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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 153 OF 1993

Cuttack, this the 14th day of May, 1999

Harekrushna Sahu ..... 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
14.5.99

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

.....

Harekrushna Sahu,
aged about 46 years,
son of late Mahendra Sahu,
At/PO-Sarsank,Via-Soro,
District-Balasore ..... Applicant

Advocates for applicant- M/sDevanand Misra
A.Deo
B.S.Tripathy
P.Panda
D.K.Sahu.

Vrs.

1. Union of India, represented by its Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, At/PO-Bhubaneswar, District-Puri.
3. Director of Postal Services (Headquarters), Office of the Chief Post Master General, Orissa Circle, At/PO-Bhubaneswar, District-Puri.
4. Superintendent of Post Offices, Balasore Division, At/PO/District-Balasore ....Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.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 dated 18.2.1993 at Annexure-2 removing the petitioner from the post of EDBPM, Sarasank B.O. The second prayer is for a

direction to the respondents to reinstate the petitioner to his job immediately.

2. Facts of this case, according to the applicant, are that while he was working as EDBPM, Sarsank E.D.B.O., departmental proceedings under Rule 8 of ED Agents (Conduct & Service) Rules, 1964 were initiated against him in order dated 20.8.1992. There was only one charge. It is alleged that he received Rs.100/-, Rs.200/-, and Rs.1600/- on 26.8.1987, 15.10.1990 and 30.3.1991 respectively from Smt.Jayanti Panda, depositor of Soro S.B.Account No. 355320 for depositing in her Pass Book.The petitioner granted the depositor corresponding counter-foils of pay-in-slips in respect of the above three deposits duly authenticated by his dated initials. But he did not affix the official date stamp on the pay-in-slips except on the counterfoil for deposit of Rs.100/- on 26.8.1987. He did not show these three deposits in the Pass Book or in any other corresponding records of the Branch Office. He also did not take these amounts in the Post Office accounts on these dates or on any subsequent date. On detection, the applicant voluntarily credited an amount of Rs.2050/- towards the total amount of the three deposits plus penal interest of Rs.150/-. The petitioner also received Rs.800/- and Rs.315/- from the above depositor Smt.Jayanti Panda on 20.3.1990 and 31.3.1990 respectively for which he granted the counterfoils of pay-in-slips duly authenticated by his initials and office date stamp impressions. But these amounts were not accounted for on the dates of their receipt. The petitioner corrected the dates of the deposits in the Pass Book to 31.3.1990 and 9.4.1990 for the above two deposits and took the amounts to the Post Office accounts on the same day after affixing the office date stamp dated 31.3.1990 and 9.4.1990 respectively. During

the disciplinary proceedings the petitioner was put off duty. Against the order putting the applicant off duty, he came to the Tribunal in OA No. 469 of 1992 which was disposed of in order dated 22.4.1992 in which the Tribunal directed that the disciplinary proceedings should be finally disposed of within six months from the date of receipt of copy of the order. Thereafter the inquiring officer was appointed who after holding the detailed enquiry gave the finding that both the allegations of charge are not proved.The enquiry report is at Annexure-1. Superintendent of Post Offices, Balasore Division (respondent no.4), who is the disciplinary authority, did not accept the finding of the inquiring officer and after perusing the relevant records and written representation of the applicant, passed the impugned order dated 18.2.1993 removing the applicant from service. Against the order of removal, the applicant preferred appeal dated 24.2.1993 before the Director of Postal Services (Headquarters), office of Chief Post Master General, Orissa Circle,Bhubaneswar. This appeal is still pending. 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 while the applicant was working as EDBPM, Sarasank E.D.B.O., he made several corrections in the transactions shown in S.B.Pass Books of Account No.354786 in the name of Shri N.P.Sahu and Account No. 355320 in the name of Smt.Jayanti Panda. In course of verification of these corrections, it was noticed that in respect of SB Account no. 355320 standing in the name of Smt.Jayanti panda the applicant permanently misappropriated deposits of Rs.100/- on 26.8.1987, Rs.200/- on 15.10.1990 and Rs.1600/- on 30.3.1991 and

that he had temporarily misappropriated deposits of Rs.800/- on 20.3.90 and Rs.315/- on 31.3.1990 of the same depositor. The applicant admitted the misappropriation and voluntarily credited the misappropriated amounts along with penal interest totalling Rs.2050/- on 29.10.1991.Pending further enquiry against the applicant, he was put off duty in order dated 11.11.1991 which was ratified by the superior authority on 22.11.1991. After being put off duty on 14.11.1991 the applicant sent an affidavit of the depositor Smt.Jayanti Panda to the Divisional Superintendent of Post Offices, Balasore, along with his representation stating therein that the depositor has not deposited Rs.100/-, Rs.200/- and Rs.1600/- in her S.B.Account on the respective dates and the Sub-Divisional Inspector (P) forced him to credit an amount of Rs.2050/- on 29.10.1991 representing the above amounts and the penal interest. The applicant also filed a case before the Tribunal on 18.11.1991 against the order of his put off duty. The Tribunal in their order dated 22.4.1992 ordered cancellation of the order of put off duty and directed completion of the departmental proceedings within six months. Accordingly, the applicant was reinstated on 21.5.1992 and proceeded against for the charges issued in memo dated 20.8.1992 at Annexure-R/3. The applicant denied the charges and desired to be heard in person. Accordingly, a detailed enquiry was made. The applicant also nominated one assisting Government servant to help him during the enquiry. On completion ofthe enquiry, the enquiry report was supplied to the applicant asking him to represent against the findings of the inquiring officer. The representation of the applicant was received on 8.2.1993. The Superintendent of Post Offices, Balasore

Division (respondent no.40 being the disciplinary authority, came to the finding that the petitioner has committed grave misconduct and held the charges as proved against the applicant and imposed the penalty of removal from service. Against the order the applicant filed an appeal which was duly forwarded to the appellate authority and the decision on this is awaited because the applicant filed the present OA in May 1993 without exhausting the departmental channel. The respondents have stated that the enquiry was conducted strictly in accordance with the rules and all reasonable opportunities were provided to the applicant and there was no denial of reasonable opportunity and natural justice. It is further stated that the affidavit of the depositor Smt.Jayanti Panda was duly considered and it was held that the same was prepared by the applicant taking advantage of his acquaintance with the co-villager to suppress his misdeeds. The respondents have also denied that any document asked for by the applicant was withheld from him. On the above grounds, the respondents have opposed the prayer of the applicant.

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

5. Before going into the submissions made by the learned counsel for both sides, it has to be noted that the well settled position of law on the basis of a series of decisions of the Hon'ble Apex Court, is that in departmental proceedings the Tribunal does not act as an appellate authority and cannot substitute its judgment for the findings and decision arrived at by the disciplinary authority or appellate authority. The

object of judicial review of the action of the departmental authorities in case of disciplinary proceedings is not for reviewing the conclusion arrived at by them but for reviewing the process through which departmental authorities have come to their findings. The Tribunal can interfere in such cases only if there has been denial of reasonable opportunity, violation of natural justice or if the findings are based on no evidence or on such evidence that no reasonable person could, on the basis of such evidence, come to the findings arrived at by the disciplinary authority or the appellate authority.

6. The first point submitted by the learned counsel for the petitioner is that the Tribunal in their order dated 22.4.1992 had directed that the disciplinary proceedings should be finally disposed of within six months. But in this case the respondents have taken ten months to dispose of the disciplinary proceedings and on this ground the disciplinary proceeding should be quashed. The respondents in their counter have pointed out that the processing of disciplinary proceedings from the date of its institution till finalisation was a time taking affair and the Tribunal was apprised of the position through MA No.455 of 1992 filed in OA No. 469/91 and as such there has not been any intentional delay. In this case, we find that the disciplinary authority has finalilsed the proceedings within ten months as against six months period indicated by the Tribunal. The delay is not for such a long period so as to invalidate the disciplinary proceedings. This contention of the learned counsel for the petitioner is therefore rejected.

7. The second point urged by the learned counsel for the petitioner is that the documents asked

for were not supplied to the applicant. The respondents have squarely denied this averment. The applicant has not specifically pointed out which documents were asked for and were denied. In view of this, this contention of the learned counsel for the petitioner is also rejected.

8. The third point urged by the learned counsel for the petitioner is that the inquiring officer in his report held both the elements of the charge, i.e., the fact of permanent misappropriation of three deposits and temporary misappropriation of two deposits, as indicated above, as not proved. The disciplinary authority differed from the finding of the inquiring officer but did not intimate the reasons of his disagreement to the applicant to enable him to file representation against such reasoning. We have considered this submission carefully. A copy of the enquiry report has been filed as an enclosure to Annexure-1 and from this it is clear that both the elements of charge have been held as not proved by the inquiring officer. The disciplinary authority sent a copy of the enquiry report to the applicant asking him to represent against the finding of the inquiring officer. This itself shows non-application of mind. When the inquiring officer had held the charge as not proved, there was no occasion for the applicant to file representation against the finding of the inquiring officer. The disciplinary authority differed from the finding of the inquiring officer and held that the two elements of the one charge are proved against the applicant, and passed the impugned order of removal from service against the applicant.

9. The sole question which arises for consideration of this aspect of the matter is whether the disciplinary authority was obliged to communicate the reasons of his disagreement with the findings of the inquiring officer, to the applicant to enable him to file representation against such reasoning and tentative finding of the disciplinary authority differing from the finding of the inquiring officer. The same question can be viewed from another angle, i.e., whether by non-communication of the reasons of disagreement of the disciplinary authority with the finding of the inquiring officer to the applicant, he has been denied any reasonable opportunity to defend his case or if the principle of natural justice has been violated.

10. The law regarding furnishing a copy of the report of the inquiring authority to the delinquent officer has been laid down in the case of Union of India and others v. Mohd. Ramzan Khan, AIR 1991 SC 471, and has more recently been examined in greater detail by the Hon'ble Supreme Court in the case of Managing Director, ECIL, Hyderabad and others v. B.Karunakar and others, (1993) 25 ATC 704. It is not necessary to go into the detailed reasoning and development of the law on this point as has been mentioned by their Lordships of the Hon'ble Supreme Court in both these cases. It is only necessary to note that prior to coming into force of the Forty-second Amendment of the Constitution through which sub-article (2) of Article 311 was amended and the provision for second showcause notice against the

proposed punishment was done away with, the delinquent official was entitled to be given a notice against the proposed punishment. In the case of **Managing Director, ECIL, Hyderabad (supra)**, their Lordships have made the following observations while discussing the provisions of Section 240(3) of Government of India Act, 1935 from which the present Article 311 in a sense came:

> ".....It is stated that the civil servant shall not be dismissed or reduced in rank until he had been given "reasonable opportunity to show cause against action proposed to be taken in regard to him". The expression "against action proposed to be taken" was uniformly interpreted by the courts to mean the stage at which the disciplinary authority had arrived at its tentative conclusion with regard to the guilt of and the punishment to be awarded to, the employee. The expression "reasonable opportunity to show cause" was accordingly interpreted to mean an opportunity at that stage to represent to the authority against the tentative findings both with regard to the guilt and the proposed punishment. It was, therefore, held that in order that the employee had an effective opportunity to show cause against the finding of guilt and the punishment proposed, he should, at that stage be furnished with a copy of the findings of the inquiring authority. It is in this context that the finding of the enquiry officer's report at that stage was held to be obligatory. It is, however, necessary to note that though the provisions of Section 240(3) of the Government of India Act stated that they would apply only when the employee was sought to be dismissed or reduced in rank which were the major punishments, the same were interpreted to mean that they would also apply when the employee was sought to be removed."

From the above, it is clear that when before the Forty-second Amendment the delinquent official was given

notice to show cause against the punishment tentatively proposed against him, he was also entitled to show cause against the findings of the inquiring authority and the findings of the disciplinary authority. It is relevant to note that the disciplinary authority is not obliged to accept the findings of the inquiring authority. He can come to his own finding with regard to the guilt or otherwise of the delinquent official in respect of the charge or charges against him. In the case of **Mohd.Ramzan Khan (supra)** and the case of **Managing Director, ECIL, Hyderabad (supra)**, the Hon'ble Supreme Court have held that communicating a copy of the report of the inquiring authority to the charged official is necessary to enable the charged official to represent against the findings of the inquiring authority. Thus, it is to be noted here that where the charged official has been given all facilities to participate in the enquiry against him into the charges and where he has been afforded reasonable opportunity by the inquiring authority, even then he is entitled to receive a copy of the report of enquiry to represent against the findings arrived at by the inquiring authority. He has a right to show cause against the findings arrived at by the inquiring authority, before the disciplinary authority. The Hon'ble Supreme Court have held in both the above cases that affording an opportunity to the charged official to show cause against the finding of the inquiring authority is essential and if this is not done, the whole proceeding would be vitiated.

10. If we apply the above well settled position of law to a case like the present one where the inquiring officer has held the charge as not proved, but the disciplinary authority has differed from the finding of the inquiring officer and held the charge as

proved, the charged official misses out a vital opportunity to prove his innocence if the reasons for disagreement recorded by the disciplinary authority are not communicated to the charged official affording him an opportunity to show cause against the tentative finding of the disciplinary authority with regard to the charge. The mere fact of communicating the report of the inquiring officer and asking him to represent against the findings of the inquiring officer in a case like the present one where the inquiring officer has held the charge as not proved, is pointless because the applicant can have no grievance against the finding of the inquiring officer. Law is well settled that it is the finding of the disciplinary authority which matters and the disciplinary authority is free to differ from the finding of the inquiring officer with regard to the charge. If reasons for disagreement recorded by the disciplinary authority are not communicated to the charged official and the charged official is denied an opportunity to represent against the findings in respect of the charge against him, this, to our mind, will result in denial of reasonable opportunity as also violation of principles of natural justice. In view of the above, we hold that in the instant case when the disciplinary authority differed from the finding of the inquiring officer and held the charge as proved against the applicant, he should have communicated his reasons for such disagreement with the finding of the inquiring officer, to the applicant enabling him to show cause against the proposed tentative finding of the disciplinary authority. As that has not been done, the applicant has been denied a reasonable opportunity. The

Hon'ble Supreme Court in the case of **Managing Director, ECIL, Hyderabad (supra)** have directed that if a reasonable opportunity has been denied, the Court should not mechanically set aside the order of punishment. It has to be seen whether because of denial of reasonable opportunity, injury has been caused to the applicant. In the instant case, the applicant has been visited with the second extreme penalty of removal from service and it was necessary that in such a case he should have been afforded the reasonable opportunity to show cause against the tentative finding of the disciplinary authority with regard to the charge.

11. We have already mentioned earlier that in case of disciplinary proceedings, the Tribunal does not act as the appellate authority and cannot substitute its finding and conclusion in place of what has been arrived at by the disciplinary authority. Keeping this provision of law in view, we have looked into the facts of the case, particularly with regard to the differing conclusion of the inquiring officer and the disciplinary authority. The inquiring officer believed the version of the depositor of the SB Account who denied entrustment of money to the applicant. On that basis amongst other grounds the inquiring officer held the two elements of the single charge as not proved. The disciplinary authority took the view that the depositor who was the SB Account holder had been gained over by the applicant, the charged official and that is how he came to a different finding. In the context of the above facts, it was all the more necessary for the disciplinary authority to give an opportunity to the charged official to show cause against his tentative finding. As this has not been done, the order of punishment cannot be sustained.

12. We, therefore, quash the order dated 18.2.1993 of the disciplinary authority removing the applicant from service. The disciplinary authority is directed to communicate the reasons of his disagreement with the finding of the inquiring officer to the applicant within thirty days from the date of receipt of copy of this order, giving the applicant a reasonable opportunity to represent against such finding. Thereafter the disciplinary authority will be free to pass appropriate orders after taking into consideration the representation, if any, filed by the applicant in response to the notice ordered to be issued by us. The entire process should be completed within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order. As regards the treatment of the period from the date of removal of the applicant till the date of passing of the final order, the same will be decided in accordance with the final result of the proceedings.

13. In view of the above, the Original Application is 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

14.5.99

AN/PS