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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.377 OF 1993

Cuttack, this the 7th day of April 1998

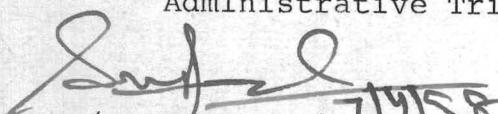
Shri Bhagirathi Behera Applicant

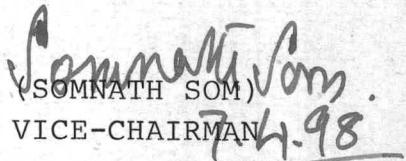
Vrs.

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.


(S.K.AGRAWAL) 7/4/98
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 7/4/98

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 377 OF 1993
Cuttack, this the 7th day of April 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGRAWAL, MEMBER(JUDICIAL)

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Shri Bhagirathi Behera,
aged about 47 years
s/o Markanda Behera
At/PO-Chulifunka,
Via-Bangamunda,
Dist.Bolangir

Applicant

By the Advocates -

Mr.B.S.Tripathy.

Vrs.

1. Union of India,
represented through its
Secretary in the Department of Posts,
Dak Bhawan, New Delhi.
2. Chief Post Master General,
Orissa Circle,
Bhubaneswar, Dist.Khurda.
3. Post Master General,
Sambalpur Zone,
At/PO/PS/Dist.Sambalpur.
4. Director of Postal Services,
Sambalpur,
At/PO/PS/Dist.Sambalpur
5. Superintendent of Post Offices,
Bolangir Division,
At/PO/PS/Dist.Bolangir

Respondents.

By the Advocate -

Mr.Ashok Mohanty,
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 12.2.1993(Annexure-4) removing him from the post of E.D.B.P.M.,Chulifunka E.D.B.O., and the order dated 4.5.1993 (Annexure-7) in which his appeal against the order of punishment was rejected by the Director of Postal Services, Bhubaneswar.

2. The facts of this case, according to the applicant, are that he was appointed as E.D.B.P.M.,Chulifunka E.D.B.O., on 19.11.1955 and had been discharging his duties satisfactorily since then. On 20.9.1991 the Sub-Divisional Inspector, Postal, made a surprise inspection of the Branch Office. He was inimically disposed towards the applicant and as such he submitted a report against him. On that report, respondent no.5 in his memo dated 25.2.1992 (Annexure-1) drew up charges against the applicant and asked him to submit his explanation. The applicant's case is that the materials and documents on which charges were based were not supplied to him. He was thereby handicapped in submitting his explanation which he did in his letter dated 5.3.1992 (Annexure-2) denying all the charges against him. The inquiring officer was appointed who, according to the applicant, did not allow him to inspect the documents, conducted the enquiry in a most perfunctory manner and refused to examine one Ghasiram Sahu who made a request to the applicant to keep his Money Order undelivered for seven days as he was away from his village. According to the applicant, at every stage of the enquiry, principle of natural justice was

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violated. The facts stated by the applicant and his supporting witnesses were not taken into account. On receipt of the enquiry report, the disciplinary authority without intimating the applicant about the proposed punishment, removed him from service by the impugned order at Annexure-4. On receipt of the impugned order, the applicant filed an appeal before the appellate authority vide Annexure-5. That was not disposed of and the applicant was forced to approach the Tribunal in O.A.No.285 of 1993 which was disposed of in order dated 31.5.1993 giving a direction to Director, Postal Services to dispose of the appeal within a period of thirty days. Liberty was given to the petitioner to approach the Tribunal in case he was aggrieved by the order passed on his appeal. Thus the appeal having been rejected in the order at Annexure-5, the applicant has approached the Tribunal with the aforesaid prayer.

3. The respondents in their counter have submitted that while the petitioner was working as E.D.B.P.M., Chulifunka EDBO, charges were drawn up against him. The petitioner denied the charges and desired to be heard in person. Accordingly, the inquiring officer and presenting officer were appointed. The petitioner also nominated an assisting Government servant. The enquiry was held strictly in accordance with rules and the inquiring officer submitted his report holding all the charges as

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proved. Copy of the enquiry report at Annexure-R/5 was given to the petitioner to submit his representation. Accordingly, the petitioner submitted a representation vide Annexure-R/6. After considering his representation, the impugned order at Annexure-4 was passed removing the petitioner from service. On receipt of the order of the Tribunal in O.A.No.285 of 1993, the appellate authority by his order at Annexure-7 rejected the appeal of the petitioner. The respondents have stated that Sub-Divisional Inspector, Postal, Titilagarh, had no personal grudge against the petitioner. The petitioner's service was not satisfactory because in the past he was instructed on several occasions to provide a house for the Post Office and to hand over Money Orders for payment to payees through the E.D.D.A., but he did not improve his conduct. The respondents have stated that the petitioner had duly inspected the listed documents. He was also allowed to cross-examine the witnesses and all principles of natural justice were observed during enquiry. The respondents have submitted that the enquiry has been properly held and the charges have been correctly held proved against the petitioner. On the above grounds, the respondents have opposed the prayer of the applicant.

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4. The applicant has filed a rejoinder in which he has contested the assertion in the counter that he was asked on several occasions to provide a house for the Post Office and to hand over Money Orders for prompt payments to the payees through the E.D.D.A.. Besides, he has reiterated his allegation that the

Sub-Divisional Inspector, Postal, Titilagarh, was biased against him and the principles of natural justice were not followed during the enquiry. Besides, he has stated that punishment imposed is disproportionate to the lapses held to have been proved.

5. We have heard Shri B.S.Tripathy, the learned lawyer for the petitioner and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing on behalf of the respondents, and have also perused the records. The learned lawyer for the petitioner was given time till 26.3.1998, at his instance, to file written submission, but no written submission has been filed.

6. The first point urged by the petitioner is that the Sub-Divisional Inspector, Postal, was biased against him. Besides this bare assertion, the petitioner has not mentioned anything in support of this allegation. The respondents have denied this. The petitioner has also not made the Sub-Divisional Inspector, Postal, Titilagarh, a respondent in this case. In view of this, we find no ground for holding that the disciplinary proceeding was initiated on account of the bias of the Sub-Divisional Inspector, Postal, Titilagarh, against the petitioner.

7. The second ground urged by the learned lawyer for the petitioner is that the necessary documents were not supplied to the applicant. We find from the copy of the ordersheet dated 18.6.1992 (Annexure-R/8), which is the first sitting of the enquiry, that there is a mention in the ordersheet that the

charged official perused all the listed documents and took xerox copy of the same with the help of his assisting Government servant. It is also mentioned that the charged official was directed to produce list of additional documents and witnesses, if any, to defend his case within a fortnight. In ordersheet no.2, dated 6.8.1992 it has been recorded that the petitioner desired production of one document in support of his defence and this is "Non-availability Certificate" from the payee in respect of Golbazar, Sambalpur, M.O.No.974 dated 12.7.1991 for Rs.50/- payable to Ghasiram Sahoo, Kundabutula P.O., Chulifunka B.O. Accordingly, the inquiring officer in his order dated 6.8.1992 allowed the request and required the Superintendent of Post Offices, Bolangir, to produce the documents. The inquiring officer has noted in his report that the petitioner had stated that this document would be available in Accounts Office of Bunganmura S.O. But S.P.M., Bunganmura in his letter dated 7.9.1992 intimated that no such certificate was available with him. The inquiring officer has noted that accordingly this certificate could not be produced. From the above, it is clear that all the documents asked for by the applicant were supplied to him. He also took xerox copies of the documents. He called for one document from a particular office where the document was not available and hence it could not be produced. In view of the above, his contention that the necessary documents were not supplied to him is held to be without any merit and is rejected.

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8. The third point submitted by the learned counsel for the petitioner is that during the enquiry, adequate opportunity was not given to the applicant. We find from the ordersheet of the inquiring officer that the petitioner was allowed to cross-examine all the prosecution witnesses. He was also given opportunity to produce defence witnesses, but he declined to examine any witness on his behalf. In view of this, the contention that the petitioner was not given opportunity to prove his innocence vis-a-vis the charges is held to be without any merit and is rejected.

9. The last point urged by the learned lawyer for the petitioner is that the inquiring officer has looked into the records and the evidence in a perfunctory manner and his finding holding the charges proved cannot be sustained and is liable to be set aside. The well settled position of law is that in respect of a departmental proceeding the Tribunal does not act as an appellate authority and cannot examine the evidence and come to a different finding and substitute its findings in place of the findings arrived at by the inquiring officer and the disciplinary authority. Even then we have looked into the charges, the explanation and the report of the inquiring officer. Four charges were framed against the applicant. The first charge is that there was shortage of office cash to the tune of Rs.100.50 at the time of verification of cash and stamps by the S.D.I.(P), Titilagarh on

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20.9.1991. The applicant in his explanation at Annexure-2 submitted that there was no shortage of cash. The key of the box was with his wife and she returned home a little late and therefore, he could not produce the cash immediately. We have gone through the report of the inquiring officer. The inquiring officer noted that cash verification was done between 10.00 A.M. and 11.00 A.M. in the morning and the applicant was given time till 3.00 P.M. to make good the cash. His house is on the other side of the road and it could not have taken such a long time to make good the shortage. But by 3.00 O'clock in the afternoon the shortage of cash was not made good and the memo was accordingly drawn up showing shortage of cash and this was also signed by the applicant. According to the Branch Office Account Book, the closing balance of cash and stamps account was Rs.315.30. But actual amount of cash and stamps found was Rs.214.80. The applicant's plea that the Inspector forgot to take into account one hundred rupee note which was there has been disbelieved by the inquiring officer. The Inspector has also noted that the charged official made good the cash shortage at 5.00 P.M., but by that time shortage has been shown after giving him time till 3.00 P.M. to make good the shortage. The inquiring officer has elaborately discussed all the points made by the applicant with regard to this charge and has also considered the evidence of witnesses and all the documents. We find nothing wrong in his finding that there was

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actually shortage of cash at the time of verification, which was made good by 5.00 P.M. that day.

10. The second charge against the applicant was that he received Hatkhola VPP No.30409 dated 11.9.1991 for Rs.47/- addressed to Gopal Behera who happened to be his son. This VPP was received on 18.9.1991 and was shown delivered on 19.9.1991. But the article was kept in deposit till the date of inspection on 20.9.1991 and the amount of Rs.50/- said to have been realised was not taken into account. The inquiring officer has discussed this charge quite elaborately. From the depositions of witnesses, it was found that on the date of inspection on 20.9.1991 it was seen that only the wrapper of VPP article was kept in the Branch Office and the article was delivered to Gopal Behera, the son of the applicant, but the amount of Rs.50/- realised for the article had not been taken into account on 19.9.1991. This was also not shown as part of office cash and stamp balance on 20.9.1991. Prosecution witness no.1 has indicated that the amount of Rs.50/- being the value of the article and the commission was realised from the applicant on 20.9.1991 as the article was not available with the charged official in the Post Office but only the wrapper was available. The recipient of the VPP article was also examined. The applicant took the stand that the VPP article was actually delivered on 19.9.1991 and the amount was also realised, but it was beyond office hours and therefore, the amount was not taken into account. The inquiring officer after elaborate discussion of

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the evidence, has come to the finding that even though on record it was shown that the VPP article was delivered on 19.9.1991, actually it was delivered on 20.9.1991 and the amount shown to have been realised on 19.9.1991 has also not been included in the Branch Office account on 19.9.1991. In view of this, the inquiring officer has held this charge to have been proved. Here also the inquiring officer's finding is fully based on evidence and he has analysed all the aspects of the matter and it is not possible to hold that he has done the enquiry in a perfunctory manner.

11. The third charge is that the petitioner did not hand over Sambalpur M.O.No.974 dated 12.7.1991 for Rs.50/- during the period from 15.7.1991 to 19.7.1991 to E.D.D.A. for payment to the payee even though there was cash with him for payment during the period. The E.D.D.A. has deposed that the M.O. in question was not made over to him on 15.7.1991. The Money Order was given to him only on 19.7.1991 on which day it was paid. The petitioner took the stand that the payee Ghasiram Sahoo of village Kundabutula had requested him orally to keep the Money Order as he would be absent from the village for a few days and would return on Friday. Accordingly, the petitioner did not hand over the Money Order and cash to the E.D.D.A. from 15.7.1991 to 19.7.1991 for making payment to the payee. The inquiring officer has held that

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there is no evidence on record that the payee had requested the applicant to keep the Money Order without delivering it to him. It was the duty of the applicant to produce the payee and have him examined, but he has not done so. He has, on the contrary, declined to examine any defence witness. In view of this, the inquiring officer has rejected his explanation and held the charge to have been proved.

12. The last charge is that the applicant did not provide suitable accommodation for functioning of the Branch Office and furnished false information that he had already provided suitable accommodation. According to their condition of appointment, E.D.B.P.Ms. are required to provide rent free accommodation in the village for holding the post office. The evidence on record shows in this case that the applicant had fixed a signboard in a room, but that room was not used for Post Office as that portion belongs to another brother of the applicant. The evidence on record also proves that the applicant never worked in that room. The witnesses also proved that generally inspections and visits were done in the verandah of the temple which is on the other side of the road where records were brought from the house of the applicant for verification. While discussing charge no.1 the inquiring officer has also noted that during the inspection of the Inspector on 20.9.1991 the records were brought to the verandah of the temple on the other side of the road and inspection was done there. From this it is clear that the applicant did not provide accommodation

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for the Post Office. This charge has also been rightly proved against the applicant.

13. In view of our above discussion, we hold that the charges have been rightly proved against the applicant and there is no reason for us to interfere with the findings of the inquiring officer and the disciplinary authority or upset the findings on the ground that they are based on no evidence. This contention of the applicant also fails and is rejected.

14. As regards the question regarding quantum of punishment, it is submitted by the learned lawyer for the petitioner that the amounts involved in this case are very small amounts. All the three items are below Rs.100/- and the punishment imposed on the applicant is disproportionate to the charges held to have been proved against him. This is primarily a matter for the disciplinary authority. But in consideration of series of lapses held to have been proved against the applicant, particularly the fourth charge that he did not provide accommodation for the Branch Office which has also been held proved against him, we do not think that the order of removal from service is unjustified.

15. In the result, therefore, the application fails and is rejected but, under the circumstances, without any order as

S.K. Agrawal
to costs.
(S.K.AGRAWAL)
7/4/98
MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
7/4/98
VICE-CHAIRMAN