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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

O.A. NO. 124/92

17th day of September, 1997

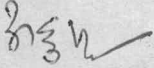
Purna Chandra Barik Applicant

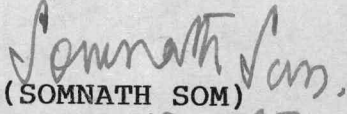
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Union of India and others ... Respondents.

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.


(A.K. MISRA)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 17.9.97

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.124 OF 1992
Cuttack, this the 17th day September, 1997

CORAM:

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

....

Purna Chandra Barik,
Ex-Extra-Departmental Branch Post Master,
Garadihi, Via-Rajnilagiri,
District-Balasore

Applicant.

Advocates for applicant - M/s Devanand
Misra
R.N.Naik
A.Deo &
B.S.Tripathy.

Vrs.

1. Union of India, represented
by its Secretary, Department of
Posts, Dak Bhawan,
New Delhi.
2. Director of Postal Services,
Orissa, O/O Postmaster General,
Sambalpur Region,
Sambalpur.
3. Senior Superintendent of Post Offices,
Balasore Division,
Balasore

Respondents.

Advocate for respondents - Mr.A.K.Misra.

O R D E R

Somnath Som
17.9.97

Somnath Som, Vice-Chairman

In this application under Section 19 of
Administrative Tribunals Act, 1985, the applicant, who was
Extra-Departmental Branch Post Master, Garadihi,
Via-Rajnilagiri, District-Balasore, has prayed for quashing the
order dated 1.8.1991 removing him from service at the
conclusion of a departmental enquiry against him as also the

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order dated 8.1.1992 rejecting his appeal against the order of removal. There is also a prayer for a direction to the respondents to reinstate the applicant in service with all consequential benefits. The facts of this case fall within a small compass and can be briefly stated.

2. While the applicant was working as E.D.B.P.M. at Garadihi Branch Post Office, departmental proceedings under Rule 8 of Extra-Departmental Agents (Conduct & Service) Rules, 1964 were initiated against him on 20.9.1986. According to the applicant, he was charged for retaining cash beyond the authorised minimum cash balance limit during the period from 20.10.1984 to 30.4.1985. The applicant denied the charge, but / according to the applicant the Enquiring Officer without proper enquiry into the matter came to the conclusion that the charges were proved. The disciplinary authority accepted the enquiry report and ordered on 19.8.1987 removal of the applicant from service. On appeal, this order was confirmed by the appellate authority on 23.3.1988. This order of removal and the appellate order were challenged by the applicant in OA No.3/89 which was allowed in order dated 19.2.1991. The Tribunal quashed the removal order on the sole ground that following the decision of the Hon'ble Supreme Court in the case of Union of India v. Mohd. Ramzan Khan, 1990(4) JT 456, the departmental authorities were obliged to give a copy of the enquiry report to the applicant to show cause against the enquiry report. It was also laid down in

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this order that the disciplinary authority would be at liberty, if he so chooses, ^{to} proceed with the disciplinary proceedings after giving the applicant an opportunity to make any representation that he might desire to make concerning the report of the Enquiring Officer. Following this order, the applicant, who had already been supplied with a copy of the enquiry report along with the original order of removal from service, was asked to show cause. He accordingly made a representation, but the disciplinary authority after going through the report of the enquiry and the representation dated 24.4.1991 of the applicant, passed order on 1.8.1991 (Annexure-3) removing him from service. His appeal against the order of removal was rejected by the appellate authority in his order dated 8.1.1992 (Annexure-4). That is how the applicant has come up once again before the Tribunal with the aforesaid prayers.

3. Respondents in their counter have pointed out that departmental proceedings were initiated against the applicant on 29.10.1986 for retaining excess cash beyond the authorised limit without any liability and for showing fictitious liability in the Branch Office records. The charge was denied by the applicant and an oral enquiry was ordered. After due enquiry, the impugned order of removal from service was passed which was upheld by the appellate authority. Respondents have claimed that charges held proved against the

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applicant are serious in nature and the departmental enquiry suffers from no illegality and therefore, they have opposed the prayers made by the applicant.

4. We have heard the learned lawyer for the applicant and the learned Senior Panel Counsel appearing on behalf of the respondents and have also perused the records.

5. It is well settled position of law that in a matter of departmental proceedings, Tribunal does not act as an appellate forum and cannot take up reappraisal of evidence obtained during departmental enquiry. If the Enquiring Officer and the disciplinary authority have come to a finding in respect of a charge on the basis of materials on record, it would not be open for the Tribunal to re-assess the evidence and come to a different finding. The conclusion in a disciplinary proceeding can be challenged before the Tribunal only on the ground of denial of reasonable opportunity and natural justice to the delinquent officer to defend his case as also when the conclusions reached in the enquiry as also by the disciplinary authority are based on no evidence, or are based on such evidence that no reasonable person would come to the conclusion arrived at by the enquiring officer or the disciplinary authority.

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6. Learned lawyer for the applicant has urged two grounds in assailing the conclusion arrived at in the departmental proceedings and these are discussed below.

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Firstly, it has been alleged that the applicant was not given a large number of relevant documents which were asked for by him. We find from Annexure-3 that along with the articles of charge, the statement of imputation of misconduct and a list of documents by which and a list of witnesses by whom the articles of charge were proposed to be sustained were supplied to the applicant. The applicant has not stated which documents he asked for and were denied access to. He has also not submitted copy of his application, if any, asking for copies of documents which were denied to him. In view of this, it is not possible to hold that the documents asked for by the applicant were not supplied to him. We, therefore, hold that this ground has not been established and is hereby rejected.

7. The second ground of assailing the punishment order is that the enquiry report is based on no evidence. We have looked into the detailed order of the disciplinary authority imposing punishment on the applicant. Unfortunately, the applicant has not enclosed a copy of the enquiry report even though the same has been served on him by the respondents and he has filed written representation on 24.4.1991 on the enquiry report. In case the enquiry report is based on no evidence, the applicant should have filed the enquiry report and brought out how the finding is based on no evidence. In the

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absence of that, we have to go by the punishment order where details of the charge, the evidence collected during enquiry, and the conclusion of the enquiring officer have been gone into in detail. The charge is that the applicant while working as E.D.B.P.M., Garadihi, retained cash beyond authorised limit during the period from 20.10.1984 to 30.4.1985 contravening the provisions of Rule 177 of Rules for Branch Offices and thereby failed to maintain absolute integrity and devotion to duty. During oral enquiry, it was established that a departmental officer visited Garadihi Branch Office on 15.5.1985 and on inspection of the Branch Office Accounts Book, found that on five days cash in hand ranged from Rs.613.22 to Rs.837.77 and the liability shown by the applicant ranged from Rs.490/- to Rs.1120/-, whereas actual liability was "Nil" in four out of five days and on one day the actual liability was Rs.102/- against which the applicant had shown a fictitious liability of Rs.670/- and retained cash of Rs.835.02. Some of these relate to fictitious requisition for withdrawal of cash from Savings Bank Accounts. Two of the depositors were examined during enquiry and they had denied that they wanted withdrawal. The disciplinary authority has disbelieved the applicant's version that withdrawal from Savings Bank Accounts was asked for by these depositors, on the ground that as there was cash in hand, there was no reason for the applicant not to allow withdrawal in case such withdrawal was asked for. In consideration of

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the above, the disciplinary authority has accepted the finding of the enquiring officer that the applicant did retain excess cash by showing fictitious liability. The finding is based on the Branch Office Accounts Book entries as also statements of Ramesh Chandra Behera, holder of S.B.Account No.326761, and Rabindra Kumar Mandal, holder of S.B.Account No.326737. In view of the elaborate discussions made and evidence collected and analysed, it is not possible to hold that the finding is based on no evidence and therefore, this ground is also held to be without any merit and is rejected.

8.Learned lawyer for the applicant has submitted that the applicant has put in long years as E.D.B.P.M. and the punishment imposed on him is disproportionate to the error committed. We are unable to accept this contention, firstly because the disciplinary authority has rejected the contention of the applicant that the mistakes have occurred due to clerical error. Moreover, it is the settled position of law laid down by the Hon'ble Supreme Court that the Tribunal while dealing with disciplinary cases cannot substitute their judgment in place of the decision of the disciplinary authority about the nature of punishment imposed. The disciplinary authority with detailed knowledge of the work and functioning of the Department is in a better position to decide the quantum of punishment. In view of this, it is not possible to interfere with the nature of punishment imposed on the applicant.

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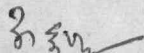
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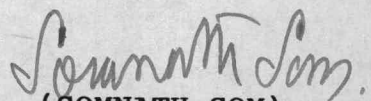
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9. The last prayer of the applicant is for his reinstatement. In view of our findings above, this prayer also fails and is rejected. It was, however, submitted by the learned lawyer for the applicant at the time of hearing that from the date the original order of removal from service was quashed by the Tribunal in OA No.3/89, the applicant must be taken to have been reinstated in service and he must get his emoluments till the second order of removal. We find no merit in this submission. The admitted position is that before the first order of removal, the applicant was on put-off duty. After the original order of removal was quashed on 19.2.1991 in OA No.3/89, the applicant would be deemed to have been continuing on put-off duty and the question of his reinstatement does not arise. During the period of put-off duty, the applicant might have been entitled to certain allowances under the Rules. If this is so, then such dues must be worked out by the respondents and paid to the applicant within a period of 90 (ninety) days from the date of receipt of this order, if the same has not already been paid.

10. In the result, therefore, we hold that the application is without any merit and the same is rejected subject to the direction given in paragraph 9 of this order.

There shall be no order as to costs.


(A.K. MISRA)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN