CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH:CUTTACK.

Original Application No.323 of 1989

Date of decision:26th February,1990.

1. Pravakar Nayak,S/o Late Biswanath Nayak,
Village/P.O.Mahisapat,Dist.Dhenkanal.

..... Applicant

-Versus-

1. Union of India, represented through the Secretary,
Ministry of Communications, Government of India,
New Delhi-110001.

2. Director of Postal Services,Sambalpur Region,
District-Sambalpur.

3. Superintendent of Post Offices,
Dhenkanal Division,Dhenkanal.

..... Respondents.

For the Applicant .... Mr.D.P.Dhalasamant

For the Respondents. ..... Mr.Aswini Kumar Misra.

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C O R A M :

THE HON'BLE MR.P.S.HABEEB MOHD,MEMBER(ADMN)
A N D
THE HON'BLE MR.N.SEN GUPTA,MEMBER(JUDICIAL)

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1. Whether reporters of local papers may be allowed to see the judgement ? Yes.

2. To referred to the Reporters or not ?

3. Whether Their Lordships wish to see the fair copy of the Judgement ? Yes.

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:- J U D G E M E N T :-

P.S.HABEEB MOHD,MEMBER(ADMN) Pravakar Naik who was working as Extra Departmental Branch Postmaster,Mahisapat(district of Dhenkanal)has filed this application under section 19 of the Administrative Tribunal's Act,1985 challenging Annexure-3 which is Memo No.F4-1/86/87 dated 25.9.87 (communicated him on 12.10.87)removing him from service on completion of the disciplinary proceeding started against him on alleged non-deposit of an amount Rs.42/- deposited by one Sarat Chandra Bhoi,thedepositer in S.B.Pass Book Account No.752748,the pass book, therefore indicating short deposit of the same amount. The applicant prays for the quashing of the above orders. The applicant also filed an appeal to the Appellate Authority Respondent No.2,but at the time of filing of application the appeal had not been disposed of.The case was heard by the Tribunal on the point of delay and by the order of the Tribunal dated 18.8.89 the delay was condoned.

2. The Respondents have taken the stand that the Inquiry wasduly conducted, the inquiry officer submitted his report on 31.8.87 and the applicant was removed from his service vide office Memo of even no. dt.25.9.87/12.10.87.The appeal petition has been disposed of. During the arguments ofthe case,the learned Counsel for the applicant prayed for quashing of the appellate orders also. We have perused the documents and heard learned Counsels on both sides. The scope for the Tribunal interfering matters of

disciplinary proceedings is limited. It has been well settled by a number of decisions of the Supreme Court and particulary in the case of Paramanand-Vs-The State of Hariyana (A.I.R.1989, S.C.1185) that the Tribunal cannot interfere with the findings of the Inquiry Officer or the Competent Authority where they are not arbitary or utterly perverse and if there has been an inquiry consistent with the rules or in accordance with the principles of natural justice, the punishment is a matter exclusively within the jurisdiction of the Competenent Authority.

4. There is nothing to indicate in the present case that the inquiry was not conducted properly or there is perversity in the findings of the Inquiry Officer.

5. However the Disciplinary proceeding reveals a serious flaw. The present case being one of removal from service, Article 311 has been attracted. Article 311(2) of the Constitution after the 42nd amendment in 1976 reads as follows:

> " 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State- (1) No person who is a member of a civil service of the Union of an all-India Service or a civil service of a State or holds a civil post under the union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.
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> (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges: Provided that where it is proposed after such inquiry, to impose upon him any such penalty,

such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such persons any opportunity of making representation onthe penalty proposed;

Provided further that this clause shall not apply-

(a) where a person is dimsissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a Criminal charge;or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reasons,to be recorded by that authority in writing, it is not reasonably practicable tohold such inquiry;or

(c) where the President or the Governor,as the case may be,is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If,in respect of any suchperson as aforesaid,a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause(2),the decision thereon of authority empowered to dismiss orremove such person or to reduce him in rank shall be final.

It has been held by the Principal Bench of the Tribunal in the case of Railway employee Premanath Sarma- Vs- Union of India(Full Bench Judgements of the C.A.T.Bahri Bros.,Delhi pages 245-268)that the findings of the Disciplinary Authority are bad in law because the applicant was not given a copy of the report of the inquiry officer and was not heard and given an opportunity of making his representation before arriving at the finding. The Principal Bench also held in the above case that hearing of course did not mean oral hearing but an opportunity to make a representation to the Disciplinary Authorityagainst the report in writing would constitute hearing and would amount to affording reasonable opportunity to the charged officer.

Such a opportunity not having been given the finding of the Disciplinary Authority was bad in law. The same position obtains in the present case, and the observations of the Principal Bench apply with equal force, to a proceeding under E.D.A. (Conduct and Service) Rules, (Rule8). In the present case we find the Inquiry report was not given to the applicant and therefore any order of punishment based on the findings would be bad in law.

6. It has been held by this Bench of Tribunal in O.A.273/88 Prahallad Chandra Mallick -Vs- Union of India and others dated 9th February, 1990 (which to one of us was a party) that the Appellate Authority should give a personal hearing tothe applicant. The Appellate Order in the present case shows that though the Appellate Authority had goneto the points raised in the appeal petition he had not given any personal hearing to the applicant. In the case decided bythis Bench inPrahallad Chandra Mallick's case it was held thatthe personal hearing by the Appellate Authority was necessary. The judgement reads as follows:-

"Mr.Caneswar Rath appearing for the respondents has contended that no where in the E.D. Agents (Conduct & Service) Rules, 1964 is there a provision for giving a personal hearing to the applicant or the delinquent by the appellate Authority. He has referred to Rules 12 to 15 of the Rules of 1964 and contended that since under rule 12 the appeal memorandum is to contain all material statements and the arguments on which the appellant

relies, it would not be necessary to give him a personal hearing. On the other hand, Mr. Deepak Misra for the applicant has drawn our attention to a decision of the Chandigarh Bench of the Central Administrative Tribunal reported in II 1988 ATLT(CAT) 421 (Ram Singh-Vs-Union of India & Ors) where the observations made by the Hon'ble Supreme Court in thecase of Ram Chandra-Vs-Union of India and Ors. (A.T.R. 1986) (2) SC262) have been quoted. From the quoted part, it would be found that Their Lordships of the Supreme Court stated that it was of utmost importance after the Forty-second amendment as interpreted by the majority in Tulsi Ram Patel case that the Appellate Authority must not only give a hearing to the Government servant but also pass a reasoned order dealing with the contentions raised by him in the appeal. After quoting these observations ofthe Hon'ble Supreme Court, the Chandigarh Bench went on to say "we feel that in view of the aforesaid rulling, the appellate authority should have gien him a personal hearing even though theapplicant did not ask for such a hearing". These observations of the Chandigarh Bench of the C.A.T. are binding on us unless we differ and refer the matter to a larger Bench. But in view ofthe observations of the Supreme Court quoted in the judgement ofthe Chandigarh Bench, we do not feel any necessity to make a reference or to enter into a further detailed discussion about the contentions raised by Mr. Rath basing on the rule 12 to 15 of the E.D. Agents (Conduct & Service) Rules, 1964".

The same principles apply to the present case also.

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7. In the circumstances, neither the order of the Disciplinary Authority, Annexufe-1 northe Appellate Authority, Annexure-R-1 can be sustained and both the orders are quashed. The proceedings are restored to the stage before the order of the penalty from removal from service was imposed. The Respondents if they so desire may continue the proceedings from the stage of supply of the Inquiry report and after obtaining the representation of the applicant on the inquiry report may thereafter pass appropriate orders in accordance with the law. The applicant is re-instated in duty but he will not entitled to get any back wages for the period has not worked but he will entitled to get other service benefits. The Respondents are directed accordingly.

8. The Respondents are directed to implement the above direction within a month of the date of receipt of a copy of this order.

There will be no order as to costs.

6.2.90.

MEMBER (JUDICIAL)

26/2/1990.

MEMBER (ADMINISTRATIVE)

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH