

(2005) 08 OHC CK 0017
In the Orissa High Court
Case No : O.J.C. No. 8187 of 2000

Abhay Kumar Magar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Citation : (2005) 2 OLR 530

Hon'ble Judges : Pradip Mohanty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : H.M. Dhal, for the Appellant; J.K. Mishra, Assistant Solicitor General, for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—The writ application has been directed against the impugned judgment dated 31.7.2002 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack dismissing O.A. No.75 of 1999 in which the petitioner had challenged the order of punishment of removal from service dated 17.6.1996 passed by the Disciplinary Authority as well as the order dated 11.10.1996 passed by the appellate authority confirming the said punishment.

2. The brief facts of the case are that the petitioner was appointed as Extra Departmental Branch Post Master (EDBPM), Kaikachhar Branch Post Office in the district of Sundargarh in the year 1992. Preliminary enquiry was conducted against the petitioner by Shri Aswini Kumar Panda, SDI(P), Sundargarh (North) Subdivision who has been examined as S.W.2. On the basis of the preliminary enquiry report, the Superintendent of Post Offices ordered to hold an enquiry under the E.D. Agents (Conduct and Service) Rules, 1964 against the petitioner vide order dated 17.4.1995 and a memorandum of charges was issued to him. The charges were that while functioning as EDBPM, Kaikachhar Branch Post Office during the period from 27.6.1992 to 31.8.1994, he accepted a sum of Rs.375/- from the deposit holder against Recurring Deposit Account No.388120 belonging to Telendra Roudia who has been examined as S.W.I and a sum of Rs.100/- from

the deposit holder against Recurring Deposit Account No.388107 belonging to Lalu Harijan (not examined). He entered the transaction in the pass book, but did not enter the amount in the Government cash register.

3. The above two witnesses were the material witnesses as one of them was the account holder in the said Post Office and the another has conducted the preliminary enquiry. However, the other deposit holder, namely, Lalu Harijan was not examined. S.W. 1 Telendra Roudia has stated in his evidence that he had given statement on 19.10.1994 before the SDI(P), Sundargarh (North) Subdivision which was marked as Ext.-I. He has further stated that the Pass Book of R.D. Account No.388120 opened at Kaikachhar Branch Post Office on 12.1.1994 with a balance of Rs.125/- (One hundred twenty five), which was shown to him and marked as Ext.S-2, belonged to him. He admitted all the facts in toto which have been categorically mentioned in Ext.S-1. The statement of Telendra Roudia (S.W.I) is reproduced as under :

"My name is Shri Telendra Roudia, s/o Shri Madhyam Roudia village : Balijori, Post Office Kiakachhar, via Shankara, Dt. Sundargarh. I am aged about 30 years. The statement dated 19.10.94 was given by me before the SDI(P), Sundargarh (North) SubDivn on my own willingness which is marked Ext.S-1. The handwriting appearing therein is my own. The R.D. pass book of a/c. No.388120 opened at Kiakachhar BO on 12.1.94 of denomination Rs.125/-(One hundred twenty five only) now shown to me and marked as Ext.S-2 is mine. I admit all the facts in toto, categorically mentioned in Ext.S-1."

The officer, namely, Aswini Kumar Panda, who was examined as S.W.2, has stated that he had conducted the preliminary enquiry. He has also admitted to have recorded the statement of S.W. 1 in detail and seized all the documents which were involved in the matter.

The learned counsel for the petitioner has submitted that the copy of the statement of S.W. 1, which was recorded by Shri Panda (S.W.2) was not supplied to the petitioner and as such it cannot be said that adequate opportunity was given to the petitioner. He was deprived of proper cross-examination to S.W. 1 as in the absence of his (S.W. 1's) statement recorded during the preliminary enquiry which became a part of the disciplinary proceeding, he could not get the point on which the said witness could have been cross-examined. Learned counsel has further submitted that the statement of Lalu Harijan recorded during the preliminary enquiry conducted by S.W.2 was made a part of the disciplinary proceeding. Learned counsel has further submitted that since Lalu Harijan did not turn up for proving his own statement and the petitioner could not get the opportunity to cross-examine him, his statement could not have been taken into consideration. Therefore, when the petitioner could not get the opportunity to cross-examine the above two persons, it cannot be said that reasonable opportunity was provided to him. The Tribunal on a consideration of the above points has rejected the contention of the learned counsel for the petitioner by observing that there is no provision that copy of the statement recorded during

preliminary enquiry must be supplied to the charged official before he cross-examines the witness.

We have perused the record pertaining to the disciplinary proceeding and found that in fact no statement has been given by S.W. 1 against the petitioner before the enquiring officer. Rather he has stated that whatever has been stated by him before Shri Panda who had conducted the preliminary enquiry, was correct in toto. Therefore, it was incumbent upon the Enquiring Officer to supply a copy of the statement recorded during the preliminary enquiry to the petitioner enabling him to properly cross-examine the said witness. Further with regard to Lalu Harijan, when he did not turn up before the Enquiring Officer, how could it be said that the statement recorded during the preliminary enquiry was in fact given by him and that the same was correct without his appearance before the Enquiry Officer to prove his earlier statement. When he did not turn up to prove his own statement, there was no question to consider the same.

In the case of *State of Madhya Pradesh v. Chintamani Sadashiva Waishampayan* reported in AIR 1961 SC 1623 a Constitution Bench of the Hon'ble Apex Court has held as under:

"xx xx The first point is that the respondent should have been given copy of the application on the strength of which the preliminary enquiry was started against him; and the second that the statements of Rajab Ali and Noor Bhai recorded by Mr. Ghatwal should have been supplied to him. In appreciating the significance of these points, it is necessary to recall the broad features of the evidence adduced against the respondent. In respect of each charge evidence was given by the person who paid the money to Rajab Ali and Noor Bhai or one of them in order that it should be paid in turn to the respondent. Nooruddin, s/o Saoji Veerami, Noor Mohd. S/o Hasham, and Kasim Bhai are the three witnesses who gave evidence in support of the three charges respectively. The first witness said that he had given in all Rs.12,000/- to Rajab Ali and Noor Bhai in three instalments of Rs.3,000/-, Rs.3,000/- and Rs.6,000/-. Similarly the second witness said that he had paid Rs.11,000/- to Rajab Ali and Noor Bhai by two instalments of Rs.6,000/- and Rs.5,000/- respectively, and the third witness stated that he was arrested after the police action, and he was told that if he paid the respondent Rs.5,000/- he would be released, and so the money was paid. It is obvious that Rajab Ali and Noor Bhai are the principal witnesses against the respondent. It is equally clear from the findings recorded in the report itself that they collected far more than they are alleged to have paid to the respondent in two cases. In fact the report says that the excess amount collected by these two witnesses had been quietly pocketed by them. Thus it was of very great importance for the defence to cross-examine these two witnesses, and for that purpose the respondent wanted copies of their prior statements recorded by Mr. Ghatwal in his preliminary enquiry. It is difficult to understand how these statements could be regarded as secret papers, for that alone is the reason given for not supplying their copies to the respondent. Failure to supply the said copies to the

respondent made it almost impossible for the respondent to submit the said two witnesses to an effective cross-examination; and that in substance deprived the respondent of a reasonable opportunity to meet the charge. That is the view taken by Sen and Bhutt, JJ. and we see no reason to interfere with it."

In the case of the The State of Punjab Vs. Bhagat Ram, , the Hon"ble Apex Court has observed that the object of supplying statements is that the Government servant will be able to refer to the previous statement of the witnesses proposed to be examined against the Government servant. The relevant extract of the judgment of the Hon"ble Apex Court is quoted as under :

"The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the Government servant is afforded reasonable opportunity to defend himself against charges on which inquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken."

In the above mentioned facts and circumstances, we are of the opinion that the petitioner has not been given adequate opportunity to defend his case. Therefore, the impugned order of punishment as well as the order passed by the Tribunal are liable to be quashed.

In the result, the writ application is allowed. The impugned order dated 31.7.2000 passed by the Tribunal as well as the order imposing punishment of removal from service dated 17.6.1996 and the order dated 11.10.1996 passed in appeal are quashed. The petitioner shall be re-instated and be entitled to get the back wages as admissible in accordance with law.

However, it is open to the opposite parties to proceed afresh against the petitioner from the stage of examination and cross-examination of witnesses before the Enquiry Officer. In case they propose to do so, they can proceed only after providing the copy of the statement of S.W. 1 recorded during the preliminary enquiry to the petitioner.

Pradip Mohanty, J.

I agree.