

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 120 OF 1992  
Cuttack, this the 5th day of February, 2002

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*

1. Canorautin Mohanty  
(M. R. MOHANTY) 05/02/2002  
MEMBER (JUDICIAL)

( SOMNATH SOM )  
VICE-CHAIRMAN



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CUTTACK BENCH, CUTTACK.

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**CORAM:**

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)  
Gourachandra Pedi, son of late Pruthinath Pedi,  
ex-E.D.B.P.M., Makedia Branch Office,  
At/PO-Makedia,District-Balasore....  
....Applicant

Advocates for applicant - M/s P.Mohanty  
D.N.Mohapatra  
G.S.Satpathy,  
Smt.J.Mohanty

Vrs.

1. Union of India, represented by its Secretary, Department of Posts, Dak Bhavan, New Delhi.
2. Chief Post Master General,Orissa Circle, At/PO-Bhubaneswar, District-Puri.
3. Post Master General, Sambalpur Region, At/PO/Dist.Sambalpur.
4. Superintendent of Post Offices,Balasore Division, At/PO/Dist.Balasore....Respondents

Advocate for respondents - Mr.Aswini Kr.Mishra  
Sr.Panel Counsel

O R D E R  
SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for quashing the order dated 30.4.1991 (Annexure-4) of the disciplinary authority removing him from service and the order dated 24.1.1992 at Annexure-6 of the appellate authority rejecting his appeal.

2. The case of the applicant is that while he was working as EDBPM, Makedia B.O. he was put off duty and a disciplinary proceeding was initiated against him and he was removed from service. Against the order of removal from service he filed an appeal before the Post

Master General which was disposed of by the appellate authority in order dated 21.3.1988 (Annexure-1). The appellate authority remitted the matter to the disciplinary authority for denovo proceedings after obtaining the opinioin of the handwriting expert on the disputed documents and taking the relevant Pass Book if available to the record of the proceedings. The applicant has stated that even though a denovo enquiry was ordered a fresh proceeding was initiated against him in memo dated 1.11.1988 in which there was one charge. The charge was that he granted a counterfoil of a pay-in-slip in support of having received an amount of Rs.2000/- from one Pranab Kumar Taldi for depositing in his S.B.Pass Book Account No. 219448. But the amount was not reflected in the post office record on that date or any subsequent date thereafter. The applicant filed an explanation and inquiring officer was appointed. The inquiring officer in his report (Annexure-3) held that the charge against the applicant is not proved. The disciplinary authority taking into account the report of the inquiring officer and representation of the applicant on the enquiry report, held that the inquiring officer has not correctly evaluated the evidence and came to the finding that the charge levelled against the applicant has been proved. In pursuance of the above finding he was removed from service in the order at Annexure-4. The applicant's appeal was also dismissed in order at Annexure-6. In the context of the above, the applicant has come up in this petition with the prayer referred to earlier.



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3. Respondents in their counter have stated that the applicant was proceeded against in the chargesheet dated 6.8.1985. In this chargesheet there were two charges. The first charge is the same one which was the sole charge in the subsequent proceedings dated 1.11.1988 (Annexure-2). It was also mentioned that the applicant had subsequently credited the amount of Rs.2000/- with penal interest on 6.11.1984. The second charge was that he received an amount of Rs.50.30 from one Harekrushna Sen in august 1984. He made the entry in the Pass Book but subsequently erased and corrected the date by allowing withdrawal of Rs.50/- from the Pass Book. On completion of the enquiry the inquiring officer held one charge as proved and the other as not proved. After going through the enquiry report the applicant was removed from service in order dated 18.8.1987. On appeal, the appellate authority remitted the matter for denovo enquiry and accordingly denovo proceeding was started against him and chargesheet at Annexure-2 with only one charge was issued. The respondents have stated that the applicant credited the amount of Rs.2080/- on 6.11.1984. The enquiry was held fairly. The applicant was allowed to represent his case by an Assisting Government Servant and the inquiring officer submitted his report on 29.1.1991. The respondents have mentioned that the disciplinary authority after taking into consideration the enquiry report and the accompanying documents came to the conclusion that the applicant is guilty of the charge. The appellate authority also rejected the appeal. The respondents have stated that



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the G.E.Q.D. opined that it is not possible to express any definite opinion about the authorship of the disputed signature. But on careful examination of all the documents placed before him, he held that it reveals that the signature appearing in the counterfoil of the pay-in-slip has got similarity with the writing on these documents. The respondents have stated that the applicant credited the misappropriated amount by admitting his fault in his written statement dated 6.11.1984 at Annexure-R/11. It is further stated that even though the GEQD could not give any definite opinion about the authorship of the signature on the counterfoil, he also did not categorically deny that it was not written by the applicant. The other oral evidence was also there in support of the guilt of the applicant and in consideration of this, the disciplinary authority came to the right finding. It is further stated that the punishment imposed is justified in view of the gravity of the offence. On the above grounds the respondents have opposed the prayer of the applicant.

4. No rejoinder has been filed.

5. We have heard the learned counsel for the parties and have also perused the pleadings. The learned counsel for the petitioner has relied on the following decisions:

(i) Biswambar Pattanaik v. Union of India and others, I(1992) CSJ (HC) 18(DB);

(ii) P.M.Komala v. Union of India and others, 1994(1) AISLJ 500;

(iii) Shri Ram Charan Singh v. Union of India and others, 1995(2) AISLJ (CAT) 177; and



(iv)

Smt. Mohini Navani v. Union of India and others, 1996(1) AISLJ (CAT) 523.

We have perused these decisions.

6. Before considering the submissions made by the learned counsel of both sides, it has to be noted that in a disciplinary proceeding the Tribunal does not act as an appellate authority and cannot substitute its findings in place of the findings arrived at by the disciplinary authority and the appellate authority. The Tribunal can interfere only if the delinquent officer has not been given reasonable opportunity or if the principles of natural justice have been violated. The Tribunal can also interfere if the findings are based on no evidence or are patently perverse. The submissions of the learned counsel for the petitioner have to be considered in the light of the above well settled position of law.

7. It has been submitted by the learned counsel for the petitioner that the inquiring officer in his report, considered all the evidence and held that the sole charge is not proved against the applicant. The disciplinary authority, however, differed from the finding of the inquiring officer, and on an analysis of evidence came to the conclusion that the charge has been proved and proceeded to pass the order removing the applicant from service. It is submitted that reasons for disagreement were not communicated to the applicant and thereby the principles of natural justice have been violated. From the pleadings it appears that the disciplinary authority differed from the finding of the inquiring officer and came to the finding that the sole charge is proved against the applicant. It is also clear that the reasons for



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disagreement were not communicated to the applicant before the disciplinary authority came to this finding. The question for consideration is whether because of this principles of natural justice have been violated and secondly if in the process the applicant has been prejudiced. For considering this question, it is necessary to refer to the findings of the inquiring officer. In the statement of imputation it has been mentioned that while the applicant was working as EDBPM, Makedia B.O., on 11.6.1984 he received a sum of Rs.3500/- from one P.K.Taldi for depositing in his Pass Book Account No.219448. The pass book was left with the applicant by the depositor. The applicant retained the cash stating that the account for the day was closed and the deposit would be made on 12.6.1984. The applicant granted the counterfoil of the pay-in-slip for Rs.2000/- and retained Rs.1500/- as private loan assuring the depositor that he would deposit the same subsequently. Prior to 11.6.1984 a sum of Rs.600/- was taken as private loan by the applicant from the depositor with assurance to deposit the same subsequently. But he did not return the pass book which was with him on 12.6.1984 stating that the Pass Book would be sent to the Head Office for posting of interest. The depositor asked for the Pass Book several times, but the applicant granted him a counterfoil receipt on 26.7.1984 showing deposit of Rs.2000/- in his Pass Book. He also returned a sum of Rs.100/- as private loan. The Pass Book was ultimately returned to the depositor a few days later and he noticed that the amount of Rs.4000/- was not deposited in the Pass Book. On enquiry by the depositor, the applicant told him that he would deposit



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the rest of the amount in the Pass Book when he will again call for the Pass Book at a later date. On 28.8.1984 the applicant sent the EDDA of the Branch Office to collect the Pass Book and the counterfoil of the pay-in-slip. The depositor made over the Pass Book and the counterfoil of the pay-in-slip dated 11.6.1984. The counterfoil dated 26.7.1984 was not readily available. The EDDA tore up the counterfoil of the pay-in-slip which was seen by the depositor. It is further stated in the imputation that during preliminary enquiry the depositor produced the counterfoil of pay-in-slip dated 26.7.1984 for Rs.2000/-.

The applicant admitted to have received the amount and granted the counterfoil. He also voluntarily credited a sum of Rs.2000/- along with penal interest of Rs.80/- in Jaleswar Head Office vide receipt dated 6.11.1984. The disciplinary authority has held in his order at Annexure-4 that the inquiring officer has not correctly evaluated the evidence available. Accordingly, the disciplinary authority has evaluated the evidence and come to a finding that the sole charge against the applicant has been proved. Law is well settled that in disciplinary proceedings the Tribunal cannot re-evaluate the evidence. But the point for determination is whether by not communicating the reasons of disagreement to the applicant by the disciplinary authority, the applicant has been prejudiced. For determining this point, the evaluation of evidence by the inquiring officer and the disciplinary authority has to be examined. The inquiring officer after recording the evidence of the witnesses has framed three questions. The first one is whether the counterfoil of pay-in-slip dated 26.7.1984 was granted by the applicant



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to the depositor. The second question is whether the depositor produced the Pass Book along with pay-in-slip with a sum of Rs.3500/- on 11.6.1984 before the applicant for depositing the amount in the Pass Book, and thirdly whether the counterfoil of the pay-in-slip dated 26.7.1984 was in the custody of the depositor immediately on receipt from the applicant and if the same was issued by the applicant under his signature. The inquiring officer has noted the report of the handwriting expert and stated that the handwriting expert has noted that the counterfoil was not signed by the applicant and the signature appearing on it is not the signature of the applicant. The disciplinary authority has noted that the handwriting expert opined that it has not been possible to express any definite opinion about the authorship of the signature on the counterfoil on the basis of materials at hand. From this the disciplinary authority has drawn the conclusion that the handwriting expert does not specify that the signature on the counterfoil of the pay-in-slip dated 26.7.1984 is not that of the applicant. The disciplinary authority has also noted that the handwriting expert has stated that the disputed signature has some similarity in writing with the admitted signature of the applicant. On this basis the disciplinary authority has held that the applicant had granted and signed the receipt dated 26.7.1984. From the above it is clear that the handwriting expert had before him the admitted signature of the applicant and he did not say that the disputed signature is that of the applicant. He merely stated that the disputed signature has similarity with the admitted signature of the applicant. The inquiring officer has noted that the handwriting



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expert has not opined that the disputed signature is that of the applicant because he has declined to express any definite opinion on this point. As from the same opinion of the handwriting expert the inquiring officer and the disciplinary authority came to different conclusions, it was incumbent on the part of the disciplinary authority to communicate the reasons of his disagreement to the applicant to enable him to make a representation in this regard. This not having been done, we have no hesitation in holding that principles of natural justice have been violated. Hon'ble Supreme Court in an old decision which went from Orissa in the case of Narayan Misra v. State of Orissa, 1969 SLR 657, have taken the same view. On the second question formulated by the inquiring officer, he has noted that on the basis of evidence on record it reveals that the Pass Book was not in the custody of the depositor on 11.6.1984 and he has disbelieved that a person could tender a huge amount of Rs.3500/- before the Branch Post Master for deposit in his Account without producing the Pass Book. This aspect has not at all been considered by the disciplinary authority in his impugned order. On the third question as to whether the counterfoil dated 26.7.1984 was in the custody of the depositor, the inquiring officer has held that the depositor could not produce the counterfoil before the Sub-Divisional Inspector (Postal), Jaleswar, who recorded his statement on 22.9.1984 but produced the same on 20.10.1984. The fact of production of counterfoil of the pay-in-slip later by the depositor has been borne out by the evidence of the S.D.I.(Postal). This aspect has also not been gone into by the disciplinary authority in his order. In view of this,

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it is clear that the principles of natural justice have been grossly violated in this case by the disciplinary authority coming to a finding different from the finding arrived at by the inquiring officer which in law he has a right to do but only after his reasons for disagreement have been communicated to the applicant to enable him to make a representation. As in this case the extreme penalty of removal from service has been imposed, the applicant has obviously been prejudiced by the non-communication of the reasons for disagreement. The respondents in their counter have stated that the applicant in his statement at Annexure-R/11 has admitted his lapse. On going through the statement of the applicant at Annexure-R/11 it appears that the applicant has merely stated therein that on being shown the counterfoil of the receipt dated 26.7.1984 he has credited the amount of Rs.2000/- along with penal interest of Rs.80/-. It is a far-cry from this to hold that the applicant has admitted his guilt. In view of our above discussions, we quash the orders of the disciplinary authority and the appellate authority and remand the matter back to the disciplinary authority to communicate the reasons for his disagreement to the applicant giving reasonable time to make his representation and then consider his representation and pass orders in the disciplinary proceedings. All this should be done within a period of 90 (ninety) days from the date of receipt of copy of this order. The period from the date of removal of the applicant from service till the date of passing of final orders in the disciplinary proceedings in accordance with our above direction would be decided on the basis of



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final result in the disciplinary proceedings.

8. In the result, therefore, the O.A. is allowed in terms of observation and direction above. No costs.



*M. R. Mohanty*  
(M. R. MOHANTY) 05/02/2002

MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM) 05.2.2002

VICE-CHAIRMAN

AN/PS