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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO. 464 OF 1992
Cuttack this the 5th day of March, 1999**

CORAM:

Bishnu Charan Mollick

Applicant(s)

-VERSUS-

Union of India & others

Respondent(s)

FOR INSTRUCTIONS

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
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(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.464 OF 1992
Cuttack this the 5th day of March, 1999

CORAM:

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

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Shri Bishnu Charan Mollick,
aged about 47 years,
Son of Late Nandakishore Mollick,
at present working as S.P.M., Mashara P.O.,
P.S. Binjharpur, Munsif: Jajpur
Dist: Cuttack

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Applicant

By the Advocates : M/s.P.R.Dash
B.B.Patnaik
T.Ratho
Miss.S.Mohanty

-Versus-

- 1.Union of India represented through
the Chief Post Master General,
Orissa, At/Po: Bhubaneswar,
Dist: Puri
- 2.Shri K.C.Hota, Superintendent of
Post Offices, Cuttack North Division
At/Po/Town/Dist: Cuttack
- 3.Director of Postal Services,
Office of the Chief Post Master General
Orissa, At/Po: Bhubaneswar,
Dist: Puri

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Respondents

By the Advocates : Mr.Ashok Mishra

ORDERMR.G.NARASIMHAM, MEMBER(J):

Order dated 30.6.1992(Annexure-5) passed by Respondent No.2 for recovery of a sum of Rs.15,000/- from the applicant in 30 monthly equal instalments, passed in a disciplinary proceeding initiated under Rule-16 of CCS(CCA) Rules is under challenge in this application under Section 19 of the Administrative Tribunals Act, 1985 filed on 14.9.1992. Prior to filing of this application under Annexure-6 the applicant preferred departmental appeal. In view of the admission of this application on 16.9.1992, the appeal even if disposed of in the meanwhile has no legal significance because of the provision of Abatement under Section 19(4) of the Act in the absence of any order of this Bench to the contrary.

The main ground averred in this application is that after service of charge-sheet (Annexure-1) the applicant in order to submit his statement of defence requested for inspection of certain documents to take extract of the same (Annexure-2). The disciplinary authority, however, rejected that representation under Annexure-3. Again the applicant moved the disciplinary authority under Annexure-4 to make available the records and documents and to give him a personal hearing. But without giving any opportunity to the applicant the impugned order of recovery of a sum of Rs.15000 was passed. Since he was denied effective opportunity to explain of his defence principles of natural justice have been grossly violated and the proceeding drawn up thereby is vitiated.

2. The stand of the respondents is that during

preliminary inquiry the applicant had opportunity to peruse those documents and no procedural lapse occurred in finalising the proceeding.

3. We have heard rival submissions of learned counsels for both sides and perused the record.

The applicant is a Postal employee and while he was in charge of Deputy Post Master, Jajpur on some days of the year 1987, he did not account some of the S.B. Deposits and withdrawals(particulars mentioned in the charge-sheet) resulting pecuniary loss of Rs.15000 to the department. Law is well settled that a Tribunal or Court cannot sit as an appellate authority over the disciplinary authority. The duty of the Tribunal is not to reappreciate the evidence on record, but to review whether the decision making process has been correctly made. In otherwords, if there are procedural lapses affecting the principles of natural justice in finalization of a departmental proceeding, the Tribunal will be justified in interfering with the order of the disciplinary authority.

The statement of imputation under Annexure-1 has been made on 20.3.1992. It relates to certain transaction of the year 1987 reflected in the relevant register, pertaining to deposit and withdrawals of certain pass-book accounts. It is not expected of an employee to remember or recall in the year 1992 the entries/transactions relating to year 1987. In order to make out an effective defence, he would necessarily seek assistance of those particulars. When he represented for giving him an opportunity to inspect and if necessary, to

take extract of those documents, the disciplinary authority denied him that opportunity in his letter dated 6.4.1992 under Annexure-3 stating that the applicant had not noted the reasons for which the documents were necessary. In the counter under para-5(3) the department had taken further plea that since during the fact finding inquiry by A.S.P.O. in January, 1991, the applicant had occasion to peruse the documents, there was no sufficient reason to accede to such request of the applicant. Even if the applicant had occasion to peruse the document in January, 1991, the imputation memo was served on him more than one year thereafter, i.e. in March, 1992. Hence the plea advanced by the department-respondents, besides being too technical is unreasonable as well. The facts remains that the applicant had been denied effective opportunity to make out his defence through written statement as he had no opportunity to go through the relevant papers in order to prepare the written statement.

Law is well settled by the Apex Court through a catena of decisions, latest being **State of Utter Pradesh v. Satrughan Lal** reported in AIR 1998 SCW 2898 that opportunity of hearing based on principles of natural justice has to be an affective opportunity of hearing and not mere pretence. Since the applicant has been denied effective opportunity of hearing we have no hesitation to hold that the proceeding has been vitiated.

4. In the result we quash the impugned order at Annexure-5 directing recovery of penalty of Rs.15,000 from

the applicant.

In the result the application is allowed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

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B.K.SAHOO

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(G.NARASIMHAM)
MEMBER (JUDICIAL)