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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 374 OF 1993

Cuttack, this the 11th day of August, 1999.

P. S. V. S. NARAYANA.

....

APPLICANT.

-VERSUS-

UNION OF INDIA & 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 11.8.99

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

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C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

....

P. S. V. S. NARAYANA,
aged about 45 years,
Son of P. Krishnaswamy,
at present working as Supervisor,
Savings Bank Control Organisation,
Rayagada, PO/PS/DIST. RAYAGADA.

.... APPLICANT.

By legal Practitioner: M/s. A. Deo, B. S. Tripathy, P. Panda,
A. Mishra, Advocates.

-VERSUS-

1. Union of India represented through its Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Senior Superintendent of Post Offices, Koraput Division, Jeypore, Dist. Koraput.
4. Director, Postal Services (Headquarters), Office of the Chief postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.

.... RESPONDENTS.

By legal Practitioner : Mr. U. B. Mohapatra, Additional
Standing Counsel (Central).

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN.

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, applicant has prayed for quashing the order dated 25-8-1992, ordering recovery of a sum of Rs. 1200/- from his salary on a monthly instalment of Rs. 100/- passed by the Disciplinary Authority, Respondent No. 3 and the order dated 13-1-1993, at Annexure-8 of the Appellate Authority, Respondent No. 4, rejecting his appeal. He has also prayed for a direction to the Respondents to refund the amount already recovered from the applicant.

2. Facts of this case fall within a small compass and can be briefly stated. A minor penalty proceeding was initiated against the applicant for his alleged lapses when he was working as UDC, SBCO, Jeypore during the period from 12-4-1975 to 23-9-1976. In order dated 27-9-1991, at Annexure-1, he was informed that on a review of the Savings Bank fraud case committed by Shri S. Das, Jeypore Head Office and it came to the light that while the applicant was working as UDC, SBCO, Jeypore during the period from 12.4.75 to 23.9.1976, failed to maintain the objection register (SB-61) and noted the objections like difference of balance etc. as required under Rule 13(1) of the Posts and Telegraphs Manual of SB Control, paring and internal check organisation. As a result of which, the fraud committed by the above person, could not be detected earlier. He was asked to explain within seven days of receipt of the notice at Annexure-1. Applicant

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submitted his show cause indicating that 16(sixteen) years having been passed in the meantime, he does not remember and as far as his impression goes, he had maintained the Objection Register. Thereafter, Respondent No.2, in his letter dated 8.6.1992, at Annexure-3 initiated minor penalty proceeding against the applicant on the above alleged lapse. Applicant in his letter, which is at Annexure-4, submitted that he had maintained the objection register and noted therein the objections which had come up. He also stated that the fact of maintaining register by him, could be revealed from the monthly statements regularly submitted to the AO, ICO (SB) and the monthly statement of the list of objections pending over two months submitted to the Superintendent of Post Offices. In the above context, applicant stated that as the case relates to 17 years back, he should be supplied with the Inspection Report of AO, ICO(SB) for the period covering 12-4-75 to 23-9-1976, office copy of the monthly statements submitted to the AO, ICO(SB) during that period and the list of objections pending over two months submitted to the Supdt. of Post Offices during that period and lastly the objection registers of 4C I for the period one month before and one month after the period under reference. His prayer for supplying copies of these documents, were rejected in order dated 27.7.1992, at Annexure-5 indicating that the records can not be supplied. Thereafter, he submitted his explanation, at Annexure-6, on perusal of which, the impugned order of punishment at Annexure-7 was passed and the appeal of the applicant was also rejected in impugned order dated 13.1.1993, at Annexure-8. Applicant has stated that as the relevant

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documents were not supplied to him, there has been denial of reasonable opportunity. He has also pleaded that the proceeding has been initiated after a long period of delay and on the above grounds, he has come up in this Original Application with the prayers referred to earlier.

3. Respondents, in their counter have stated that the records were not supplied to applicant as these were not relevant. They have also stated that the applicant was given reasonable opportunity to submit his statement of defence, his explanation was also received and the charges levelled against the applicant was fully proved. It is stated that due to non-observance of the Rule by Applicant, the fraud committed by the above person namely Shri S. Das, could not be detected and thereby, the Department sustained loss of Rs. 13045.62p. In view of this, the impugned order of punishment for recovery of Rs. 1200/- from the applicant, has been passed. It is also stated that it was the preliminary duty of applicant to note the objections with reference to the differences of the balances. It is submitted that Respondent No. 4 after going through the appeal petition has rejected the same. It is further stated that the matter was actually detected in 1976 and not in 1973 as has been mentioned by applicant. Respondents have further stated that after recovery of Rs. 600/- at the rate of Rs. 100/- PM from the salary of the Applicant, applicant himself, requested in his letter at Annexure-4 to recover the balance amount of Rs. 600/- in one

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instalment and accordingly the entire amount has already been recovered. On the above grounds, Respondents have opposed the prayers of applicant.

4. This matter has come up for hearing from the warning list notified more than a month ago. To-day, when the matter was called, learned counsel for the applicant and his associate were absent nor was any request made on their behalf seeking adjournment. In view of this, the matter could not be allowed to drag on indefinitely. We have, therefore, heard Mr. U. B. Mohapatra, learned Additional Standing Counsel (Central) appearing for the Respondents and have perused the records.

5. Even going by the counter of the Respondents, it is seen that the fraud was detected in the year 1976. Admittedly, the proceeding was initiated in the year 1992. Even if we go by the initial explanation which was called for from the applicant, at Annexure-1, the same was called for only in 1991 i.e. after a delay of over 15 years. Respondents, in their counter, have not indicated any reason why there was delay for 15 years in initiating the disciplinary proceeding. Hon'ble Supreme Court have held in many cases that unexplained and unreasonable delay for initiating the departmental proceeding for any lapse itself will be a ground for quashing the disciplinary proceeding. The second aspect of the matter is that the applicant in his letter dated 19.6.1992 asked for copies of four documents but in letter at Annexure-5 he was intimated that the documents can not be supplied. Respondents have mentioned in their counter that

the 4th documents i.e. the Objection Register could not be given to applicant because the charge against the applicant is that he has not maintained this register and therefore, as the register was not maintained, it was not possible to supply the same to him. We are unable to accept the above contention. Applicant has indicated in his letter asking for supplying of documents that this register is a continues register which has been maintained by persons before and after him and the charge against him that during his incumbency, this register was not maintained by him. In view of this, the 4th documents asked for was the copy of the register for the period one month before and one month after the period of his incumbency. Had this been given, then it could have been conclusively proved that during the incumbency of applicant no entry has been made in the objection register. Applicant, has however, in his first as also second explanation stated that so far as he recalls he had entered objections in this register. In view of this, we hold that non supply of copy of this register to applicant has resulted ⁱⁿ denial of reasonable opportunity. As regards ^{^ Sbm.} the other three documents, from the explanation it is crystal clear that these documents are relevant. Applicant has also stated that he has submitted list of objections which are two months old and he had asked for copies of such list. He has also asked for copy of the monthly statements and inspection report of the AO, ICO (SB). If it was not possible for the Respondents to supply copies of these documents, atleast, they could have permitted him to peruse the same. Admittedly, the alleged lapse of applicant was over 15 years

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and it was not possible on the part of a person to remember about the entry made by him or not made by him in a register long years ago. Non-supply of copies of documents and even not giving permission to peruse the same has resulted in denial of reasonable opportunity. ^{S.M.} We find from the impugned order, which is at Annexure-7 that in that order, there is also no discussion with regard to the stand taken by the applicant in his explanation. Para-5 of this order deals with the findings of the Disciplinary Authority. First four paras deal with regard to the charge against the applicant and in para 5 it is merely mentioned that applicant's defence has been received and the charges have been fully proved. Not even a word has been mentioned about the explanation given by applicant and on perusal of the same it has not been found satisfactory. In view of the above, we hold that the impugned order at Annexure-7 is not sustainable and is liable to be quashed. The order of the Appellate Authority is also liable to be struck down. We, therefore, quash the order at Annexures-7 & 8 and allow this Original Application. Respondents are directed to refund the amount of Rs.1200/- which had already been recovered from the applicant within a period of 30(thirty) days from the date of receipt of a copy of this order.

6. In the result, therefore, the Original Application is allowed. No costs.

(G. NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN