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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 493 OF 1992
Cuttack, this the 29th day of June, 1999

Narayan Chandra Sethy 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
29.6.99

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 493 OF 1992
Cuttack, this the 29th day of June, 1999

CORAM:

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

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Narayan Chandra Sethy,
Sub-Post Master, Jajpur Road RSSO,
At/PO-Jajpur Road, District-CuttackApplicant

Advocates for applicant-M/s Devanand Misra
R.N.Naik
A.Deo
B.S.Tripathy
P.Panda
D.K.Sahu
P.K.Routray

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1. Union of India, represented through its Secretary in the Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, District-Puri.
3. Director of Postal Services, Office of the Chief Post Master General, Orissa Circle, Bhubaneswar, District-Puri.
4. Superintendent of Post Offices, Cuttack North Division, Cuttack...Respondents

Advocate for respondents - Mr.A.k.Bose,
Sr.C.G.S.C.

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 30.6.1992 (Annexure-3) in which an amount of which Rs.4000/- has been ordered to be recovered from his pay in 10 monthly equal instalments. On the date of admission of the Application on 29.9.1992 the realisation of the amount was stayed. This stay order

has continued for last more than six years.

2. Facts of this case, according to the applicant, are that at present he is working as Sub-Post Master, Jajpur Road RSSO, Cuttack. A minor penalty proceeding under Section 16 of CCS (CCA) Rules, 1965 was initiated against him and chargesheet was issued in memo dated 10.3.1992 (Annexure-1). There were three charges. The disciplinary authority has held charge no.3 as not proved and therefore, it is not necessary to refer to that charge. Charge no.1 was that the applicant was working as Deputy Post Master, Jajpur H.O. , on 16.7.1987, 23.7.1987 to 31.8.1987 and 8.9.1987 to 10.12.1987 and 21.12.1987 to 30.12.1987 and 1.1.1988 to 15.2.1988 and 17.2.1988 to 30.4.1988 and was supervising the Savings Bank work of Jajpur H.O. relating to Dala EDSO. Sri Jitendra Kumar Mahapatra, EDSPM, Dala did not account for a deposit of Rs.300/- made by the depositor on 28.7.1987 in S.B.Account No. 345526 in the name of Dasarathi Mishra. Subsequent to this deposit the aforesaid depositor took payment of an withdrawal amounting to Rs.100/- on 27.8.1987 and the EDSPM, Dala allowed the transaction from the above account. This withdrawal was posted to Ledger Card and the applicant as Deputy Post Master, Jajpur H.O. signed the posting of the withdrawal in the Head Office Ledger Card. The annual interest for the year 1986-87 was not posted in the Pass Book of this account. As per Rule 452(5) of P & T Manual, Vol.VI, Part-II, if any transaction takes place in S.B.Account after 31st March and the Pass Book is not received for addition of interest, the fact should be noted in the special Error Book and the Pass Book should be called for. While the applicant signed the Head Office Ledger Card relating to the withdrawal referred to above, the applicant did not ensure entry in the special Error Book with regard to this S.B.Account and

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also did not ensure action to call for the Pass Book. Had the Pass Book been called for during the posting of this withdrawal dated 28.7.1987, the non-accounting of deposits made in the pass book on 28.7.1987 would have been detected in July 1987 and further fraud could have been avoided. Due to failure of the applicant to ensure calling for the Pass Book, EDSPM, Dala got scope to commit further fraud not only in this Pass Book but also in several S.B. Pass Books and National Savings Certificates putting the Department to huge pecuniary loss of Rs.2, 47, 734.15. By the above act, the applicant has failed to maintain due devotion to duty and thereby violated the provisions of the Conduct Rules. The second charge was that a list of Pass Books standing at B.Os. and single-handed S.Os. which were not received for addition of annual interest at the H.O. was required to be prepared by the Head Office on First July of every year and sent to the concerned Sub-Divisional Inspector (P) for verification of balances.

This procedure was intended for early detection of fraud at EDBOs/EDSOs/Single-handed S.Os. Though the applicant was Deputy Post Master since 16.7.1987 supervising the S.B. work with regard to Dala EDSO, he did not ensure preparation of the aforesaid list of SB Pass Books and therefore the very purpose of provision of verification of balances of pass books which were not received for posting of interest was frustrated and the fraud committed by EDSPM, Dala remained undetected till October 1987. The applicant has stated in his explanation he submitted that he had to supervise the work of Postal assistants and the entries in huge number of ledgers were to be checked and signed and strict vigilance was to be kept over all other counters by him as the Post Master remains off duty from 10.00 A.m. to 3.00 P.M. In the midst of such tight duty

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it was impossible for the applicant to detect that any Pass Book due to be sent by the subordinate offices had not been submitted and the applicant cannot be fully blamed for the lapses pointed out. The applicant has further stated that according to the relevant rule of P.O.S.B. Manual, Vol.I, page 75 and P.O.S.B. Hand Book Rule 77(3) and Rule 75(3), the relevant portion of which has been quoted by him, it is the duty of the Ledger Assistant to note non-submission of the Pass Book in the Special Error Book. It is also provided that the Special Error Book will be examined by the supervisory official and test-checked once a week by the Head of Office and also by inspecting and visiting officers. The applicant had therefore pointed out that detection of non-submission of Pass Books and noting of such irregularity in the Error Book are the duty of the Ledger Assistant and not the supervisory official. With regard to charge no.2 the applicant had pointed out that according to the relevant rules in the month of July every year the Head Office will prepare a list of accounts of each Sub-Office the pass books of which have not been received for posting of interest. The ledger cards which do not bear the initials of Post Master against the entry of interest will relate to those accounts pass books of which have not been received for entry of interest and further each ledger assistant is to pick out these accounts of those Sub-Offices from the binders in which the interest has not been posted in the Pass Books and he is to prepare a list and each list is to be signed by the Post Master. The applicant had therefore contended that the Post Master is directly concerned with it and not the applicant as his duty was only to sign the list as prepared by the ledger assistant. He also pointed out that he joined the Savings

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Bank Branch in July 1987 and was performing duty of two supervisory officials and therefore, he cannot be blamed for this lapse. The applicant has further stated that in spite of his explanation, Superintendent of Post Offices, Cuttack North Division (respondent no.4) who is the disciplinary authority did not appreciate the contentions of the applicant and wrongly came to the conclusion that the first and second charges have been proved against the applicant and the penalty referred to earlier was imposed. The order of the disciplinary authority is at Annexure-3. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that there was a case of fraud in Dala EDSO under the accounts jurisdiction of Jajpur H.O. from the S.B.Accounts as well as Savings Certificates spreading over the period from 5.7.1982 to 19.8.1987 causing pecuniary loss to the Department to the tune of Rs.2,47,734.15. The applicant while working as Deputy Post Master, Jajpur H.O. on 16.7.1987, 23.7.1987 to 31.7.1987, 8.9.1987 to 10.12.1987, 21.12.1987 to 30.12.1987, 1.1.1988 to 15.2.1988 and 17.2.1988 to 30.4.1988 was supervising the SB work of Jajpur H.O. In course of departmental enquiry into the above misappropriation case of Dala EDSO certain lapses on the part of the applicant were established and accordingly he was proceeded against under Rule 16 of CCS (CCA) Rules,1965. Disciplinary action was conducted strictly in accordance with the provisions of rules and regulations and the impugned order of penalty was passed. It is stated that correct position in respect of charge nos. 1 and 2 has been elaborately discussed in the final order passed by the disciplinary authority at Annexure-3 after considering the submission of the applicant. It is further stated that the applicant admitted in his representation

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that he had to check the Special Error Book, but he had not taken any action in this regard. The respondents have stated that the applicant cannot escape his responsibility by taking the plea that the ledger assistant was solely responsible for maintenance of Special Error Book. It is further stated that in respect of charge no.2 the duty of the applicant was simply not to put a signature on the list but also to ensure preparation of the list in time. But the applicant had not done so and therefore he has been rightly held guilty in respect of these two charges. On the above grounds, the respondents have opposed the prayer of the applicant.

4. We have heard Shri A.Deo, the learned counsel appearing for the petitioner and Shri A.K.Bose, the learned Senior Central Government Standing Counsel appearing for the respondents, and have also perused the records.

5. It has been submitted by the learned Senior Standing Counsel for the respondents that even though the applicant has stated in paragraph 4(g) of his O.A. that he has preferred an appeal against the punishment order to the competent authority, but no appeal filed by the applicant has been received. It is therefore submitted by the learned Senior Standing Counsel that as the applicant has not filed any appeal against the impugned order and has not exhausted the statutory departmental remedy, this O.A is not maintainable.

6. The law is well settled that in disciplinary proceedings Tribunal does not act as appellate authority and cannot substitute its findings and judgment in place of the findings arrived at by the disciplinary authority and appellate authority. Tribunal can interfere only if there has been denial of reasonable opportunity, or violation of principles of natural justice, or if the findings are based on no evidence or are patently

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perverse. The submissions of the learned counsels for both sides have to be considered in the context of the above well settled position of law.

7. The applicant in this case has not pleaded that reasonable opportunity has been denied to him and there has been violation of the principles of natural justice. For the lapse in not calling for SB Pass Book of Dasarathi Mishra and for not getting the Special Error Book prepared, the applicant has himself stated that he cannot be held fully responsible. Rules also make it clear that it is the responsibility of the Ledger Assistant to make entries in the Special Error Book and also to prepare the list of Pass Books which were due to be but had not been submitted. The applicant's responsibility in this regard is supervisory in nature. As these works had not been done and the applicant had not insisted on the Ledger Assistant to get these works done, the disciplinary authority has rightly held charge nos. 1 and 2 as proved against him. We find no reason to interfere with the findings of the disciplinary authority.

8. We, however, entertain grave doubt as to how the disciplinary authority had arrived at the figure of Rs.4000/- which has been ordered to be recovered from the pay of the applicant in part recoupelement of the loss sustained by the Department because of the fraud committed by EDSPM, Dala EDSO. Certain facts mentioned by the respondents in their counter have to be noted in this connection. The respondents in their counter have noted that EDSPM, Dala, committed fraud in SB account as well as savings certificates spreading over period from 5.7.1982 to 19.8.1987, i.e., for more than five years, causing pecuniary loss to the Department to the tune of Rs.2,47,734.15. The respondents have themselves stated in the counter that the applicant worked as Deputy Post

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Master, Jajpur H.O. on 16.7.1987, 23.7.1987 to 31.7.1987, 8.9.1987 to 10.12.1987, 21.12.1987 to 30.12.1987, 1.1.1988 to 15.2.1988 and 17.2.1988 to 30.4.1988. In other words, the applicant worked as Deputy Post Master, Jajpur H.O. from 16.7.1987 to 30.4.1988 with a gap of about one month in August 1987 and few days in July 1987 and December 1987. The respondents have specifically averred that EDSPM of Dala EDSO committed fraud during the period from 5.7.1982 to 19.8.1987. During this period the applicant was Deputy Post Master, Jajpur H.O. only for ten days, i.e., on 16.7.1987 and from 23.7.1987 to 31.7.1987. It must also be noted that had the applicant called for the Pass Book as mentioned in Charge no.1 and got the list prepared as mentioned in charge no.2, then possibly further fraud committed by EDSPM, Dala EDSO from 1.8.1987 to 19.8.1987 could have been checked. But obviously during this long period of five years there were other supervisory officials who handled the SB accounts of Dala EDSO and other Ledger Assistants. How this amount of Rs.4000/- has been fixed as amount due to be recovered from the applicant does not appear from the impugned order of punishment. The respondents have also not indicated as to in respect of what amount fraud was committed by EDSPM, Dala EDSO during the period from 1.8.1987 to 19.8.1987. In the absence of any such averment in the charge itself as also in their counter, it cannot be held that the amount of Rs.4000/- ordered to be recovered from the applicant has been reasonably arrived at. It has been submitted by the learned Senior Standing Counsel for the respondents that the applicant's lapse is in the nature of contributory negligence and in such a case some sort of approximation with regard to the amount sought to be recovered has necessarily to be arrived at. We do accept this contention because in case of contributory negligence

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the precise amount which has been lost due to the negligence of the charged official cannot be determined. But at the same time the amount ordered to be recovered must bear some relation to the loss which has occurred in respect of which the applicant was in some way responsible because of his contributory negligence. In view of the above, the order for recovery of Rs.4000/- cannot be sustained. Under the circumstances, we would have been inclined to remand the matter to the disciplinary authority to arrive at the figure of recovery by adopting some rational basis. But considering the fact that the punishment has been imposed more than seven years ago and that the stay order has continued for more than six and half years and the fact that the averment of the respondents that the applicant has not preferred an appeal has not been denied by the applicant by filing any rejoinder and in order to cut short the process, instead of remanding the matter to the disciplinary authority, we reduce the amount sought to be recovered from the applicant to Rs.1000/- (Rupees one thousand) in ten monthly equal instalments or earlier if he so chooses starting from the pay bill of the month of August 1999.

9. The Original Application is accordingly partly allowed in terms of the observation and direction given above but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
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