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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 135 OF 1992.

Cuttack this the 4th day of January, 1999

JAYANANDA BARIK. APPLICANT.

-Versus-

UNION OF INDIA & OTHERS. RESPONDENTS.

(FOR INSTRUCTIONS)

1. WHETHER it be referred to the reporters or not?
2. WHETHER it be referred to the all the Benches of the Central Administrative Tribunal or not?.

2m/
(A.K. MISHRA)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
1.99.

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 135 OF 1992.

Cuttack this the 4th day of January, 1999

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN,

&

THE HONOURABLE MR. A.K. MISHRA, MEMBER(JUDICIAL).

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Jayananda Barik, aged about 32 years,
Son of late Madan Barik, At-Kupura,
PO-Simulia, Dist-Balasore.

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APPLICANT.

By legal practitioner :- Devanand Mishra, Deepak Mishra,
R.N. Naik, A. Deo, B.S. Tripathy,
P. Panda, Advocates.

- Versus -

1. Union of India represented by its
Secretary, Department of Posts,
Dak Bhavan, New Delhi.

2. The Postmaster General, Orissa Circle,
At/P.O. Bhubaneswar, Dist. Puri.

3. Superintendent of Post Offices,
Bhadrak Division, At/P.O. Bhadrak,
Dist. Balasore.

4. Assistant Superintendent of Post
Offices in charge Bhadrak Central
Sub Division, At/P.O. Bhadrak, Dist.
Balasore.

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RESPONDENTS.

By legal practitioner:- Mr. Aswini Kumar Mishra,
Senior Counsel (Central).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction quashing the order dated 16.1.1991 (Annexure-1) removing him from service and order dated 6-12-1991 (Annexure-3) rejecting his appeal against the order of removal. There is also a prayer for a direction to the Respondents to reinstate the applicant in his post.

2. The facts of this case, according to the applicant, are that, at the relevant time, he was working as E.D. Night Watcher, Simulia Sub Post Office under the Bhadrak Head Post Office. In June, 1996, the applicant was exchanging Mails of the Sub Office with Mail Motor Service and vice-versa at Markona Chhak. For this, he was getting extra remuneration as this was in addition to his own duties of E.D. Nightwatchman. It is alleged that sealed bag of Jamjhadi B.D. Branch Post Office was opened and the contents removed while the branch Office bag was in the custody of the applicant. Accordingly, charges were drawn up against him and Inquiring Officer was appointed. After going through the report of the enquiry, the impugned order at Annexure-1 was passed removing him from service. Applicant filed an appeal but his appeal dated 4.3.91, at Annexure-2, was rejected in the impugned order at

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Annexure-3. The applicant has challenged the impugned order of punishment and the order rejecting his appeal, on the ground that allegations are vague and baseless. The Disciplinary Authority has not taken all the facts into consideration before passing the order of removal from service. The bag cord and seal of Jamjhadi Branch post Office for the relevant date i.e. 28.6.86 were not preserved. The E.D. M.C., Bati Branch Post Office, had not been examined. Applicant further states that on the basis of material on record, the Disciplinary Authority should have held that Branch Office Bag of Jamjhadi Branch Office on the date 28.6.1986 was admittedly received in Simulia Sub-Office in good condition and was opened on 30.6.1986. On the above grounds, he has come up with the aforesaid prayers, referred to above.

3. The Respondents have filed counter in which they have opposed the prayer of the applicant on the ground that for the lapses alleged against the applicant, charges were framed. Detailed enquiry was conducted in course of which, all facilities were provided to the applicant to put forth his case. The Inquiring Officer, has come to the finding that the charges are proved and the Disciplinary Authority, after taking all the facts, into consideration, including the representation of the applicant dated 10.2.1990, had passed the impugned order of removal of service. His appeal has also been duly considered and all aspects having been taken into

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consideration. The appeal has been rejected.

4. We have heard the learned Counsel for the applicant and the learned Senior Counsel (Central) appearing on behalf of Respondents Mr. Aswini Kumar Mishra.

5. Learned Counsel for the applicant has submitted that he was not supplied with copies of the documents and natural justice was violated. The charges in this case are that while the applicant was working as E.D. Nightwatchman, Simulia Sub Office, he was also exchanging Mails of the Sub Office with the Mail Motor Service and vice-versa at Markona Chhak, on 28.6.1986, afternoon, he received the Branch Office Bag of Jamhadi E.D. Branch Office relating to 28.6.86 in good condition from the Mail Motor. He did not make over the aforesaid Branch Office bag to anybody in Simulia Post Office. He retained the Key of the Post Office room of Simulia Sub Office irregularly, from 28.6.86 afternoon to the time of opening of the Sub Office on 30.6.86 morning. He also retained a bunch of keys having the keys of an wooden chest of Simulia Sub Office irregularly in his custody from 28.6.86 afternoon to the time of opening of Simulia Sub Office on 30.6.86 morning. He remained alone, inside the Post Office room during this period irregularly and kept the bags in his custody from 28.6.86 to 30.6.86 morning. Jamhadi Branch Office bag dated 28.6.86 was containing a locked, sealed cash bag with a cash remittance of Rs. 2500/-. On 30.6.86, the applicant left Simulia Sub Office leaving the Branch Office

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bags of Bati and Jamjhadi dated 28.6.86 in the wooden chest of the Sub Office. On opening of Branch Office bag of Jamjhadi Branch Office, the cash remittance was not found in the Cash bag instead the empty cash bag was found. On examination of the cord of the Branch Office bag of Jamjhadi, it was found that one of the two rounds twine used in the cord is of thicker type similar to that used at Jamjhadi Branch Office and the other thin type similar to that used at Jamjhadi Branch Office. The thicker one was managed to have been inserted between the seal of Jamjhadi EDBO appearing on the label of the BO bag of Jamjhadi EDBO. From this it was seen that the locked sealed Cash bag of Jamjhadi Branch Post Office for 28.6.86 had been opened and the contents thereof was removed while the said Branch Office bag was in the custody of the applicant from afternoon of 28.6.86 to the opening time of Simulia Sub Office on 30.6.1986 morning. Because of the above, the applicant was proceeded against for ~~having~~ gross misconduct and for exhibiting lack of integrity and thereby violating provisions of Rule-17 of P & T ED Agents (Conduct and Service) Rules, 1964.

6. Learned Counsel for the applicant has submitted that necessary documents were not supplied to him. He has not produced any evidence to show that the applicant had asked for the said documents. No averments has also been made to this effect in the Original Application. In any case, the

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material objects which have been considered in this case are the Branch Office Cash Bag of Jamjhadi, twine with which it was tied and the seal labels and different Keys. These are material objects and could not have been supplied to the applicant. During the enquiry, the applicant put up a case that Jamjhadi Branch Office, did not actually send the remittance of Rs. 2500/-. The Inquiring Officer, has controverted the above, on the basis of the Branch Office account and the statement of the staff of Jamjhadi Branch Office. As this point was taken by the applicant, in course of the enquiry, naturally, copy of Branch Office account could not be given to him. In any case, the applicant has not produced any record to show that he did ask copies of certain documents and the same were not supplied to him. The second ground on which the findings and the punishment have been assailed is that requirement of natural justice was not complied with during the enquiry. No specific instance, has however, been mentioned in support of his above contention. We find that in this case, a defence counsel was appointed and he assisted the applicant through out the enquiry. Different witnesses were cross examined. In view of this, it can not be held that the requirement of natural justice has been violated.

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The position of law is well settled that in a Departmental Enquiry, the Tribunal does not act as the Appellate Authority and can not substitute its judgment for the reasonings and findings arrived at by the Inquiring Officer and the Disciplinary Authority. The findings can be questioned, if these are based on no evidence or on such evidence that no reasonable person would come to the findings arrived at on the basis of such evidence. In view of the above well settled position of law, we have gone through the enquiry report and the impugned order dated 16.1.1991 (Annexure-1) of the Disciplinary Authority. The applicant, has himself, admitted that when he received the Bags of Jamjhadi Branch Post Office, it was in good condition. It has also been proved that after receipt of bag in the afternoon of 28.6.86, these were in the custody of the applicant, till 30.6.86 morning. He kept the bag in the Wooden chest but kept the Keys, unauthorisedly with him. When the bag was opened on 30.6.86, the remittance of Rs. 2500/- was missing from the Cash bag. It was also seen that the thin twine of the bag has been tampered with even though the seal is intact. One portion of the twine, which is different, has been inserted below the seal in a clever manner. The Inquiring

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Officer has come to the findings that for doing this, the person concerned required some time and this could not have been done in a hurry. As the applicant had kept the bags unauthorisedly in his custody during the aforesaid period, the charges have been held proved against him. After going through the report of the Inquiring Officer and the impugned order of the Disciplinary Authority, who has examined the report of the I.O. and the representation of the Applicant in detail, we find no infirmity in the Report of the Inquiring Officer as well as the order of the Disciplinary Authority. In the report of the I.O. and the order of the Disciplinary Authority, it has been held that the Jamjhadi Branch Post Office bag of 28.6.86 has been tampered while the bag was in the custody of the applicant during the aforesaid period and in the process the remittance of Rs. 2,500/- was missing. Because of this charges had been held proved against the applicant.

7. The Report of the Inquiring Officer and the Order of the Disciplinary Authority, can not, therefore, be held to be based on no evidence and the prayer for quashing Annexure-1, is, therefore, held to be without any merit and is hereby rejected.

8. As regards Annexure-3, it is noted that the

contentions of the applicant, in his appeal petition, have been duly taken note of and have been considered. The same contentions have been raised in this Original Application. For example, in his appeal petition, the applicant has mentioned that the Bag cord and seal of the Jamjhadi Branch Post Office were not preserved and the entry regarding non-receipt of remittance was not made in the book and the authorities not telegraphically intimated about the loss. The Appellate Authority has held that the above points are mainly certain procedural omissions committed by the ^{J.P.M.} Sub Post Master, Simulia and other officials and these have nothing to do with the charge that the applicant unauthorisedly kept the bags during that period. The fact that he was the sole custodian of the Branch Post Office bag from the afternoon of 28.6.86 till 30.6.86 morning alongwith the keys and the of the Post Office, Wooden chest, / Cash bag have not been disputed. Thus, the above points of the applicant in the appeal petition have been considered and rejected by the Appellate Authority. The very same points have been raised in this Original Application. We find that the Appellate Authority has applied his mind and has considered the

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points raised by the applicant and rejected the representation of the applicant. In view of this, we see no reason to interfere in the order of the Appellate Authority.

9. In the result, therefore, the Application is rejected for being without any merit but in the circumstances, there shall be no order as to cost.

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(A.K. MISHRA)
MEMBER(JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
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