
(2009) 04 OHC CK 0003
In the Orissa High Court
Case No : Writ Petition (C) No. 2203 of 2005

Tulsiram Sahu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Citation : (2009) CLT 30 Supp : (2009) 2 ILR (Ori) 1

Hon'ble Judges : B.S. Chauhan, C.J.; I. Mahanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This writ petition has been filed challenging the judgment and order of the Central Administrative Tribunal, Cuttack Bench (herein after called the Tribunal") dated 19.1.2005 by which Original Application No. 1276 of 2003 filed by the Petitioner against the order of punishment dated 30.12.2002 and the order of the appellate authority dated 2.6.2003 has been dismissed.

2. The Petitioner while working as Extra Departmental Branch Post Master was given a charge sheet dated 11.7.2000 (Annex. 2).

The articles of the said charge sheet contained the following three charges:

Art. (I)- The Petitioner did not take Rs. 100/- into Government account on the date of deposit or on any subsequent dates.

Art. (II) The Petitioner did not take Rs. 100/- into Government account on the date of deposit.

Art. (III) Petitioner did not take Rs. 200/- into Government account on the date of deposit or on any subsequent dates.

3. The reply to the charge sheet given by the Petitioner was not found satisfactory and therefore, enquiry was conducted against him. On his request he was given the defence assistant. The said defence assistant died. Petitioner was

given the opportunity to have another defence assistant. However, the opportunity was not availed by the Petitioner. In the enquiry it was admitted by the Petitioner that a sum of Rs. 400/- which could not be deposited, as mentioned above, was subsequently deposited by the Petitioner. The Enquiry Officer found the Petitioner guilty of the charges and enquiry report was accepted by the disciplinary authority imposing the punishment of removal from service vide order dated 30.12.2002 (Annex. 7). Challenging the order of punishment, Petitioner preferred appeal on 30.1.2003 (Annex.-8). However, the appellate authority rejected the same vide order dated 2.6.2003. Being aggrieved, the Petitioner approached the Tribunal by filing O.A. No. 1276 of 2003, which has been dismissed by judgment and order dated 19.1.2005. Hence this writ petition.

4. Learned Counsel for the Petitioner has agitated issues which have basically been considered and decided by the Tribunal elaborately. The main contention raised by the learned Counsel for the Petitioner is that the disciplinary authority which had initiated the disciplinary proceedings and passed the order of punishment was not competent to do so as he was below the rank of the appointing authority. Secondly, the second show cause notice was not given to the Petitioner, and thirdly the punishment of removal from service is disproportionate to the delinquency of temporary embezzlement of Rs. 400/-.

5. So far as the first contention is concerned, the tribunal has examined the entire Rules, Circulars and Guidelines issued by the Department from time to time in this regard and came to the conclusion that in view of the provisions contained in Rule 5 of the EDA (Conduct & Service) Rules/GDS (Conduct & Employment) Rules which stood amended with effect from 3.9.1983, the authority which initiated the disciplinary proceeding and passed the punishment order was fully competent and on the basis of the same it negated the contention regarding incompetence of the said authority. We have examined the issue at length. But, we do not find any cogent reason to interfere with the said finding.

6. The second contention that the Petitioner has not been given the second show cause notice is meaningless as the learned Counsel for the Petitioner has failed to satisfy us as what is the prejudice caused to the Petitioner for non-issuance of the second show cause. It is settled legal proposition that such submission is to be considered taking into consideration the doctrine of prejudice.

7. Unless in a given situation the aggrieved party makes out a case of prejudice or injustice, some infraction of law would not vitiate the order/inquiry/selection/result. (Vide Jankinath Sarangi Vs. State of Orissa, ; Sunil Kumar Banerjee Vs. State of West Bengal and Others, ; Major G.S. Sodhi Vs. Union of India (UOI), ; Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., ; Krishan Lal Vs. State of Jammu & Kashmir, ; Rajendra Singh Vs. State of Madhya Pradesh and others, ; State Bank of Patiala and others Vs. S.K. Sharma, ; S.K. Singh v. Central Bank of India and Ors. (1996) 6 SCC 416; Union of India and Ors. v. IC-14827, Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827), ; State of U.P. Vs. Shatrughan Lal and Another, ; State of UP. v. Harendra Arora

and Anr. 2001 SC 2319; and Debotosh Pal Choudhary Vs. Punjab National Bank and Others, .

8. In State of A.P. Vs. Thakkidiram Reddy and Others, , the Apex Court while dealing with a similar issue relied upon its earlier judgment in Willie (William) Slaney Vs. The State of Madhya Pradesh, , wherein it has been observed that in judging a question of prejudice, as of guilt, Courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given full and fair chance to defend himself, and rejected the contention that for omissions and errors in the charge, the trial stood vitiated.

9. More so, in case the Petitioner has deposited Rs. 400/- subsequently, thus he committed the misconduct of temporary embezzlement. He cannot succeed on such technical ground. Therefore, we do not find any force in the submission of the learned Counsel for the Petitioner.

10. Thirdly, the contention that the punishment of removal for temporary embezzlement of Rs. 400/- is disproportionate to the delinquency is preposterous for the reason that it is not the amount, rather mense-rea to cheat which is relevant to be considered. In case of temporary embezzlement also no punishment other than dismissal is permissible.

11. In Municipal Committee, Bahadurgarh Vs. Krishan Behari and others, , the Supreme Court held as under:

In a case of such nature - indeed, in cases involving corruption - there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant.

12. Similar view has been reiterated in Ruston & Hornsby (I) Ltd. v. T.B. Kadam AIR 1975 SC 2025; U.P. SRTC v. Basudeo Chaudhary, (1997) 11 SCC 370; Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarara Sangha Etc., ; Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, ; and Regional Manager, RSRTC v. Ghanshyam v. Sharma, (2002) 1 LLJ 234 SC .

13. In Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh, ; U.P. State Road Transport Corporation Vs. Vinod Kumar, ; the Supreme Court held that the, punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption, the only punishment is dismissal.

14. In service, where money matters are involved, an employee has to maintain the highest integrity as he is acting as the Trustee. In fact Petitioner has been dealt with leniently as the Department could also launch criminal proceeding"s against him on the charges of temporary embezzlement three times.

15. In view of the above, we find no merit in this writ petition which is accordingly dismissed.