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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 471 OF 1992
Cuttack this the 11th day of August, 1999

Chhabirani Sahu

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 nor ? No

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
11.8.99

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.471 OF 1992
Cuttack this the 11th day of August, 1999

CORAM:

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

Chhabirani Sahu, W/o. Late ...

Kanduri Charan Sahu

Postal Assistant

Jajpur H.O.

Dist: Cuttack

... pplicant

By the Advocates : Mr.D.P.Dhalasamant

-Versus-

1. Union of India represented through
the Chief Post Master General
Orissa Circle,
Bhubaneswar-751001

2. Director of Postal Servies
Office of the Chief Post Master General,
Orissa Circle,
Bhubaneswar-751001

3. Superintendent of Post Offices,
Cuttack North Division
Cuttack-753001

... Respondents

By the Advocates : Mr.A.K.Bose
Sr.Standing Counsel
(Central)

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MR.G.NARASIMHAM, MEMBER(J): This Original Application was filed by Kanduri Charan Sahu, who during 1986-87 was serving as Postal Assistant under Jajpur Head Office and was dealing with S.B. work of Dala E.D.S.O. In a disciplinary proceeding initiated by Res.3, ie. Superintendent of Post Offices, Cuttack (North) Division under Rule-16 of CCS(CCA) Rules, 1965, order was passed for recovery of a sum of Rs.10,000 /- from his pay in 25 monthly instalments to compensate the pecuniary loss caused to the Department due to his negligence and lack of devotion to duty. This order of the disciplinary authority was passed on 21.5.1992(Annexure-5). The applicant preferred appeal before Res.2 on 8.7.1992 (Annexure-6).

2. This Original Application has been filed on 14.9.1992 with a prayer for quashing recovery order passed by the disciplinary authority as well as the imputations under Annexure-1 levelled against him. There is also a prayer for refund of the amount already recovered.

3. On 21.9.1992, the application was admitted and interim order was passed staying realisation of recovery of Rs.10,000/-. On 23.10.1992 the interim stay was made absolute.

4. In the counter filed by the Department it has been mentioned that departmental appeal of the original applicant was rejected. ^{Evidently} ~~Evidently~~, this appellate order was passed after admission of this Original Application. Hence no legal sanctity can be attached to this appellate order, because ^{under} ~~under~~ Rule-19(4) of the Administrative

Tribunals Act such pending appeal at the time of admission will abate.

5. There is no dispute that on account^{of} occurrence of series of frauds during 1986-87 the then E.D.S.P.M., Dala E.D.S.O. Shri J.K. Mohapatra has been booked by the C.B.I. In this proceeding for minor penalty the applicant was accused under three heads (Annexure-1). In respect of deposits and withdrawals of various Passbook accounts of several account holders (details mentioned in the Annexure) it is alleged that he had not posted annual interests for the years 1985-86 in some of these passbooks accounts in Head Office Ledger. As per relevant rule of the P & T Manual, if any transaction takes place in the S.B. Account after 31st March and the passbook is not received after addition of interest, the fact should be noted in the special error book and the passbook should be called for. While posting the withdrawals mentioned under Annexure-6 in the Head Office Ledger, Shri Sahu did not ensure entry in the special error book and also did not initiate action to call for the passbook. Had the passbooks been called for during the posting of the above withdrawals, non-accounting of transactions in the concerned passbooks would have been detected instantly and fraud committed by the E.D.S.P.M. beyond 24.9.1986 in particular would have been prevented. In this way there was huge pecuniary loss of Rs.99,102.30. The second imputation is that the applicant did not take any action for preparation of the list of passbooks standing at Branch Office which were not received for addition of interest by the Head Office till 30th June

was required to be prepared by 1st July, 1986 for verification of balances by the concerned S.D.I.(P). This procedure is intended for ^{small} ~~orally~~ detection of savings bank fraud. The last imputation is more specific in regard to T.D.Account No.76034 which was opened on 21.1.1987 in the name of Ramachandra Jena. The amount shown to have been deposited was Rs.1000/-. As per rule, Ledger Clerk should prepare the new passbook after scrutinising the pay-in-slip application form and the list of transactions submitted by the E.D.S.P.M. The relevant pay-in-slip dated 20.1.1987 submitted by the E.D.S.P.M. revealed that the depositor had written the amount of deposit as Rs.10, 000/- in words and figures as well, but the amount of deposit was subsequently corrected to Rs.1000/-. In this way there was defrauded of an amount of Rs.9000/-. Had Shri Sahu acted promptly as per rules this fraud could have been prevented.

6. Annexure-1 was served on the applicant Shri Sahu to show cause within 10 days. It is the case of the applicant Shri Sahu (also admitted in the counter) that in response to this he sent representation requesting for /supply of copies of three documents, i.e., Special Error Book maintained by L.C. II for the period 1.9.1986 to 31.5.1987 under the relevant P & T Manual; S.B. 3 Index in respect of one year T.D.Account 76034; and S.B. 103 pay-in-slip in respect of 1st deposit made on 21.1.1987. He wanted copies of those documents to prepare his written statement. Further he requested that an enquiry under Rule-16 (1)(a) may be undertaken. This representation was turned down under Annexure-3 dated

4.1.1991 on the ground that during preliminary enquiry on 17.1.1991, the applicant Shri Sahu had perused the relevant records and documents and that ^{no} cogent reason has ^{been} assigned for holding enquiry under Rule-16(1)(a) of C.C.S. Rules. However, he was given 10 days more time to file written statement. In response to this Annexure-3 he represented under Annexure-4 dated 17.10.1991 explaining the reasons for perusal of those documents in order to prepare his defence and that an enquiry can reveal the truth. Receipt of Annexure-4 has not been denied in the counter.

7. It is the further case of the applicant that without taking any decision on his representation under Annexure-4, and without giving an effective opportunity to putforth his defence, the disciplinary authority decided the matter exparte and passed the aforesaid penalty under Annexure-5.

8. These facts in general have not been disputed in the counter. It is further averred that the applicant was ^{not} given due opportunity to submit his representation and his representation dated 17.10.1991 under Annexure-4 has been accepted as a written statement. Under the P & T Manual rules it is not incumbent on the part of the disciplinary authority to give opportunity to the delinquent to inspect the relevant records in case of minor penalty involving no formal enquiry. Where minor punishment is sought to be imposed holding of enquiry is not necessary unless otherwise desired by the disciplinary authority.

9. During pendency of this case, the original applicant Shri Kanduricharan Sahu passed away. His widow,

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Chhabirani Sahu has been substituted in his place as the Legal Representative.

10. We have heard Shri D.P.Dhalasamant, learned counsel for the applicant and Shri A.K.Bose, learned Sr.Standing Counsel appealing for the respondents(Department). Also perused the records.

11. Penalty of recovery of an amount of Rs.10,000/-, though not a major punishment as such, is not an insignificant one to be overlooked. This amount of Rs.10,000/- was ordered to be recovered, as Annexure-5 reveals, is mainly on account of the fraud committed in opening of T.D.Account No.76034 in respect of which it is alleged by the Department that the Account holder in the pay-in-slip against the Deposit mentioned Rs.10,000/- in figures as well as words, which was interpolated as One ~~Th~~ousand and shown in the ledger as one thousand. This fraud occurred on 20/21.1.1987. Naturally when the imputation memo under Annexure-1 was issued four and half years later, i.e. on 31.7.1991, the applicant wanted to verify these documents before making out his defence. Similarly he wanted to verify Special Error Book maintained for the period from 1.9.1986 to 31.5.1987 to know whether he made any entry in the Special Error Book with reference to details of various entries mentioned in Annexure-1. The Department turned down his request mainly on the ground that on 17.1.1991 he had an occasion to see those documents. Even assuming he had an occasion to see those papers on 17.1.1991 it was not expected of the applicant to remember, if not memorised, the details seven months afterwards when he received the imputation

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on 31.7.1991. These three documents, in our opinion, are most vital documents to establish the negligence on the part of the applicant. Denial of supplying those documents or at least to inspect those documents after service of imputations under Annexure-1 dated 31.7.1991, in our view, amounts to denial of reasonable opportunity in order to make effective defence. This is clear from the ruling of Hon'ble Apex Court in the case of Kashinatha Dixita (AIR 1986 SC 2118), Chandrama (AIR 1988 SC 117) and Amrik Singh (1995 (Supp) 1 SCC 321). Moreover, recently in State of U.P. vs. Satrugan Lal reported in 1998(Supp) Supreme Court 3038, the Hon'ble Apex Court held that opportunity of hearing based on principles of natural justice has to be an effective opportunity and not mere pretence. We have therefore, no hesitation to hold that the disciplinary authority had grossly violated the principles of natural justice in not at least giving him an opportunity to inspect those vital documents in order to prepare his defence. Viewed from this angle, we have no hesitation to say that the entire proceeding is vitiated.

12. Since we are of the opinion that the proceeding has been vitiated, it is not necessary for us to decide whether a further enquiry is necessary in a case of this nature.

13. In view of our discussion above, we quash the impugned order of recovery of Rs.10,000/- ordered by the disciplinary authority under Annexure-5 and we direct the respondents if any amount already recovered from the salary of the applicant, the same shall be refunded to the substituted applicant forthwith.

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 1.8.99

B.K. SAHOO

11.8.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)