

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 618 OF 1993.
Cuttack, this the 20th day of June, 2000.

SWKESWAR PATI.

....

APPLICANT.

-Versus-

UNION OF INDIA & ORS.

....

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*

J. S. Dhalwal
(J. S. DHALI WAL)
MEMBER (JUDICIAL)



Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 618 OF 1993.
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C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D

THE HONOURABLE MR. J. S. DHALIWAL, MEMBER (JUDL.).

..

SWKESWAR PATI,
Aged about 47 years,
Son of late Paramananda Pati,
At/Po:Kandorkella, via. :Purunapani,
Dist:Sundergarh, Ex-EDBFM,
Kandarkela BO.

..... APPLICANT.

By legal practitioner: M/s.A.Deo,B.S.Tripathy,Papanda,Advocate.

- VRS. -

1. Union of India represented by its
Secretary, Department of Posts,
Dak Bhawan, New Delhi.

2. Chief Postmaster General, Orissa Circle,
At/Po:Bhubaneswar, Dist:Khurda.

3. Director of Postal Services,
Office of the Postmaster General,
Sambalpur, At/Po/Dist:Sambalpur.

4. Senior Superintendent of Post Offices,
Sundergarh Division,
At/Po/Dist.Sundergarh.

.... RESPONDENTS.

By legal practitioner: Mr.A.K.Bose, Senior 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, the applicant has prayed for quashing the order dated 12.3.1986 placing him under put off duty, the order dated 8.1.1988, Annexure-2, removing him from service and the order dated 16.12.1993, Annexure-6 of the Appellate Authority rejecting his appeal. He has also prayed for

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reinstatement with full backwages.

2. Applicant's case is that while he was serving as Extra Departmental Branch Postmaster, Kanderkela Branch Post Office, in order at Annexure-1, he was put off duty and Departmental proceedings under Rule-8 were initiated against him. On the applicant denying the charges, enquiry was conducted. Applicant has stated that the Inquiring Officer did not afford him adequate opportunity and did not provide him relevant documents and concluded the enquiry holding him guilty of the charges. Thereafter, the Disciplinary Authority in his order at Annexure-2, removed the applicant from service without supplying a copy of the enquiry report to him. His appeal against the order of punishment was also rejected in order dated 12.12.1993 at Annexure-6. Applicant has stated that the Senior Superintendent of Post Offices, Sundergarh, Division, Sundergarh, Respondent No. 4 filed a F.I.R. alleging misappropriation and on the basis of which Departmental proceedings were initiated. Ultimately the investigating Agency submitted final report because of insufficient evidence and the final report was also accepted by the learned S.D.J.M. In the context of the above facts, the applicant has come up with the prayers referred to earlier.



S. J. Sam

3. Respondents in their counter have opposed the prayers of applicant. They have stated that while the applicant was working as E.D.B.P.M., Kanderkela Branch Post Office, the Asst. Suptd. of Post Offices, Rourkela paid a visit to Kanderkela Branch Post office for annual inspection on 27.2.1986 and shortage of Government cash and stamp balance to the extent of Rs. 630.50ps. were found. The shortage was made good by the applicant on the date of inspection on 27-2-1986. The Inspecting Officer found further misappropriation in Savings

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Bank Account and thereafter, the applicant was put off duty. The work of the applicant was verified and it came to the light that he had committed permanent misappropriation of Rs. 2770/50Ps. in eleven different Savings Bank Pass Books and temporary misappropriation of Rs. 476/- in seven teen different Savings Bank accounts during the period from 7.9.1985 to 2.1.1986. Accordingly departmental proceedings were initiated against him. It is stated that the Inquiring Officer provided adequate opportunity to the applicant and all relevant documents were provided to him. Applicant pleaded himself guilty and did not wish to defend during the enquiry and admitted the charges on 1.12.1987. Taking that into account, the impugned order of punishment was passed and the appeal was also rejected. Respondents have stated that there is no violation of principle of natural justice during the enquiry. As regards the FIR, Respondents have stated that the learned SDJM, Panposh, accepted the final report of the police stating that the case is true but evidence is insufficient. Respondents have stated that the applicant was not found not guilty of the charges mentioned in the FIR. They have further stated that against the order of punishment, applicant preferred an appeal on 15.2.1983 which was forwarded to the Appellate Authority on 17.3.1983. Another appeal was preferred by the applicant on 20.8.1992 which was rejected by the Appellate Authority in order at Annexure-6. On the above grounds, the Respondents have opposed the prayer of applicant.

J Som

4. Respondents have filed an additional counter in which it has been mentioned that the punishment awarded is proportionate to the gravity of the charges and the Tribunal has no authority to interfere on the question of punishment. Applicant in his rejoinder has stated that he has not been given adequate time

to submit his explanation. He has also stated that under the pressure of the Presenting Officer and the Senior Superintendent of Post Offices, he admitted the charges and deposited the amount. He has stated that he had deposited ^{more than} the alleged amount of misappropriation. On the above grounds, the applicant has reiterated his prayer made in the original Application.

5. We have heard Mr. A. Deo, learned counsel for the Applicant and Mr. A. K. Bose, learned Senior Standing Counsel appearing for the Respondents and have also perused the records.

6. Before going into various submissions made by the learned counsel for the petitioner and learned Senior Standing Counsel appearing for the Respondents, it has to be noted that the scope of interference of the Tribunal in a Departmental proceedings is somewhat limited. Law is well settled that the Tribunal can not assess the evidence and come to a findings different from what has been arrived at by the I.O. and the Disciplinary Authority. The Tribunal can only interfere if reasonable opportunity has not been given to the charged official or if the principle of natural justice has been violation or if the findings are based on no evidence or are patently perverse. The submission made by learned counsel for the petitioner has to be examined in this context.

7. It has been submitted by learned counsel for the applicant that the applicant was not supplied with necessary documents. Respondents in their counter have stated that copy of all relevant documents were supplied to the applicant. Besides the above bald assertion, the applicant has not mentioned as to what specific document was asked for by him and was denied. In view of this, it is not possible to accept the above



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contention of the learned counsel for the applicant. The second contention of learned counsel for the applicant is that the report of the enquiry was supplied to him along with the final order of removal. Because of this, applicant did not get any chance to represent against the findings of the Inquiring Officer and thereby principle of natural justice has been violated. The requirement that a copy of the enquiry report has to be supplied to the delinquent officer to enable him to file a representation against the findings of the I.O. was laid down by the Hon'ble Supreme Court in the case of UNION OF INDIA VRS. MOHD. RAMZAN KHAN - reported in AIR 1991 SC 471 and it was laid down that this requirement will be prospective in nature. Ramzan Khan's case was decided on 20.11.90 .

In this case, order of punishment has been issued prior to that date i.e. on 8.1.1983. Therefore, the order of punishment can not be assailed on the ground of non-supply of a copy of the enquiry report. Moreover, it is admitted position between the parties that the applicant admitted the charges during the enquiry and on the basis of his admission, charges were held proved. In view of this, it can not be said that nonsupply of copy of the report of the enquiry has prejudiced the applicant in any way.

8. The next point urged by the learned counsel for the applicant is that he received the charges on 7.10.1987. He represented on 15.10.1987 to allow fifteen days time to him for submission of his explanation. This representation was allowed by the departmental Authorities in letter dated 19.10.87 which was received by the applicant on 23.10.87. He submitted his explanation on 24.10.1987 and because of this it is submitted by the applicant in para-4 of his rejoinder that no reasonable time was given to him. As the applicant's prayer for giving him fifteen



S. J. Sam

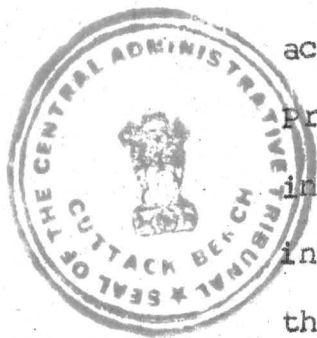
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days time to submit his explanation was allowed by the Respondents and the concerned order was received by the applicant on 23.10.1987 and he submitted his explanation only after that date i.e. on 24.10.1987. It can not be said that reasonable opportunity was not given to him. This contention is therefore, rejected.

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9. It is further submitted that as the FIR filed against him on the charge of misappropriation did not result any final submission of a chargesheet, in the Departmental proceedings he should not have been found guilty. This contention is without any merit because the scope of a criminal case and the Departmental proceedings are quite different and notwithstanding acquittal in a criminal case the Departmental/Disciplinary Proceedings can be maintained and a person can be found guilty in a Departmental Proceedings. In this case, the Police after investigation found that the case is true but recorded that the evidence was insufficient. Submission of final report by the police would not, therefore, in any way invalidate the findings of the I.O. and the Disciplinary Authority in the disciplinary proceedings. The last point urged is that under pressure of the Presenting Officer and the Supdt. of Post Offices, applicant admitted the charges, as he was given assurance that if he admits the charges, he will be retained in service. It is difficult to accept the above contention of the applicant because on a perusal of the charges as they appeared in the order of the Disciplinary Authority, we find that the charges against the applicant is that on different accounts he accepted money from the different savings bank accounts' holders but did not take the amount in the Branch Office account and the Branch office Journals. It is difficult to conceive that if the applicant had


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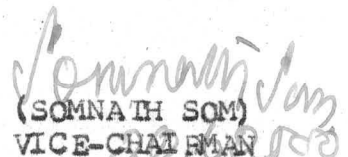
not actually committed the above illegalities he would admit his lapses only for the purpose of being retained in service. This contention is also held to be without any merit.

10. As regards the punishment on a perusal of the charges in this case, we do not feel that the punishment is disproportionate to the lapses proved. This contention is also held to be without any merit.

11. In the result, therefore, we hold that the application is without any merit and the same is rejected but in the circumstances without any costs.


(J. S. DHALI WAL)
MEMBER (JUDICIAL)




(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.