

6

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 688 OF 1993
Cuttack, this the 8th day of May, 2001

Sunamani Nayak

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
8.5.2001

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CORAM:

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

.....
Sunamani Nayak, aged about 40 years,
son of Bhikari Charan Nayak
At/PO-Kamgarh, Dist.Cuttack Applicant

Advocates for applicant - M/s K.C.Kanungo
B.Rout
S.Behera

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-Khurda.
3. Director of Postal Services, Sambalpur Region,
At/PO/Dist.Sambalpur.
4. Superintendent of Post Offices, Cuttack North
Division, At/PO/Dist.Cuttack

..... Respondents

Advocate for respondents - Mr.Ashok Mishra
Sr.Panel Counsel

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

Som.
In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 3.5.1993 (Annexure-5) removing him from the post of Extra-Departmental Branch Post Master (EDBPM), Kamgarh. He has also prayed for reinstatement in service with full back wages.

2. The case of the applicant is that while he was working as EDBPM, Kamgarh B.O., chargesheet was issued against him in memo dated 29.8.1991 (Annexure-1). The applicant has stated in paragraph 4(d) of the O.A.

that he submitted his explanation dated 18.4.1992 which is at Annexure-2. But Annexure-2 to the O.A. is not his explanation but the written brief submitted to the inquiring officer by the Presenting Officer. From the report of the inquiring officer, which is at Annexure-3, it appears that the applicant denied the charges and wanted to be heard in person. After receipt of the enquiry report, the applicant submitted a representation which is at Annexure-4. Taking into account the explanation and other papers the disciplinary authority in his impugned order dated 3.5.1993 accepted the findings of the inquiring officer holding the five charges as proved and imposed upon the applicant the punishment of removal from service. The applicant has stated that the impugned order of punishment is illegal as all the relevant documents and witnesses have not been examined and he has not been given adequate opportunity to cross-examine the witnesses. It is stated that the inquiring officer's findings are not based on correct assessment of evidence and the findings of the disciplinary authority are outcome of non-consideration of material aspects. On the above grounds, the applicant has come up in this petition with the prayers referred to earlier.

3. Respondents' case in the counter is that the applicant while working as EDBPM, Kampagarh, was involved in misappropriation of a number of S.B.deposits, Money Orders and Recurring Deposit cases and accordingly chargesheet was issued to him. It is stated that all reasonable opportunity was given to the applicant. The inquiring officer in his report dated 30.6.1992 held all the charges as proved. The respondents have stated that no

J. Som.

illegality has been committed in the process of enquiry and the impugned order has been rightly passed.

4. We have heard Shri K.C.Kanungo, the learned counsel for the petitioner and Shri Ashok Mishra, the learned Senior Panel Counsel for the respondents and have perused the records. Written note of submission filed by the learned counsel for the petitioner has also been taken note of.

5. Before going into the various submissions made by the learned counsel for the petitioner, it is to be noted that the settled position of law is that in departmental proceedings the Tribunal does not act as an appellate authority. The Tribunal can interfere only if reasonable opportunity has not been afforded to the charged official in course of the disciplinary proceedings and if there has been denial of natural justice. Interference is also possible 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 inquiring officer and the disciplinary authority. The submissions of the learned counsel for the applicant will have to be considered in the background of the above well settled position of law.

6. At this stage it is necessary to note the five charges against the applicant. The first charge is that the applicant accepted an amount of Rs.367/- on 22.12.1989 from one Akura Sahoo of Balikuda for issuing two Money Orders payable to Prasadi Paida and Bata Biswal. He granted B.O.Receipt Nos.87 and 88 on 22.12.1989 but did not account for the same in the Branch Office Account on

10

the same day. The second charge is that he accepted an amount of Rs.70.50 on 29.12.1989 from one Achutananda Sahoo for issuing a Money Order and granted B.O.Receipt No.93 dated 29.12.1989 but did not credit the amount to the Branch Office account on the same day nor did he show the issue of money order in any of the branch office records. The third charge is that he accepted a sum of Rs.735/- on 18.12.1989 from one Renuka Sahoo for issuing one money order and granted Branch Office Receipt No. 80 dated 18.12.1989 but did not credit the amount in the branch office account on 18.12.1989 nor did he show the issue of money order in the branch office record. Under charge no.4 it is stated that the applicant, while working as EDBPM, did not account for deposit of Rs.800/- entrusted to him on 3.6.1989 by one Kulamani Tripathy for deposit in the S.B.Account No.1201445 standing in the name of Mitali Madhumita. The fifth charge is that he did not account for Rs.600/- entrusted to him on 13.1.1990 for deposit in R.D.Pass Book Account No. 4753 standing in the name of Sibsaya Mohapatra, daughter of S.B.Mohapatra.

7. The applicant has stated that all the relevant documents and the witnesses have not been examined and as the burden of proof lies on the prosecution, non-examination of material witnesses and non-production of material documents have resulted in denial of reasonable opportunity to him. It is also stated that as against charge no.5, operator of RD Account No.4753 was not examined and therefore the applicant was not able to cross-examine him and entrustment of money was also not proved. The applicant has not mentioned in his OA as to which documents were not exhibited and thereby he was prejudiced. In view of the above, this stand of

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the applicant cannot be accepted. Regarding his contention about non-examination of operator of RD Account No.4753, this will be discussed while considering the charges. The five charges are being considered only for the purpose of finding out if the findings of the inquiring officer and the disciplinary authority are based on no evidence or are patently pervers.

8. As regards charge no.1, Akura Sahoo, remitter of the money order, deposed in his statement before the inquiring officer that on 22.12.1989 he had booked two money orders but he had not paid the full amount. He deposited the amount to be remitted and the M.O. commission amounting to Rs.7/- was deposited by him seven days later and the applicant accounted for the amounts on 30.12.1989 and handed over the receipts to him on that day. The applicant has taken the stand that the money order amounts were paid to him late and without the money order commission, which was paid on 30.12.1989, he had made out the receipts on 22.12.1989. But he handed over the receipts to the remitter on 30.12.1989 and the fact was also mentioned by him in the error book. He has also pointed out rightly that the remitter of the money orders has made no complaint about delay in payment of the money orders. The inquiring officer in his report has relied on the statement given by the remitter during preliminary enquiry. He has also noted that the date stamp of 22.12.1989 in the two receipts kept in the Branch Office was corrected to 30.12.1989, but the remitter's copies were not corrected. As regards the applicant's statement that this fact was mentioned in the error book, the inquiring officer has held that the

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applicant failed to bring the error book to the enquiry by placing requisition for the error book as a defence document. On that basis, the inquiring officer has held that the charge has been proved. In the light of the facts mentioned above, even though it cannot be said that the finding of the inquiring officer is based on no evidence or is patently perverse with regard to this charge, it is to be noted that the remitter's statement during the enquiry has simply been ignored by the inquiring officer in view of his earlier statement in course of the preliminary enquiry. Secondly, even though the applicant did not requisition the error book, it was always open for the inquiring officer to check up if this fact had been mentioned by the applicant in the error book. Had this been mentioned in the error book by the applicant, then obviously it must mean that the applicant is only guilty of a procedural irregularity in making out the receipt without collecting the full amount.

9. Under the second article of charge it has been alleged that the applicant accepted an amount of Rs.70.50 on 29.12.1989 from Achutananda Sahoo and granted him Branch Office receipt on the same day but did not credit the amount in the Branch Office account on the same day. In the charge itself it has not been mentioned that the amount was credited by the applicant in the Branch Office Account on the next day, i.e., 30.12.1989. The applicant's stand is that this amount was received by him at late hours on 29.12.1989 and he granted the receipt on that day, recorded the fault in the error book and took this amount in the Branch Office account on the next day. Thus, in respect of this charge, the lapse of

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the applicant is with regard to not crediting the amount in the Branch Office account on the same day, i.e., 29.12.1989. But admittedly he credited the same on the next day. Here also the inquiring officer has not checked up whether this fact has been mentioned in the error book. But the fact is that the applicant accepted the money on 29.12.1989, granted the receipt on the same day and took the amount into Branch Office account on the next day. This charge has no doubt been held proved but the extenuating circumstance as urged by the applicant has not been probed by the inquiring officer.

10. The third charge is about acceptance of Rs.735/- on 18.12.1989 for issuing a money order and granting receipt dated 18.12.1989 but not taking that amount into account on the same day. In the charge it has not been mentioned that the applicant took the amount into Branch Office account on 21.12.1989. The remitter of the money order was examined as a prosecution witness and she deposed that she paid Rs.735/- on two dates. She paid Rs.720/- on 18.12.1989 and the commission was paid after two days and the receipt was granted to her on the day she paid the balance amount. Here also it is seen that the amount was credited after three days. But from the charge it gives an impression as if the amount was not credited into Branch Office account at all. The inquiring officer has gone by the statement of S.D.I. P, Kendrapara and ignored the evidence of the remitter. Here also the applicant's stand that Rs.15/- less was paid on the first day and he made an entry to that effect in the error book has not been probed into further by the inquiring

officer. But the fact of the matter is that the lapse of the applicant for making out the receipt for the whole amount, without getting the full amount including Rs.15/- which was paid two days later, has been rightly held as proved.

11. The fourth charge is about non-accounting for the deposit of Rs.800/- entrusted to him on 3.6.1989 by one Kulamani Tripathy for deposit in S.B.Account No.1201445 standing in the name of Mitali Madhumita. The inquiring officer has noted that Kulamani Tripathy, the operator of the minor's S.B.Account, deposed that he presented cash of Rs.800/- along with the pay-in-slip on 3.6.1989 and the applicant accepted the cash and made entry on 3.6.1989 in the Pass Book, but this was actually accounted for on 22.7.1989 after a delay of more than one month. The applicant has taken the stand that the operator of the S.B.Account had deposited only Rs.700/- on 3.6.1989 and gave the balance amount of Rs.100/- on 22.7.1989. But he has not been able to produce any evidence or document in support of the stand. On the other hand, the operator of the S.B.Account has categorically stated that he had deposited the entire amount of Rs.800/- on 3.6.1989. In view of this, it cannot be said that there is any infirmity in the finding of the inquiring officer with regard to the fourth charge.

12. The fifth charge is that the applicant accepted Rs.600/- from one S.B.Mohapatra, operator of minor's R.D.Account No.4753 standing in the name of Sibasaya Mohapatra. The charge is that he received this amount on 13.1.1990. This deposit was for

the months of August to December 1989 and January 1990. The applicant has taken the stand that the money was received by him only on 18.1.1990 and he had also taken that into account on the same day, i.e., 18.1.1990. But by mistake he put the date stamp of 13.1.1990 and after becoming aware of the mistake, corrected the date from "13" to "18". As the operator of the account S.B. Mohapatra was not examined either during the preliminary investigation or during the enquiry, the finding of the inquiring officer that the amount was received on 13.1.1990 is based solely on the date stamp of 13.1.1990 which was corrected later to 18.1.1990. IN view of this, it cannot be held that the amount was entrusted to the applicant on 13.1.1990 merely on the basis of the date stamp of 13.1.1990 for which the applicant has given reasonable explanation. In view of this, it must be held that the entrustment of the above amount to the applicant on 13.1.1990 has not been proved and this finding is based on no evidence.

13. It has been submitted by the learned counsel for the petitioner that even granting for the sake of argument that the charges have been rightly held proved, the punishment awarded is disproportionate to the lapses of the petitioner. It has been submitted that there have been no misappropriation of funds and no loss to the Department. In respect of the first four charges the remitters and the account-holders have made no complaint and in view of this, the punishment of removal from service is highly disproportionate to the lapses alleged against the applicant. It has been further

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submitted that prior to 16.5.1991 the only punishment which could be imposed on an ED Agent for any sort of lapse is removal or dismissal from service. But this was amended and under Rule 7 of ED Agents (Conduct & service) Rules, 1964, lesser punishment can be imposed. This amendment came into force on 22.4.1993 and the punishment has been imposed on the applicant in the order dated 3.5.1993 as has been noted in annexure-5 and admitted by the respondents in paragraph 3(a) of the counter. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of B.C. Chaturvedi v. Union of India and another, AIR 1996 SC 484, in which their Lordships have held that the Tribunal while exercising power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. But if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

S. Jom. On a reference to Rule 7 of the EDAs (Conduct & Service) Rules, 1964, we find that prior to 16.5.1991, besides dismissal and removal from service, there was also provision for awarding punishment of recovery from allowance of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders. As in the instant case there has not been any

pecuniary loss caused to the Government, the only two punishments were removal and dismissal from service. But this situation underwent a change with the amendment of Rule 7 with effect from 22.4.1993 providing for three other punishments, besides recovery of pecuniary loss, removal and dismissal from service. The learned counsel for the petitioner has urged that in the case of Poonam Chand v. Union of India and others, (1996) 34 ATC 30, decided by Jodhpur Bench of the Tribunal, it was held that on the charge of unauthorised absence the penalty of removal from service imposed was harsh and disproportionate because there was no proof that because of the absence there was dislocation of work. In the case of Bishen Singh and others v. State of Punjab and others, 1997 SCC (L&S) 112, in which the members of the police force led a procession and went to Superintendent of Police to ventilate their grievances violating the prohibitory order, it was held that in the facts and circumstances of the case, the extreme penalty of dismissal was unwarranted and the Department was directed to impose the penalty of stoppage of one increment without cumulative effect. The learned counsel for the petitioner has submitted that in these cases punishment of removal from service was modified by Courts even though the applicants in those cases violated departmental rules in one case and in another case, violated the prohibitory order. Similarly, in the case of Pareswar Tripathy v. Union of India and others, 89(2000) CLT 274, decided by the Hon'ble High Court of Orissa,

Their Lordships have held that overstayal of leave for 207 days due to illness would not justify removal from service. The Hon'ble High Court noted that the ultimate punishment of removal from service is not warranted as the petitioner in that case was unable to attend to his duties and his past records also do not indicate his insincerity in discharging his duties at any point of time. It is submitted by the learned counsel for the petitioner that the charges alleged against the applicant are the only instance of lapses on his part and therefore, for his first offence the ultimate punishment of removal from service should not have been imposed. In the case of Om Prakash v. Union of India and others, (1997) 36 ATC 635, which is somewhat similar to the facts of the present case, the Chandigarh Bench of the Tribunal held that in the facts and circumstances of that case the punishment of removal from service is too harsh and unwarranted. In that case the applicant was an EDBPM from 1979 like the applicant in the present case and the lapse proved was that he delayed payment of two Money Orders to one Smt. Manjit Kaur. There was also shortage of cash in the Post Office. Taking into account the fact that the applicant was under severe strain because his daughter was suffering from fatal diseases, the Tribunal noted that though the applicant had actually delayed payment of the Money Orders, but after a very short delay the Money Orders were paid. The Tribunal in that case felt that the extenuating circumstances deserve to be noted and ordered that the ends of justice would be met if the applicant is brought down to the level of ED Packer/Mail Man. In the instant case, we have already noted that the finding in respect of the fifth charge is based on no evidence and

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in respect of charge no.2 the delay if at all is only for one day. In respect of two other charges the applicant has given reasonable explanation and his explanation has not been properly looked into. His statement that he has mentioned certain facts in respect of these charges in the error book has been ignored even though it was possible for the inquiring officer to call for the error book and see if the applicant did make appropriate entries in the error book. In consideration of all these extenuating circumstances, we feel that the punishment of removal from service is grossly disproportionate. We, therefore, quash the punishment order dated 3.5.1993 (Annexure-5) and direct the disciplinary authority to impose any other punishment, besides dismissal or removal from service, on the applicant. This action should be taken by the disciplinary authority within a period of 90 (ninety) days from the date of receipt of copy of this order.

14. In the result, therefore, the Original Application is disposed of in terms of observation and direction above. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
8.5.2001

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