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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 497 OF 1992  
Cuttack, this the 6<sup>th</sup> day of April 1999

Shri Harihar Giri ..... 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)  
VICE-CHAIRMAN

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CORAM:

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

.....

Shri Harihar Giri, aged about 32 years,  
son of Jayakrushna Giri,  
Village/PO-Kukudi Mundi,  
Via-Gorumahisani,  
District-Mayurbhanj ..... Applicant

Advocates for applicant -M/s Devanand Misra  
R.N.Naik  
A.Deo

Vrs.

1. Union of India, represented by its  
Secretary in the Department of Posts,  
Dak Bhawan,  
New Delhi.
2. Chief Post Master General,  
Orissa Circle,  
Bhubaneswar, District-Puri.
3. Post Master General,  
Sambalpur Region,  
Sambalpur-768 001.
4. Superintendent of Post Offices,  
Mayurbhanj Division,  
Baripada-757 001,  
District-Mayurbhanj ..... Respondents  
Advocate for respondents - Mr.A.K.Bose  
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S Som.

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 31.12.1991 (Annexure-1) removing the applicant from service and the order dated 29.4.1992 (Annexure-2) of the appellate authority upholding the punishment. There is also a prayer for reinstating the

applicant in service with full back wages.

2. The case of the applicant is that he was working as Branch Post Master, Kukudimundi Branch Post Office from 1983. Two charges were framed against him and at the conclusion of the proceedings he was removed from service. The first article of charge is that while the applicant was working as Branch Post Master, Kukudimundi B.O., he made withdrawal of Rs.500/- each on 23.6.1990 and 12.7.1990 from S.B.Account No. 170128 without entering these two withdrawals in the Pass Book concerned and Branch Office S.B.Journal violating Rule 134(ii) and (iii) of the Rules for Branch Office and failed to maintain absolute integrity and due devotion to duty as required of him under Rule 17 of EDAs (Conduct & Service) Rules, 1964. The second article of charge is that while the applicant was working as such, on 18.6.1990 he had shown withdrawal of Rs.200/- from the same SB Account, but it was not paid to the depositor violating Rule 134(iv) of the Branch Office Rules. The applicant states that Superintendent of Post Offices (respondent no.4) without going through the papers properly and without considering the case of the applicant, passed the order of removal from service in the impugned order dated 31.12.1991 at Annexure-1. He filed an appeal before Post Master General, Sambalpur Region (respondent no.3) who confirmed the order of the disciplinary authority in a mechanical manner without considering the case of the applicant. The order of the appellate authority is at Annexure-2. The applicant has stated that non-entry of certain items and transaction in one or two records cannot put a question mark against his integrity. It is stated by him that even though he failed to note the transactions in S.B.Journal and the Pass Book, he had correctly accounted for the withdrawal amount and noted the same in the Branch Office accounts. It is further stated that the two

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prosecution witnesses Basanta Giri and Pramod Giri were examined and both of them have stated that the depositor received the disputed amounts from the applicant. It is also submitted that the second article of charge has not been proved by the Department. Lastly, it is submitted that the award of punishment is disproportionate to the charges levelled against him. On the above grounds, the applicant has come up in this petition with the prayers referred to earlier.

3. Before noting the averments made by the respondents in the counter, it is necessary to note that the applicant in his petition has wrongly mentioned the S.B.Account No. 170128 in respect of both the charges. But from the articles of charge which have been mentioned in the order at Annexure-1 it appears that the first article of charge is with regard to S.B.Account No.170427, and it is the second article of charge which relates to SB Account No.170128. In any case, charge no.2 has been held not proved and this has also been accepted by the disciplinary authority and therefore, it is not necessary to refer to the second article of charge hereafter.

4. Respondents in their counter have stated that while working as Branch Post Master, Kukudimundi, the applicant committed some "foul" transaction in the Post Office account. The fact was reported by the Accounts Office to the Sub-Divisional Inspector (Postal) of the area concerned. The fact finding enquiry was made and finding a prima facie case the applicant was put off duty in order dated 13.8.1990 at Annexure-R/1. The Sub-Divisional Inspector (Postal), Rairangpur, conducted an enquiry and submitted a preliminary report to respondent no.4. This

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preliminary report is at Annexure-R/2. Charges were communicated to the applicant in Annexure R/4. The applicant denied the charges and inquiring officer and presenting officer were appointed. The inquiring officer started enquiry on 19.3.1991 and completed the same on 13.8.1991, and submitted a report which is enclosed to the counter but no number has been given to this enclosure. Copy of the enquiry report was supplied to the applicant and the applicant also made a representation. This was taken into account and the disciplinary authority taking into account the finding of the inquiring officer with regard to charge no.1, imposed the punishment of removal from service on the applicant. His appeal was also rejected. It is submitted by the respondents that the order of removal from service is legal in all respects and because of this the respondents have opposed the prayer of the petitioner.

5. This matter was called for hearing on 22.3.1999 on which day the learned counsel for the petitioner wanted a pass over in the morning for arguing the matter. It was indicated to him that pass over would be allowed only till 12.30 P.M. When the matter was taken up at 1.00 P.M., the learned counsel for the petitioner was absent nor was any request made on his behalf seeking adjournment. In view of this, we heard the learned Senior Standing Counsel for the respondents and closed the hearing. Thereafter on 23.3.1999 the learned counsel for the petitioner filed a Memo stating that he was unavoidably held up in the Hon'ble High Court and therefore, should be heard before orders are delivered in the O.A. This prayer was allowed in order dated 24.3.1999 and the OA was posted to 31.3.1999 for peremptory hearing as a part-heard matter. On 31.3.1999 we heard Shri A.Deo, the learned counsel for the petitioner and Shri A.K.Bose, the learned Sr.Standing

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Counsel, and the hearing was concluded.

6. Hon'ble Supreme Court have laid down in a series of cases that scope of interference by Tribunal in departmental proceedings is somewhat limited. Tribunal cannot act as an appellate authority and cannot substitute its judgment in place of the findings and conclusion arrived at by the disciplinary authority and that of the appellate authority. Tribunal can interfere only if there is violation of principles of natural justice or if the findings are based on no evidence or on such evidence that no reasonable person can arrive at the findings recorded by the inquiring officer and the disciplinary authority. In this case we find from the perusal of the records that all opportunity was given to the applicant to represent his case before the inquiring officer, disciplinary authority and appellate authority. The applicant has also not urged that there was any violation of the principles of natural justice.

7. We have gone through the report of the inquiring officer very carefully. As earlier noted, the inquiring officer has held the second charge not proved. After going through the records we find that it is not possible for us to hold that the finding of the inquiring officer with regard to the first charge holding the applicant guilty is perverse or based on no evidence.

8. Though it is not open for the Tribunal to  
J Sam reappraise the evidence, even then considering the fact that this is a case of removal from service, we have looked into the evidence with regard to the first charge. Under the first charge it has been alleged that the applicant withdrew Rs.500/- each on 23.6.1990 and 12.7.1990 from S.B.Account No.170427 without entering these two

withdrawals in the Pass Book concerned and Branch Office S.B.Journal and other connected records and thereby he contravened Rule 134 (ii) and (iii) of the Rules for Branch Office and failed to maintain absolute integrity and due devotion to duty. This particular S.B.Account stood in the name of Gopinath Munda, Teacher in Dhatkidihi U.P.School. According to his statement, he deposited Rs.2000/- in his Pass Book on 11.6.1990 and after such deposit the balance in his Pass Book was Rs.2020/-. On 11.6.1990 Shri Munda handed over the Pass Book to the applicant for calculating the interest. The depositor Shri Munda stated during enquiry and in cross-examination by the applicant's side that he did not withdraw Rs.500/- each on 23.6.1990 and 12.7.1990 from his S.B.Account. He stated that the signatures appearing in both sides of the withdrawal forms are not his. Basanta Kumar Giri and Pramod Kumar Giri, who had signed as witnesses in the two withdrawal forms were also examined. They supported the case of the applicant that the amounts were drawn on those two dates and paid to the depositor Shri Munda. But the inquiring officer has disbelieved their evidence and we do not find that the conclusion of the inquiring officer is against the evidence available on record. Moreover, the applicant admittedly had kept the Pass Book of the depositor which was handed over to him on 11.6.1990 and the applicant had granted SB-28 receipt to the depositor therefor. The applicant later on took the plea that he had handed <sup>over</sup> / the Pass Book to the depositor but had not taken return of SB-28 receipt. This is not correct because the Pass Book was seized from the custody of the applicant by the S.D.I.(P), Rairangpur, on 11.8.1990. We, therefore, find no infirmity in the finding of the inquiring officer and that of the disciplinary authority with regard to the first charge.

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9. The applicant has taken the stand that he had entered these two withdrawals in the Branch Office account, but due to pressure of work he could not enter them in the Savings Bank Journal and the concerned S.B. Pass Book. It further appears that because the withdrawals of the amounts were entered in the Branch Office account but not entered in the S.B. Journal, the Accounts Office noticed the discrepancy and issued an error memo pursuant to which enquiry was conducted and these transactions came to light. It is submitted by Shri A. Deo, the learned counsel for the applicant that as the applicant has entered these transactions in the Branch Office account, his failure to enter the same in the Pass Book as also in the S.B. Journal should not be taken to be culpable. We are unable to accept this contention because <sup>even</sup> if for argument's sake the version of the applicant is taken to be correct, then he had all the time to get the withdrawal forms signed by the depositor and get the signatures of the witnesses. In that case it is difficult to see why he could not find time to make one simple entry in the Pass Book on those two dates. The appellate authority has rightly held that no Branch Post Office is ever so busy as to permit the Branch Post Master to make an entry in one document but not providing time for entries in the vital documents. Therefore, the applicant's failure to enter the withdrawals in the Pass Book as also in the S.B. Journal cannot be taken lightly and especially in view of the evidence of the depositor that he did not receive the money on these two dates.

S. V. Sharma.

10. The last point urged by the learned counsel for the petitioner is that the punishment of removal from service is disproportionate to the lapses held proved against the applicant. As the applicant was a Branch Post Master and this office runs on trust, particularly the

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trust of the depositors, the lapses of the applicant cannot be held to be minor. In consideration of the above, we do not feel inclined to interfere with regard to the quantum of punishment in this case.

11. In the result, therefore, the Application is held to be without any merit and is dismissed but without any order as to costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

(SOMNATH SOM)  
VICE-CHAIRMAN

6.4.99

AN/PS