.C.).

The applicant at the material was working as Assistant Accounts Officer in the office of the Regional Provident Fund Commissioner. Three Article of Charges were framed against the applicant which are as follows :

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"ARTICLE - I

"Shri B.P.Bora, while functioning as the Assistant Accounts Officer on adhoc basis in Sub-Regional Office, Agartala, during the period from 26.9.88 to 20.8.90 committed gross misconduct and misbehaviour as much as that Shri Bora on 31.7.90 called Shri Nilu Ranjan Deb-Barma, Upper Division Clerk to his (Bora's) chamber, scolded him with slang words, threatened to slab and bread his (Deb-Barma's) teeth without assigning any reason thereof.

Shri Bora also committed gross misconduct and misbehaviour as much as that on 1.8.90, Shri Bora entered Shri Nageswar Kachari, Head Clerk, Accounts Branch room in drunken condition shouting against Shri Kachari with unparliamentary words and threatened to see him after office hours.

Shri B.P. Bora, by his above acts, exhibited gross misconduct and misbehaviour unbecoming of a Government servant, thereby violating rules 3 of Central Civil Service (Conduct) Rules, 1964.

ARTICLE - II

Shri B.P.Bora, while functionin as the Asstt. Accounts Officer on adhoc basis in the Sub-Regional Office, Agartala during the period from 26.9.88 to 20.8.90, refused to accept two office memos viz. No. SRO/TR/Adm/Disc/90 dated 2.8.90 and No. SRO/TR/Adm/Subs.Ser/90 dated 2.8.90 in spite of repeated attempts made to deliver them to him.

Shri B.P.Bora, by his above act of refusal exhibited glaring insubordination and indiscipline, unbecoming of Government servant, thereby violating Central Civil Service (Conduct) Rules, 1964.

ARTICLE - III

Shri B.P.Bora, while functioning as the Assistant Accounts Officer on adhoc basis in Sub-Regional Office, Agartala, during the period from 26.9.88 to 20.8.90 was under influence of intoxicating drinks during the course of his duty on 1.8.90 (afternoon) as much as that Shri Bora, enteed the room of Shri Nageswar Kachari, Head Clerk, Accounts Branch, in drunken condition, shouting against Shri Kachari in unparliamentary words.

Shri Bora, by his above acts, exhibited gross misconduct, unbecoming of a Government servant thereby violating Rule 22 of Central Civil Service (Conduct) Rules, 1964."

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RJ

The Article of charges alongwith statements of imputation were served on the applicant by the Disciplinary Authority asking him to show cause as to why disciplinary action against him should not be taken. The applicant duly replied to the notice to the show cause. However, the Disciplinary Authority not being satisfied with the reply to the show cause decided to hold an enquiry. Accordingly Shri S.K.Nayak was appointed Inquiry Officer and the enquiry was conducted by him. The charged officer participated in the enquiry. During the enquiry, witnesses were examined on behalf of the Disciplinary Authority and the applicant was also examined. Thereafter the Inquiry Officer submitted his report holding the applicant guilty of the charges. Agreeing with the findings of the Inquiry Officer, the Disciplinary Authority imposed penalty of removal from service. Being aggrieved the applicant preferred an appeal dated 29.12.1997 before the Appellate Authority namely, the Vice Chairman, Central Board of Trustees, Employees Provident Fund Organisation, New Delhi. The said appeal was not disposed of. Hence the present application.

2. In due course the respondents have entered appearance and filed written statement denying the averments made in the application.

3. We have heard Mr. G.K.Bhattacharyya, learned counsel appearing on behalf of the applicant and Mr. B.C. Pathak, learned Addl. C.G.S.C. First submission of Mr. Bhattacharyya is that enquiry was not conducted properly. At the time of taking decision by the Inquiry Officer he thrust the burden on the applicant to prove that he was innocent which according to Mr. Bhattacharyya is contrary to the established principles of law. According to Mr.

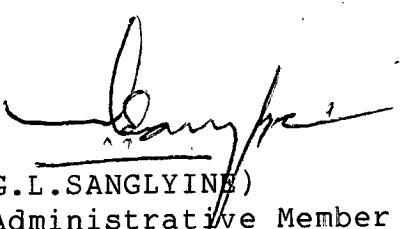
Bhattacharyya that the charges were ^{not} proved which will be apparent from the enquiry report itself. Mr. Bhattacharyya has also drawn our attention to a portion of the enquiry report where the Inquiry Officer himself stated that the evidence against the applicant were slightly weak, nevertheless he held the applicant guilty. His last submission before this Tribunal is that the punishment of removal from service was disproportionate to the offence committed by the applicant. Mr. Pathak on the other hand tries to support the action of the respondents. He also submits that the Inquiry Officer in his report stated that the applicant failed to disprove the charges. However he has also drawn our attention the enquiry report where the Inquiry Officer found the applicant guilty of charges. After considering the findings of the Inquiry Officer, the Disciplinary Authority also came to the conclusion that the charges had been proved.

4. We have considered this aspect of this matter. We have gone through the records. We find that the Inquiry Officer has in fact come to the conclusion that the charges had been proved. During the cross examination of the witnesses by the applicant wanted to see documents and certificates regarding his drunken state at the time of commission of offence, the Inquiry Officer directed the Disciplinary Authority to produce the documents, however, it was not produced. But the Inquiry Officer after looking into the oral evidence came to the conclusion that the charges had been proved. It is well settled that the Tribunal does not sit as a Court of Appeal. Therefore, it cannot interfere with the decision unless it is found there was serious irregularity in procedure or the finding is perversed or there had been violation of principles of natural justice. As we find nothing in the findings

arrived at by the authority we are not inclined to interfere with on this ground. However, on examination of the charges we find that the punishment awarded by way of removal from service is disproportionate to his charges i.e. he refused to accept two letters and used unparliamentary words to an officer below his rank. These were no doubt unbecoming of an officer and should not be encouraged. However, removal from service may not be a proper punishment considering the nature of offence, he committed. We feel the punishment of removal from service needs modification. Accordingly we modify the order of punishment from removal by reduction to the post of Head Clerk wherefrom he was promoted to Assistant Accounts Officer for a period of five years from the date of his removal and on completion of five years he shall be restored to his original position i.e. Assistant Accounts Officer. We also make it clear that pay and seniority will be counted from that date. We further make it clear that the applicant shall not be entitled to his pay from the date of removal till he resumes his duty. The applicant shall be allowed to resume his duty within fifteen days from the date of receipt of this order. For this modification we take the support of the decision of the Apex Court in the case of Union of India and Another Vs. B.C.Chaturvedi reported in (1995) 6 SCC 749.

5. With the above directions, the application is disposed of.

6. Considering the facts and circumstances of the case, we however, make no order as to costs.



(G.L.SANGLYINE)
Administrative Member



(D.N.BARUAH)
Vice-Chairman