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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 152 OF 1993

Cuttack, this the 24th day of August, 1999

Narayan Moharana 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 referred to all the Benches of the Central Administrative Tribunal or not? no.

24.8.99
(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

24.8.99

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CORAM:

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

.....

Narayan Moharana,
aged about 39 years,
son of Somanath Moharana, at present working
as Asst. Post Master, Accounts, Phulbani
Head Office, District-Phulbani ... Applicant

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

Vrs.

1. Union of India, represented by its
Secretary in the Department of Posts, Dak Bhawan, New
Delhi.
2. Member (Personnel), Postal Board, Office of the
Director General of Posts, Dak Bhawan, New Delhi.
3. Chief Post Master General, Orissa Circle, Bhubaneswar,
District-Puri.
4. Director of Postal Services, Sambalpur Region (at
present redesignated as Post Master General,
Sambalpur), Sambalpur.
5. Superintendent of Post Offices, Phulbani (O) Division,
Phulbani.....
.....Respondents

Advocate for respondents - Mr.S.B.Jena
A.C.G.S.C.

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 at Annexures 4, 5 and 6 and

the notice at Annexure-8. The second prayer is for a direction to the respondents to regularise the whole period with full back wages from the date of suspension.

2. The applicant's case is that while he was working as Accountant in Phulbani Head Office, the Current Head Office Cash Book of Phulbani Head Office was within the custody of one Lambodar Biswal, Assistant Post Master. That Cash Book was not posted and placed for which reason the local authorities for covering their own lacuna suppressed the matter. The applicant who was working as Accountant thought it fit to bring this to the notice of the higher authorities and accordingly he sent telegrams to the Post Master General intimating that the Phulbani Head Office has not been posted from 15.12.1987 onwards and prayed for enquiry. Copies of the two telegrams are at Annexures 1 and 2. Superintendent of Post Offices, Phulbani (respondent no.5) in order to cover his laches suspended the applicant on the ground that he is responsible for maintenance of the Cash Book and chargesheet was initiated on 19.5.1987 under Rule 14 of Central Civil Services (Classification, Control & Appeal) Rules, 1965. The chargesheet is at Annexure-3. The allegation was denied by the applicant and an inquiring officer was appointed to enquire into the charges. As the applicant was sick he sought for time. But the inquiring officer without affording reasonable opportunity to defend his case, submitted a report dated 24/25.6.1988 holding that the applicant is guilty of all the six articles of charge. Apparently the applicant had also been placed under suspension and the disciplinary authority in his order dated 30.6.1988 at Annexure-4 revoked the order of suspension. Before proceeding further it has to be noted that this order at Annexure-4 is an order revoking the suspension of the applicant. The applicant has apparently

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wrongly prayed for quashing the order at Annexure-4. This prayer is therefore not being considered as this is an obvious mistake on the part of the applicant. The applicant has stated that the disciplinary authority passed the order of punishment reducing the pay of the applicant from Rs.1480/- to Rs.1440/- for a period of one year with effect from the date of joining in his post with a further direction that he would not earn increment of pay during the period of reduction and on expiry of that reduction will not have the ^{effect of} postponing of future increment. Along with the order of punishment, copy of the enquiry report was also supplied to him. The applicant has stated that the order of punishment passed on 30.6.1988 is at Annexure-4. But actually this order of punishment and the enquiry report have not been enclosed at Annexure-4. As earlier noted above, Annexure-4 is an order dated 30.6.1988 revoking his suspension. The applicant preferred an appeal to the appellate authority who is Director of Postal Services. The appellate authority in his order dated 10.1.1989 issued notice in exercise of powers conferred under Rule 29(1)(v) of the CCS (CCA) Rules, 1965 proposing to revise the punishment order and provisionally holding why penalty of dismissal should not be awarded. The applicant submitted his showcause to the said notice dated 10.1.1989 contending that the charge has not been proved, he has not been granted essential documents and reasonable opportunity has not been given to defend the case and the order of punishment passed by the disciplinary authority should be quashed and the order should not be reviewed and the penalty of dismissal should not be imposed. He also submitted that the showcause may be treated as an appeal and disposed of in accordance with law. The appellate authority however did not treat the showcause as appeal and

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acting under the provisions of Rule 29(1)(v) of the CCS(CCA) Rules, 1965, passed the order on 9.8.1989 inflicting the punishment of dismissal from service with immediate effect. The order of punishment of dismissal from service is at Annexure-5. Against that order the applicant preferred an appeal to the Chief Post Master General and the C.P.M.G. in his order dated 11.1.1990 modified the order of punishment of dismissal to that of reduction of two stages from Rs.1480/- to Rs.1410/- in the scale of pay of Rs.1350-30-1440-40-1800-EB-50-2200/- for a period of two years with direction that the applicant will not earn increment during this period of reduction, but this will not have the effect of postponing his future increments of pay. This order dated 11.1.1990 is at Annexure-6. Against the order of Chief Post Master General, the applicant preferred an appeal to the Member (Personnel), Postal Board on 1.8.1991 and the appeal (Annexure-7) is still pending. The applicant has stated that in the meantime the Chief Post Master General in his order dated 12.4.1990 at Annexure-8 has issued notice to the applicant to show cause why the period from the date of dismissal from 8.9.1989 to the date of reinstatement in service, i.e. 17.1.1990 should not be treated as non-duty. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

3. The respondents in their counter have stated that while the applicant was working as Accountant in Phulbani H.O. he was proceeded against and the chargesheet was issued on 19.5.1987. The charge was served on the applicant on 6.7.1987. The applicant did not submit any explanation. Thereafter the departmental enquiry was taken up by Assistant Superintendent of Post Offices (Headquarters), Puri Division and after enquiry the

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applicant was punished with reduction of pay by one stage from Rs.1480/- to Rs.1440/- in the scale of Rs.1350-2200/- for a period of one year with effect from the date of joining in the post. It was indicated that during that period of one year he will not earn any increment. But on expiry of the period the reduction will not have the effect of postponing of future increments. The order of respondent no.5, Superintendent of Post Offices, Phulbani, was reviewed by Director of Postal Services, Sambalpur, who after going through the representation dated 30.1.1989, awarded the punishment of dismissal from service on the applicant with immediate effect in his order dated 9.8.1989. The petitioner appealed to the Chief Post Master General who modified the order of dismissal to that of reduction by two stages from Rs.1480/- to Rs.1410/- for a period of two years with direction that during these two years the petitioner will not earn any increment and on expiry of this period the reduction would not have any effect on his future increments. This order was issued on 11.1.1990. The applicant was reinstated in service on 17.1.1990 and the period of his dismissal from 8.9.1989 to 17.1.1990 was treated as leave admissible. The petitioner filed a petition to Member (Personnel), Postal Board, against the order of the Chief Post Master General, but the petition was returned to the applicant by respondent no.2 for submission of typed copy and thereafter the applicant has not submitted the typed copy of the petition. The respondents have stated that the initial punishment imposed on the applicant has been passed after taking note of the charges which were serious, the report of inquiring officer, and the fact that the applicant did not submit any explanation after getting the charges. It is further stated that in

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response to the notice dated 12.4.1990 at Annexure-8 the applicant submitted a representation dated 30.4.1990 requesting payment of full pay and allowances. Respondent no.3 took the view that as the applicant has not been exonerated and the articles of charge have been established, the representation cannot be accepted and it was ordered that the period from the date of dismissal, i.e., 8.9.1989 to 17.1.1990 should be treated as non-duty on leave admissible. The order passed by respondent no.3 to the above effect is at Annexure-R/3. The respondents have stated that the orders have been passed in accordance with rules and on the above grounds the respondents have opposed the prayers of the applicant.

4. We have heard Shri A.Deo, the learned counsel for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel appearing for the respondents and have perused the records.

5. As we have noted earlier the applicant's prayer for quashing Annexure-4 cannot be considered because that Annexure-4 is an order revoking his suspension. At paragraph 4(d) of the application the petitioner has mentioned that the order of the disciplinary authority is at Annexure-4. Even assuming that the prayer is for quashing the order of the disciplinary authority, as the petitioner has not enclosed a copy of the order of the disciplinary authority, he has no right to claim that the order should be quashed. The respondents have however enclosed at Annexure-R/1 the order dated 30.6.1988 of the disciplinary authority. We have gone through the same. The applicant has mentioned in paragraph 4(c) of his OA that the charges were denied by him. The respondents in the counter have mentioned specifically that the applicant did not submit any explanation nor did he deny the charges. The

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disciplinary authority has also mentioned at page 4 of his order that the applicant, the charged official did not submit any representation or defence. The petitioner has not denied this assertion of the respondents in the counter by filing a rejoinder. In view of this, we cannot but hold that the applicant did not submit any explanation to the charges. At this stage, it is to be mentioned that the date of Annexure-4 revoking the applicant's suspension is 30.6.1988 and the date of the order of the disciplinary authority at Annexure-R/1 of the counter is also 30.6.1988. Therefore, by mistake the applicant must have annexed the wrong order. We have gone through the order of the disciplinary authority and we find that he has elaborately discussed the charges and the findings thereon and the order of the disciplinary authority cannot be held to be unsustainable. But in any case this order has been ~~challenged~~ ^{changed} subsequently twice and this order of the disciplinary authority is no longer in existence. Therefore, the prayer of the applicant to quash the order of the disciplinary authority has become infructuous.

6. The appellate authority had decided to enhance the punishment, issued notice to the applicant, received and considered his representation and imposed the penalty of dismissal from service in his order dated 9.8.1989 at Annexure-5. The applicant has prayed for quashing this order. This order also no longer holds the field because under the rules when an order is passed by the appellate authority enhancing the penalty imposed by the disciplinary authority, against that order enhancing the punishment a further appeal lies. The applicant had filed an appeal against the order enhancing the penalty and the Chief Post Master General had modified the punishment of dismissal in the manner noted by us earlier. Thus, the

order of dismissal from service passed by the appellate authority is also no longer in existence and therefore it is not necessary to quash the same.

7. The next prayer is to quash the order of the Chief Post Master General imposing the punishment of reduction by two stages in pay from Rs.1480/- to Rs.1410/- for a period of two years. He had also mentioned that during the period of two years the applicant will not earn any increment, but after expiry of this period his future increments will not be postponed. Thus, it is seen that while the appellate authority imposed the major penalty of dismissal from service by way of enhancing the punishment the second appellate authority, the Chief Post Master General in his order dated 11.1.1990 had imposed a minor penalty. As we have held the findings of the inquiring officer have not been challenged by the applicant. The enquiry report has also not been filed. It cannot be said that considering the findings of the inquiring officer holding the six charges proved against the applicant imposition of final penalty by the Chief Post Master General, i.e., reduction of pay by two stages for a period of two years is excessive. This order also does not suffer from any legal infirmity. This prayer of the applicant is therefore held to be without any merit and is rejected.

8. The last prayer of the applicant is for quashing Annexure-8 and to regularise the whole period and to grant him full back wages from the date of suspension. In this order at Annexure-8 the applicant has been asked to show cause why the absence from duty from the date of dismissal from service from 8.9.1989 to 17.1.1990 should not be treated as non-duty without payment of pay and allowances. The respondents in their counter have pointed

out that after considering the representation of the applicant in response to Annexure-8, the Chief Post Master General in his order dated 17.5.1990 (Annexure-R/3) had taken the view that as the applicant has not been fully exonerated and as the articles of the charge have been established, the period from 8.9.1989 to 17.1.1990 will be treated as non-duty and will be regularised as leave admissible.

9. From the prayer of the applicant in this regard it is seen that this claim for back wages relates to two periods. The first period is from the date the applicant was placed under suspension till 30.6.1988 when the suspension order was revoked vide Annexure-4. The second period is from 8.9.1989 when he was dismissed from service till 17.1.1990 when he was taken back in service. The disciplinary authority in his order which is at Annexure-R/1 has not indicated how the period of suspension will be treated. As the applicant has prayed for back wages for this period, it is presumed that this period has been treated as suspension. In this case a major penalty proceeding was initiated against the applicant for imposition of major penalty but ultimately the disciplinary authority imposed a minor penalty and the second appellate authority also imposed the minor penalty. Under these circumstances the suspension has to be held as wholly unjustified. Government of India, Department of Personnel & Training O.M. No. 11012/15/85-Est.(A) dated the 3rd December 1985, the gist of which has been printed at page 254 of Swamy's Compilation of Central Civil Services Classification Control and Appeal Rules (24th Edition 1999) provides that where departmental proceedings against a suspended employee for the imposition of a major penalty

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finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified and the employee concerned should therefore be paid full pay and allowances for the period of suspension. In this case, the order dated 17.5.1990 of the Chief Post Master General does not deal with this period from the date of suspension which incidentally has not been indicated by either side till the date of revocation of the suspension till 30.6.1988. It was for the disciplinary authority to indicate in his order as to whether the period of suspension will be treated as duty or will be treated as such. As in the order of the disciplinary authority, which is at Annexure-R/1, no order for treating the period of suspension as such has been passed and in view of the fact that the major penalty proceedings have ended with imposition of minor penalty ultimately, this aspect of the prayer of the applicant is disposed of with a direction to the respondents that the period from the date of his suspension till revocation of the suspension on 30.6.1988 should be treated as duty. The applicant should be paid his salary and allowances for this period within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order.

10. As regards the second period from 8.9.1989 to 17.1.1990, the Chief Post Master General in his order dated 17.5.1990 has pointed out that the petitioner in his representation had taken the stand that had he not been dismissed from service by the Director of Postal Services in his order dated 9.8.1989 at Annexure-5 he would have continued in service and would have got his pay and allowances. The Chief Post Master General has taken the stand that this contention is hypothetical and as the applicant has not been fully exonerated, the period from 8.9.1989 to 17.1.1990 will be treated as non-duty and

regularised as on leave admissible. We are unable to accept the logic behind the order dated 17.5.1990 on the ground that the respondents have averred in their counter that against the order of punishment passed by the disciplinary authority, the petitioner did not prefer any appeal and the appellate authority took up the question of enhancement of punishment suo motu under Rule 29(1)(v) of the CCS (CCA) Rules, 1965. A plain reading of this rule would make it clear that suo motu order of revision enhancing the penalty can be passed within a period of six months from the date of order sought to be revised. In this case, the order of punishment was passed by the disciplinary authority on 30.6.1988 and within six months thereof the order enhancing the penalty should have been passed. But this order has been passed on 9.8.1989 beyond the period of six months. This order enhancing the penalty and thereby dismissing the applicant from service is therefore a nullity and non est in the eye of law. We have earlier mentioned that the prayer of the applicant for quashing this order is no longer relevant because this order of dismissal from service has already been modified by the Chief Post Master General by imposing a penalty of reduction by two stages in pay scale for a period of two years. As the order of dismissal from service is ab initio void, the applicant is entitled to pay and allowances for the period from 8.9.1989 to 17.1.1990. We order accordingly. The pay and allowances of the applicant for this period should be paid to him within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order.

11. In the result, the Original Application is partly allowed but under the circumstances without any order as to costs.

(G. NARASIMHAM)

MEMBER (JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN