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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.417 OF 1992
Cuttack, this the 23rd day of July, 1998

Sri Surendra Kumar Dhal 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.*

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
7.98

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

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

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Sri Surendra Kumar Dhal,
aged about 34 years,
s/o Sri Nisakar Dhal,
Vill/PO-Samian,
Via-Sabrang,
Dist.Balasore

By the Advocates - M/s P.V.Ramdas
B.K.Panda &
D.N.Mohapatra.

Vrs.

1. Union of India, represented by Chief Post Master General, Orissa Circle, Bhubaneswar-751 001, Dist.Puri.
 2. Director of Postal Services, Sambalpur Region, Sambalpur-768 001.
 3. Superintendent of Post Offices, Bhadrak Division, Bhadrak, Dist.Balasore, Pin-756 100

Respondents.

Advocate for Respondents - Mr.Ashok Misra
Sr.Panel
Counsel.

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has

prayed for quashing the order dated 21.5.1991 (Annexure-4) removing the applicant from service and the order dated 15.10.1991 (Annexure-5) of the appellate authority rejecting his appeal and confirming the order of punishment issued by the disciplinary authority.

2. Facts of this case, according to the applicant, are that the applicant was working as E.D.B.P.M. in village Samian in account with Sabrang S.O. under Bhadrak Division from 1984. In order dated 6.1.1987 he was put off duty and departmental proceeding was initiated against him in Memo dated 9.2.1987 (Annexure-1). On receipt of the charges vide Annexure-1, the petitioner submitted his Written Statement denying the charges. An Inquiring Officer was appointed. The report of enquiry is at Annexure-2. The petitioner states that of the two charges against him, the Inquiring Officer held charge no.1 as proved and charge no.2 as not proved. The disciplinary authority accepted the findings of the Inquiring Officer and in order dated 31.10.1988 imposed the penalty of removal from service. An appeal preferred by the applicant against this order dated 31.10.1988 was rejected by the appellate authority in his order dated 28.8.1989. Thereupon the applicant came up before the Tribunal in OA No. 487/89, which was disposed of in order dated 8.3.1991. The Tribunal set aside the order of penalty on the ground that before passing the impugned order of removal from service, a copy of the report of enquiry was not furnished to the applicant and this was against the law as laid down by the Hon'ble Supreme Court in the case of Union of India v. Md. Ramzan Khan, JUDGMENTS TODAY 1990 (4) SC 456. The Tribunal ordered that the

disciplinary authority may, if he so chooses, proceed from the stage of supply of a copy of the enquiry report after giving the applicant opportunity to make such representation as he desires concerning the said report. The applicant's case is that after disposal of OA No.487/89, the departmental authorities continued with the enquiry from the stage of supply of copy of the enquiry report and the disciplinary authority after perusing the written representation dated 29.4.1991 of the petitioner, but without application of mind, accepted the findings of the enquiry report and passed the impugned order of removal from service, which is at Annexure-4. The petitioner preferred an appeal against that order and the appellate authority in his order at Annexure-5 rejected his appeal and confirmed the punishment imposed by the disciplinary authority. In the context of the above facts, the applicant has come up with the prayer referred to earlier.

3. Respondents in their counter have indicated the facts of the case which are not different from what has been stated by the applicant in his petition. The respondents have stated in their counter that the disciplinary authority has carefully gone through the representation of the applicant dated 29.4.1991 and all connected records and has passed the impugned order of punishment. The applicant's appeal has also been rejected in the impugned order at Annexure-5. The respondents have stated that by his misconduct proved during the enquiry the applicant was proved to be a person who is unfit to be retained in service and as such the penalty has been rightly imposed on him, and in that context the respondents have opposed the prayer of the petitioner.

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4. We have heard Shri P.V.Ramdas, the learned counsel for the petitioner and Shri Ashok Mishra, the learned Senior Panel Counsel appearing for the respondents, and have also perused the records.

5. It is the well settled position of law that in a departmental enquiry the scope of interference by the Tribunal is limited. The Tribunal is not an appellate authority and therefore, cannot reappraise evidence given in the enquiry and come to a finding different from what has been arrived at by the Inquiring Officer and the disciplinary authority. The Tribunal can interfere only when in course of the enquiry, principle of natural justice has been violated or if the findings are based on no evidence or on such evidence that no reasonable person can come to the finding arrived at by the Inquiring Officer and the disciplinary authority. The applicant has stated that the enquiry held was not in keeping with the principle of natural justice inasmuch as the preliminary enquiry report, which formed the foundation of the proceedings, was not given to the applicant. It has also been stated that the finding of the Inquiring Officer under charge no.1 is a case of no evidence. On these two grounds, the petitioner has impugned the order of punishment and the appellate order.

6. There were two charges against the applicant and the Inquiring Officer in his report at Annexure-2 has held that charge no.2 has not been proved against the applicant. This finding has been accepted by the disciplinary authority and as such, it is not necessary for us to refer to the second charge. The first charge is that the applicant while working as

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E.D.B.P.M. did not account for in the Branch Office Account a sum of Rs.300/- entrusted to him by one Mani Charan Panigrahi, holder of S.B.Account No.790479 for deposit in the aforesaid account on 30.9.1986. In the statement of imputation accompanying the charge, it has been mentioned that the depositor Mani Charan Panigrahi gave him the amount of Rs.300/- on 30.9.1986 along with the Pass Book. The applicant did not ask for the pay-in-slip from the depositor. The applicant accepted the amount of Rs.300/- and entered the deposit in the Pass Book in his own hand, thereby raising the balance of the Pass Book to Rs.827.65. But against that entry in the Pass Book, Branch Office stamp with date was not given. This amount was not entered in the Branch Office S.B.Journal and was also not entered in the Branch Office Account. Subsequently, on 28.11.1986 the depositor wanted to withdraw Rs.400/- from his S.B.Account and gave the Pass Book to the petitioner along with a filled in application for withdrawal. The applicant accepted the Pass Book and the withdrawal application and did all necessary documentation and sent the Pass Book and the application for withdrawal of Rs.400/- on 28.11.1986 to Sabrang S.O. under which this E.D.B.O. was functioning and at the Sabrang S.O. this case of non-accounting came to light. We have gone through the detailed enquiry report given by the Inquiring Officer. The Inquiring Officer has listed out the documents relied upon by him with regard to the two charges and we find that there is no reference to any report of a preliminary enquiry in this list of documents. Along with the charge a list of documents on which the charge was proposed to be sustained was also supplied to the petitioner. This list is at Annexure-1. In this list also there is no reference to the

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preliminary enquiry report. The applicant has also not mentioned in his Application regarding preliminary enquiry into his alleged lapses, when such enquiry was conducted and who conducted the same. The respondents have also not referred to any preliminary enquiry conducted into the alleged lapses of the petitioner. In view of this, it is not possible for us to hold that a preliminary enquiry was conducted into the lapses of the petitioner. In any case, from the enquiry report and the documents connected with the disciplinary proceeding, it is clear that the preliminary enquiry report, even if it is taken for argument's sake that there was one, was not relied upon in any way by the Inquiring Officer except on one point. The depositor Mani Charan Panigrahi apparently gave a written statement to the Assistant Superintendent of Post Offices and this statement has been relied upon by the Inquiring Officer. We find that copy of this statement was supplied to the petitioner. There is no reference to any report of a preliminary enquiry. In view of this, non-supply of preliminary enquiry report cannot be said to have prejudiced the petitioner in any way and we hold that there has not been any violation of principle of natural justice on this account. There is also a reference in the enquiry report that Shri S.B.Pani, Assistant Superintendent of Post Offices, investigated the alleged non-credit of amount of Rs.300/- and in course of the investigation he examined Shri Mani Charan Panigrahi, the depositor. As we have already noted, the statement of Mani Charan Panigrahi given before the Assistant Superintendent of Post Offices has been supplied to the petitioner.

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7. The second aspect of the matter is that it has been submitted by the learned counsel for the petitioner that the finding of the Inquiring Officer in respect of charge no.1 is based on no evidence. We have carefully gone through the report of the Inquiring Officer and we find that the Inquiring Officer has taken all facts into consideration. The entrustment of Rs.300/- is proved by documentary evidence because in the S.B.Pass Book the applicant has entered the deposit of Rs.300/- by Mani Charan Panigrahi in his own hand and he has also sent the Pass Book to the Sabrang S.O. on 28.11.1986 along with the withdrawal application for Rs.400/-. In the Sub-Office Account it was found that this amount of deposit of Rs.300/- has not been noted in the Branch Office Account. Thus, charge no.1 has been rightly held to have been proved on the basis of documentary evidence as well as the written statements of the witnesses, and it is, therefore, not possible for us to hold that this is a case of no evidence.

8. As regards the order of the appellate authority, we find that the appellate authority in paragraph 2 of his order, has noted the points raised by the petitioner in his appeal petition. Unfortunately, the petitioner has not enclosed copy of this appeal petition to his Original Application. The first point taken by the petitioner was that copy of the enquiry report was not given to him before passing the impugned order of punishment. This point has been dealt with by us already and it is noted that after the order of the Tribunal in OA No. 487/89 the enquiry was taken up afresh from the stage of supply of copy of the enquiry report and this point, therefore, cannot be

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taken to be valid any larger. The plea of the petitioner that the depositor has taken back the amount of Rs.300/- deposited by him because of non-acceptability of currency notes has been disbelieved by the Inquiring Officer as the depositor did not say anywhere that he had taken back the currency notes. We find that the appellate authority has considered all the points raised by the petitioner and his order cannot be challenged on the ground of non-consideration of the points raised by the applicant in his appeal.

9. In the result, therefore, we hold that the applicant has not been able to make out a case for quashing the orders at Annexures 4 and 5. The Original Application is held to be without any merit and is rejected, but, under the circumstances, without any order as to costs.

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
23.7.98

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