

Union of India and Others

Vs

Kulamoni Mohanty and Others

Civil Appeal No. 1105 of 1988

(S. Saghir Ahmed K. T. Thomas JJ)

12.08.1998

ORDER

1. This is an appeal by the Union of India assailing an order of the Central Administrative Tribunal, Cuttack Bench. As per an order passed by the appellant against the respondent, a punishment of compulsory retirement was imposed on him. The Tribunal has, by the impugned order, converted it into reinstatement in service with reduction of pay by one stage without cumulative effect and also decided that the absence of the respondent from duty owing to the punishment should be treated as dies non.

2. The respondent was an employee in the Office of the National Sample Survey Organisation. The punishment of compulsory retirement was imposed on him on a finding reached in an enquiry that he had committed breach of trust of an amount of Rs. 279 and another amount of Rs. 154.80 which were payable to another employee, B. K. Samal. The enquiry was conducted pursuant to a complaint made by the aforesaid B. K. Samal on 7-8-1985. The Tribunal found on facts that the finding regarding the commission of breach of trust of the aforesaid amounts is not liable to be disturbed as the same was based on sufficient materials. But the Tribunal felt that the quantum of punishment "is rather excessive or too severe especially keeping in view that the respondent would retire on superannuation within the period of two years".

3. The learned counsel for the appellant-Union of India assailed the said conclusion of the Tribunal and contended that by no stretch of reasoning could the quantum of punishment have been held to be disproportionate or severe, particularly after concurring with the finding of the enquiry officer that the respondent has committed breach of trust.

4. We have no doubt that the Tribunal had exceeded its power and jurisdiction in interfering with the quantum of punishment imposed on the respondent. It was not even within the discretionary powers of the Tribunal to have done so, particularly on the facts of this case. We, therefore, hold that the Tribunal has gone wholly wrong in interfering with the quantum of punishment.

5. The learned counsel for the respondent adopted an alternative plea before us in the following lines : the respondent had already retired from service on 15-10-1989 and what he is now getting is only superannuation benefits. The misappropriation against him relates to what was done in the year 1974 though the complaint against that was filed only in 1985. Lapse of such a long period of time in between should have been considered for showing some leniency, according to the learned counsel. He has also submitted that the respondent's son was ailing with bone cancer and that the son had expired lately. According to the learned counsel, the maximum difference between sustaining the order of the Tribunal and sustaining the order passed against him by the Government

would be a piffling so far as the Government is concerned, but in the present circumstances that small amount would be of great utility to the respondent.

6. Having found that the Tribunal had gone wrong in interfering with the quantum of punishment, we persuade ourselves in exercise of our jurisdiction under Article 136 of the Constitution, to show some leniency to the respondent on account of the facts projected by the learned counsel which have not been controverted by the other side. We, therefore, leave the respondent's right to get the superannuation benefits as they are without changing the direction issued by the Tribunal. We make it clear that the respondent will not be entitled to any benefit other than the superannuation benefits.

7. The appeal is disposed of accordingly.