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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.547 OF 1992  
Cuttack this the 27 day of July, 1998

Pitambar Sahu

Applicant(s)

-VERSUS-

Union of India &amp; 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 ? No.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
27.7.98

27-7-98  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.547 OF 1992  
Cuttack this the 27th day of July, 1998

CORAM:

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

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Sri Pitambar Sahu,  
aged about 42 years,  
S/o.Late Bhagaban Sahu,  
At/Po:Kudaloi,  
Via:Belpahar, R.S. - S.O.  
Jharsuguda H.O.  
Dist:Sambalpur

...

Applicant

By the Advocates:

M/s.P.V.Ramdas  
B.K.Panda  
D.N.Mohapat  
-ra and  
P.V.Balakri  
-shna Rao

-Versus-

1. Union of India  
represented by the  
Chief Postmaster General  
Orissa Circle,  
Bhubaneswar-751001
2. Director,  
Postal Services  
Sambalpur Region  
Sambalpur-768001
3. Senior Superintendent of Post Offices  
Sambalpur Division  
Sambalpur-768001

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Respondents

By the Advocates:

Mr.Ashok Mishra  
Sr.Standing  
Counsel

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ORDER

MR.G.NARASIMHAM, MEMBER(J):

On

30.12.1991

Respondent No.3, i.e. Senior Superintendent of Post

Offices, Sambalpur Division, in a departmental proceeding dismissed the applicant, who was serving as Extra Departmental Branch Post Master, Kudaloi Branch Office. On 30.7.1992, the applicant preferred an appeal before Respondent No.2, i.e. Director, Postal Services, Sambalpur Region, with a prayer for condonation of delay in preferring the appeal. On 27.10.1992, this application has been preferred for quashing the order of dismissal imposed by Res.3 and for reinstatement in service with all consequential service benefits.

2. The solitary charge against the applicant is that he did not account for a sum of Rs.6000 tendered by one Shri Daya Pasayat on 13.1.1990 towards T.D. deposit in that Branch Office. In the written statement the applicant denied the charge. The Inquiring Officer after enquiry found the charge to have been established. A copy of the inquiry report was supplied to the applicant who was called upon to submit representation, if any. The applicant submitted representation. Thereafter the disciplinary authority (Res.3) accepted the finding of the Inquiring Officer and ultimately imposed the penalty of dismissal. These facts are not in dispute.

3. During hearing of the application neither the applicant nor the respondents apprised us as to the fate of the appeal preferred by the applicant. This application was admitted on 30.10.1992 and under Section 19(4) of the Administrative Tribunals Act, 1985, the appeal pending before Res.2 had abated. Hence even if Res.2 in the meanwhile passed any order on this appeal,

it has no existence under law.

4. Shri P.V.Ramdas, learned counsel for the applicant strongly urged that though the applicant for the purpose of his defence requested for supply of a copy of the preliminary inquiry report, the same has not been supplied, the entire proceeding is vitiated because of violation of natural justice as due to non supply of that report the applicant has been denied the reasonable opportunity to defend himself. It is not in dispute that request of the applicant for supply of a copy of the preliminary inquiry report was turned down by the respondents-department on the ground that its production would go against the public interest. We are not impressed about this stand taken by the respondents in not supplying copy of the preliminary inquiry report. It is not the case of the respondents-department that this report is involved any consideration of security of the State or privilege. Be that as it may, the question for consideration is whether the applicant has been denied a reasonable opportunity of defending his case due to non supply of copy of the preliminary inquiry report.

Shri P.V.Ramdas, learned counsel, in support of his contention placed reliance on the following two decisions:

1. 70 (1990) C.L.T. 116(Prafulla Chandra Behera v. Dena Bank
2. A.I.R. 1996 SC 2118(Kashinath Dikshita v. Union of India & Others)

The Division Bench of the Hon'ble HighCourt of Orissa in Prafulla Chandra Behera's case observed that it is well settled that a report preceding the inquiry with refernece to which or on the basis of which the disciplinary proceeding was initiated should be furnished to the delinquent to enable him to prepare his defence and denial of supply copy of such report would infringe principles of natural justice. However, in view of the decision in the case of Vijaya Kumar Nigam v. State of Madhya Pradesh reported in 1997 SCC(L&S) 489 the principle laid down in Prafulla Chandra Behera's case can longer hold good. In Vijaya Kumar Nigam's case the Apex Court held that preliminary inquiry is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order of dismissal against the employee. By holding so the Apex Court rejected the contentions advanced that non supply of such report was violative of principle of natural justice when the statements of persons that formed the basis for such report recorded during the preliminary inquiry were not supplied to delinquent official. There is no averment in this application as to whether any witness/witnesses were examined during preliminary inquiry and if so, copies of their statements were not supplied to the applicant. A perusal of Annexure-A/1 reveals that during inquiry the applicant placed requisition for production of some documents including preliminary report and these

documents do not include statements of witnesses, if any, recorded during the preliminary inquiry. Hence this being so, we cannot hold that during preliminary inquiry statements of some witnesses have been recorded and copy of the same have not been supplied to the applicant despite his request.

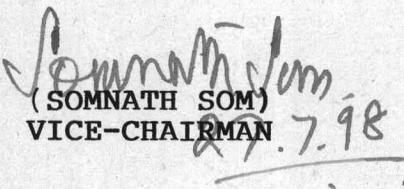
It is not necessary that in each and every case, before preliminary inquiry, there would be necessity of examination of witnesses. In some cases there may not be necessity to examine the witnesses during the preliminary inquiry which can be held on the basis of the documents available, as in the present case when Shri Daya Pasayat complained to the departmental authority that an amount of Rs.6000 deposited by him on 13.1.1990 with the applicant has not been accounted for by filing the receipt issued at the time of tendering the deposit.

Kashinath Dikshita's case (Supra) decided by the Apex Court in 1986 will also be not helpful to the applicant. Non supply of copy of the preliminary report was not the issue in this case. Copies of the statements of witnesses examined during preliminary inquiry, besides copies of some other documents were not supplied to the appellant. The Hon'ble Apex Court held that due to non supply of copies of such statements the appellant has been denied the reasonable opportunity of exonerating himself as the appellant would have needed such copies to enable him to effectively crossexamine the witnesses with reference to the contents of the

At this stage we cannot overlook the submission of Shri P.V.Ramdas, learned counsel that in the ~~option~~ <sup>otherwise</sup> of supply of copies of statements of witnesses the applicant was greatly prejudiced in defending himself. But as earlier discussed there is no averment in the application either by the applicant or by the respondents that during preliminary inquiry witnesses were examined and <sup>their</sup> therefore, statements were recorded and as such we are not inclined to accept this submission of the learned counsel for the petitioner.

5. It has been averred in the application that the finding of the Inquiring Officer ultimately accepted by the disciplinary authority was erroneous. Law is well settled that we have no jurisdiction to sit over a disciplinary authority as an appellate authority. Findings which are not arbitrary or utterly perverse cannot be interfered with by the Tribunal. We are of the view that the findings are consistent with the materials available before the authority. Hence we are not inclined to interfere with this finding.

6. In the result we do not see any merit in this application which is accordingly dismissed with no order as to costs.

  
(SOMNATH SOM)  
VICE-CHAIRMAN

7.7.98

27.3.88  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)

B.K.Sahoo, C.M.