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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

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ORIGINAL APPLICATION NO. 109 OF 1992

Cuttack, this the 13th day of January, 1998

Niranjan Acharya

...

Applicant

Vrs.

Union of India and others

...

Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? Yes .
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No .

(S.K.AGARWAL)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
13/1/98

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ORIGINAL APPLICATION NO. 109 OF 1992
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGARWAL, MEMBER(JUDICIAL).
...

Niranjan Acharya,
aged about 46 years,
son of Ganeswar Acharya,
Village-Baripada, P.O-Chasapada,
Via-Kaduapada, Dist.Cuttack

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Applicant

By the Advocates

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M/s Devanand Misra,
R.N.Naik, A.Deo, B.S.Tripathy &
P.Panda.

Vrs.

1. Union of India, represented by
its Secretary, Department of Posts,
Dak Bhavan, New Delhi.
2. Chief Postmaster General, Orissa Circle,
At/PO-Bhubaneswar, Dist.Puri.
3. Additional Postmaster General, Orissa,
At/PO-Bhubaneswar, Dist.Puri.
4. Superintendent of Post Offices,
Cuttack South Division,
At/PO/District-Cuttack

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Respondents

By the Advocates

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Mr.Aswini Ku.Misra,
Senior Panel Counsel.

O R D E R

Somnath Som
13.1.98.
SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has prayed
for quashing of order dated 26.2.1987 (Annexure-3) removing
him from the post of E.D.B.P.M., Chasapada and for a direction
to reinstate him in service.

2. Facts of this case are that in order dated 2.7.1986 (Annexure-1) proceeding was started against the applicant and he was put off duty. There were three charges against the applicant. The first charge was that he committed grave misconduct as there was shortage of Government cash of Rs.17.73 in his cash balance on 28.11.1985. This amount was utilised by him for his own purpose. The second charge was that even though as E.D.B.P.M. he was required to provide accommodation for functioning of Post Office in the post village as per conditions of service, in spite of several instructions he did not provide suitable accommodation and managed ~~to xxxxxxxx~~ the work of the Post Office under a banyan tree keeping the Post Office articles in the cowshed of E.D.D.A. for which public of the locality suffered a lot. He did not make over the M.Os. with cash and other accountable articles to the E.D.D.A. for effecting payment/delivery in the beat from 7.11.1985 to 28.11.1985 even though there was sufficient cash balance with him. The third charge was that he did not maintain the Branch Office Accounts Book from 23.11.1985 to 28.11.1985 and he also failed to show the articles kept in deposit in Branch Office journal from 31.10.1985 to 28.11.1985. The Sub-Divisional Inspector (Postal) conducted enquiry into the matter. The applicant in his written statement admitted the three charges in toto and also gave in writing that he did not desire to be heard in person. Basing on his admission, the Inquiring Officer held the three charges as proved and the matter was submitted to the disciplinary authority. The disciplinary authority in his order

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dated 26.2.1987 noted that the applicant has admitted the three charges and there are no extenuating circumstances. Accordingly, the disciplinary authority accepted the findings of the Inquiring Officer and in the impugned order, removed the applicant from service with immediate effect and the period of put-off duty was treated as non-duty. The applicant has submitted that from 1.9.1988 till December 1991 he suffered from paralysis and after recovering from his illness, he collected papers and came to Cuttack on 22.3.1992 to file this O.A. The applicant has assailed the order of removal on the ground that the charges alleged are vague. The enquiry conducted was perfunctory in nature and principles of natural justice have been violated. In the absence of any evidence recorded by the Inquiring Officer, the findings are based on no evidence and deserve to be set aside. Accordingly, he has come up with the aforesaid prayer.

3. Respondents in their counter have submitted that a regular enquiry was held into the charges. All reasonable opportunity was extended to the applicant to defend his case. The applicant in his statement at Annexure-R/3 categorically admitted all the three charges and as such the charges were held to have been proved by the Inquiring Officer and accordingly, the disciplinary authority passed the impugned order of punishment. The punishment order was received by the applicant on 13.3.1987 and according to his own statement in the Original Application, he suffered from paralysis from 1.9.1988. Therefore, he could have filed an appeal before the departmental authorities against the impugned order of removal after 13.3.1987 and before 1.9.1988 or could have filed this O.A., which he has not done. There is

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no reasonable explanation from the side of the applicant why the O.A. was not filed earlier. Respondents have also stated that as the departmental remedy has not been exhausted, the O.A. is not maintainable.

4. We have heard the learned lawyer for the petitioner and the learned Senior Panel Counsel appearing for the respondents and have also perused the records.

5. As is well settled, in a departmental proceeding the Tribunal does not act as an appellate authority and cannot substitute its judgment in place of findings arrived at by the Inquiring Officer or disciplinary authority by reappraisal of evidence. In this case, we find that all reasonable opportunity was given to the applicant to controvert the charges against him. We have perused the statements given by the applicant ^{at Annexure-R/4} in course of the enquiry in which he has admitted the charges. He has stated that the shortage of office cash was due to the fact that he had utilised the Government cash for his own purpose. Moreover, the applicant in his written statement has admitted the three charges. In consideration of this, it is not possible to hold that the findings are based on no evidence.

6. As regards the delay in filing of this O.A., no explanation is forthcoming as to why the application was not filed before 1.9.1988. Learned lawyer for the petitioner submitted that as the applicant has not filed an appeal before the departmental authorities against the impugned order of punishment, he may be permitted to file an appeal now before the appellate authority and a direction should be issued to the appellate

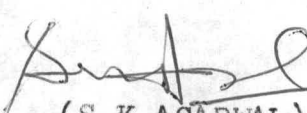
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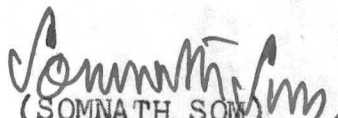
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authority to consider his appeal. We have thought about the matter and we do not feel inclined to issue any such direction. The order of punishment was issued on 26.2.1987 and the applicant received the order on 13.3.1987. Now more than ten years have passed. The applicant at the first stage had not filed an appeal within the prescribed period. He, if so advised, may file an appeal now, but we do not feel inclined to issue any order with regard to filing of appeal or disposal of the same by the respondents, thereby giving fresh life to a cause of action which with the passage of time has become finally settled.

7. In consideration of all the above, we hold that the application is without any merit and the same is rejected but, under the circumstances, without any order as to costs.


(S.K. AGARWAL) 13/1/98
MEMBER (JUDICIAL)


(SOMNATH SONI)
VICE-CHAIRMAN 13/1/98