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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

RIGINAL APPLICATION NO. 367 OF 1992
Cuttack this the 2nd day of March, 2000

Bhimsen Satpathy

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to eporters or not ? *Yes*
2. Whether it be circulated to all the Benches of the *Nal* Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
22.2.2000



22.2.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 367 OF 1992
Cuttack this the 2nd day of March, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Bhimsen Satpathy,
A/o. Jambeswar Satpathy
aged about 48 years,
At: Gurujang Nanda Sahi,
PO:Gurujang, Via: Khurda
Dist: Puri

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Applicant

By the Advocates : M/s.Ganeswar Rath
P.K.MOHapatra
A.K.Patnaik
J.C.Sahoo
A.MOhanty
C.Lakhmanan

-Versus-

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1. Union of India represented by Secretary to Government of India, Department of Posts, Ministry of Communication
 2. Senior Superintendent of Post Offices, Puri Division, Puri
 3. Director, Postal Services (Head Qrs.) Office of C.P.M.G., Orissa, Bhubaneswar

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Respondents

By the Advocates : Mr.S.B.Jena
Addl.Standing Counsel
(Central)

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MR.G.NARASIMHAM, MEMBER(JUDICIAL): In this application filed on 6.7.1992, the applicant challenges the order of dismissal dated 1.5.1991(Annexure-6) passed by the disciplinary authority (Res.2). The applicant was by then Extra Departmental Branch Post Master, Kollapadar Branch Office and was under put off duty. His departmental appeal dated 31.7.1991 against the order of dismissal was dismissed by the Director of Postal Services(Res.3).

The charges against the applicant are two fold. The first charge is that while serving as E.D.B.P.M., Kollapadar from 6.1.1994 to 28.4.1984 he did not credit the Money Order amounting to Rs.379.36 in the Post Office Account though he accepted the same from the depositors of the following S.B.Account Holders,

S.B.A/c.Nos. 157839, 158904, 159012, 159340 and 158737

The other charge is that though he received six money orders he did not pay the amounts to the payee, but showed the same to have been paid in the Postal Account by forging signatures and LTIs of the payee.

Before the charges were framed the matter was preliminarily enquired into and the applicant during preliminary enquiry admitted these allegations. However, when charges were served he denied the charges whereafter Enquiring Officer and Presenting Officers were appointed. The enquiring officer after conducting the enquiry submitted his report to the disciplinary authority holding the charges proved. A copy of the enquiry report was supplied to the applicant for his representation, if any. The applicant submitted representation and thereafter, the disciplinary authority through order



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dated 1.5.1991 vide Annexure-6 passed the order of dismissal.

2. The case of the applicant is that during preliminary enquiry he was threatened by then S.D.I.(P) Jatni to give a statement in writing admitting the allegations failing which he would be handed over to Police. Accordingly he succumbed to that threat and gave in writing to the dictation of that S.D.I.(P). In fact by order dated 14.4.1987 of the disciplinary authority (Annexure-2) he deposited an amount of Rs.400/- which has been duly acknowledged through receipt dated 15.4.1987(Annexure-3). The loss was made good and therefore, there was no justification for framing the charges, Without issuing any show cause notice as to why any disciplinary action shall not be taken against him. At any rate, the enquiring authority and the disciplinary authority did not properly appreciate the evidence and held him guilty.

3. The stand of the Department is that the disciplinary proceedings was conducted as per rules without violating the principles of natural justice to the prejudice of the applicant and as per evidence unearthed during enquiry. The charges were held to be proved and therefore, the order of dismissal was justified.

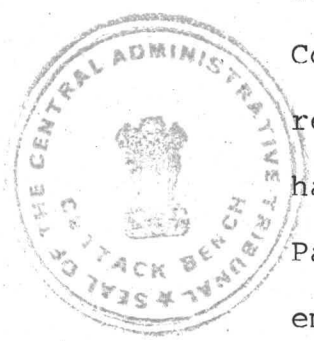
4. We have heard Shri Ganeswar Rath, learned counsel for the applicant and Shri S.B.Jena, learned Addl.Standing Counsel appearing for the respondents. Also perused the records.

At the outset learned counsel for the applicant contended that since the applicant was not paid

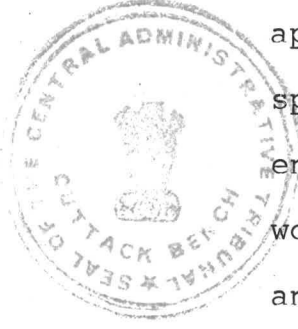


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the subsistence allowance while under put off duty, the entire proceedings stands vitiated. The learned Addl. Standing Counsel submitted that prior to the year 1997 there was no rule and/or provision for payment of subsistence allowance to the F.D. Agents under put off duty. ~~In fact~~ On the other hand Under Rule-9 of the F.D. Agents (Conduct and Service) Rules, there was specific provision that an F.D. employee should not be entitled to any allowance for the period he is kept under off duty. There is force in the contention of the learned Addl. Standing Counsel. But on behalf of the applicant reliance has been placed on the decision of the Supreme Court in V.P. Gindroviya vs. State of Madhya Pradesh reported in AIR 1970 SC 1494 (at Page 1497 in Para-8). We have carefully gone through this decision, specifically Para.8. The context was with reference to power of an employer to place an employee under suspension. It has been clearly observed in that Para that where there is power to suspend either in the contract of an employment or in the statute or the rules framed thereunder, the order of suspension has effect of temporarily suspending the relationship of master and servant with the consequences that the servant is not bound to render service and the master is not bound to pay and that it is equally well settled that an order of interim suspension can be passed against the employee while an enquiring is pending into his conduct even though there is no such term in the contract of employment or in the rules, in such a case the employee will be entitled to for his remuneration for the period of suspension if there is no statute or rule under which it could be withheld. Far



from supporting the contention advanced by the learned counsel for the applicant, the aforesaid observation of the Apex Court supports the contention of the learned Addl. Standing Counsel, because, by then there was specific provision under Rule-9 of the E.D. Agents (Conduct and Service) Rules that during the put off duty period an E.D. employee would not be entitled to any allowances.



It is not in dispute that during preliminary enquiry the applicant gave a statement admitting the allegations. However, his case is that he made such statement under duress. Whether it was under duress or voluntarily it is not for this Tribunal to appreciate it by acting as an appellate authority, specially when he had not taken this plea before the enquiring authority or the disciplinary authority, as would be evident from the reports under Annexures 5 and 6 and that he did not annex copies of his representation, to the disciplinary authority as well as appellate authority. Even otherwise, as would be evident from the reports of the enquiring authority and the disciplinary authority, there is evidence of the depositors about the entrustment of amounts and of the postal officials as to the entrustment of money orders to the applicant. Law is well settled that a Court/Tribunal cannot act as an appellate authority to reappraise the evidence on record and if there is some evidence on record which can be reasonably believed by the disciplinary authority or the enquiring authority, findings of the disciplinary authority on that score cannot be interfered. We are, therefore, not inclined to reappraise the evidence to

consider whether there is any scope to arrive at a different finding.

5. The charges proved reflect on the moral turpitude and integrity of the applicant and tell upon the reputation and prestige of the Postal Department. Hence quantum of punishment is in no way disproportionate to the charges established.

6. For the reasons discussed above, we do not see any merit in this application which is accordingly dismissed, but without any order as to costs.

(SOMNATH SOM)
VICE-CHAIRMAN

B.K. SAHOO



(G. NARASIMHAM)
MEMBER (JUDICIAL)