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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 691 OF 1993
Cuttack, this the 30th day of August, 1999

Sri Labanya Patra 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 *30.8.99*

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 691 OF 1993
Cuttack, this the 30th day of August, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Sri Labanya Patra, aged about 42 years,
son of late Antaryami Patra, Ex-E.D.B.P.M.,
Godapur, At/PO-Godapur, Via-Bamunigaon, District-Phulbani,
PIN-762 021 Applicant

Advocates for applicant - M/s R.N.Naik
A.Deo
B.S.Tripathy
P.Panda
D.K.Sahoo.

Vrs.

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

Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R (ORAL)

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of

Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 22.1.1993 of the disciplinary authority (Annexure-2) removing the applicant from service and the order dated 17.9.1993 (Annexure-4) of the appellate authority rejecting the appeal of the applicant. The petitioner has also prayed for a direction to the respondents to reinstate him within a stipulated period with full back wages from the date of put off duty till the date of reinstatement.

2. The applicant's case is that while he was working as EDBPM, Godapur Post Office, charges were issued against him under Rule 8 of Posts & Telegraphs Extra-Departmental Agents (Conduct & Service) Rules, 1964 (hereinafter referred to as "ED Agents Conduct & Service Rules") in memo dated 7.4.1992 at Annexure-1. He was also put off duty and the only article of charge was that while working as EDBPM, Godapur B.O., he accepted a sum of Rs.870/- from one K.R.Senapati on 8.11.1991 for depositing the same in his S.B.Account No. 1520806. He returned the Pass Book to the depositor after making necessary entry in the Pass Book. He also made necessary entry in the Branch Office S.B.Journal but did not take this amount into Branch Office Account on 8.11.1991. During inspection of the Branch Office by Superintendent of Post Offices, Phulbani, on 22.11.1991 this non-deposit was detected and the applicant credited Rs.870/- under the head: Unclassified Receipt (U.C.R.) at Godapur B.O. on 22.11.1991. The charge was that the applicant misappropriated Government money from 8.11.1991 to 22.11.1991. The applicant submitted his explanation denying the charge. Inquiring officer and presenting officer were appointed. The inquiring officer in his

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report held that it is not established that the applicant has misappropriated Government money and therefore the charge is not proved. A copy of the enquiry report was supplied to the applicant and he also filed a representation after getting the enquiry report. The disciplinary authority considered the enquiry report, the other connected documents including the evidence and the representation of the applicant. He differed from the finding of the inquiring officer and held that the charge of misappropriation has been proved against the applicant and in the impugned order at Annexure-2 imposed the punishment of removal from service on the applicant with immediate effect. The appeal of the applicant at Annexure-3 was rejected in order dated 17.9.1993 at Annexure-4. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

3. The respondents have filed counter opposing the prayers of the applicant. In the counter it has been stated that the applicant was put off duty from 22.11.1991 for temporary misappropriation of Government money from 8.11.1991 to 22.11.1991. It is stated that amount was Rs.870/- relating to one S.B.deposit. The respondents have mentioned about issuing of the charge, the report of the inquiring officer, punishment imposed by the disciplinary authority after disagreeing with the finding of the inquiring officer, the appeal made by the petitioner, and the order of the appellate authority. The respondents have stated that the finding of the inquiring officer is not binding on the disciplinary authority who is free to come to a conclusion with regard to the charge different from the conclusion arrived at by the inquiring

officer. It is stated that the disciplinary authority (respondent no.5) has indicated reasons for the disagreement and therefore his finding holding the charge as proved cannot be questioned. On the above grounds, the respondents have opposed the prayers of the applicant.

4. This 1993 matter came up for hearing from the Warning List notified more than a month ago. Today when the matter was called, Shri A.Deo, the learned counsel for the petitioner and his associates were absent nor was any request made on their behalf seeking adjournment. In view of this, it was not possible to drag on this 1993 matter indefinitely where the pleadings have been completed long ago. We have therefore heard Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have perused the records.

5. The admitted position is that in this case the inquiring officer held the charge as not proved against the applicant, but the disciplinary authority disagreed with the finding of the inquiring officer and held the charge as proved. On a query by the Bench regarding non-communication of the reasons for disagreement by the disciplinary authority with the finding of the inquiring officer, Shri A.K.Bose, the learned Senior Standing Counsel for the respondents, made the following submissions. Firstly it was submitted that the applicant did not raise this point in his appeal petition before the appellate authority. Secondly it was urged that this point has also not been raised in this Original Application. It was submitted by the learned Senior Standing Counsel that in view of this, it must be held that the applicant has not been prejudiced by this omission on the part of the disciplinary authority. It

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was also submitted that the disciplinary authority has gone into the evidence adduced during the enquiry and has come to the finding of guilt which he was entitled to do. It was also stated that even though the applicant took this amount of Rs.870/- into Branch Office S.B.Journal, he did not take it into the Branch office Account and the amount must therefore be held to have been with him without taking it into Government Account. On this basis it was urged that the charge of temporary misappropriation has been rightly held proved and therefore the punishment of removal from service has been justly and properly awarded. We have considered the above submissions of the learned Senior Standing Counsel for the respondents carefully. It is well settled position of law that after the inquiring officer submits his report a copy of the enquiry report has to be supplied to the delinquent officer to enable him to file representation against the findings of the inquiring officer in his enquiry report. In the instant case the inquiring officer has held the charge as not proved, but the disciplinary authority differed from the finding of the inquiring officer and held the charge as proved. It is also the well settled position of law that in such cases the reasons for disagreement of the disciplinary authority have to be communicated to the delinquent officer to enable him to make representation against such proposed finding. The Department of Personnel & Training in their Office Memorandum dated 27.11.1995, the gist of which has been printed at page 74 of Swamy's ^{John} Compilation of CCS CCA Rules (24th Edition - 1999) have mentioned that this issue has been considered in consultation with the Ministry of Law and it has been decided that where the

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inquiring authority holds a charge as not proved and the disciplinary authority takes a contrary view, the reasons for such disagreement in brief must be communicated to the charged officer along with the report of inquiry so that the charged officer can make an effective representation. As communication of reasons for disagreement is for the purpose of enabling the applicant to make an effective representation, non-communication of the reasons for such disagreement must be taken to have resulted in denial of reasonable opportunity to the applicant to present his case. In consideration of this, the fact that the applicant has not raised this point either in his appeal petition or in his OA before us cannot cure this defect of denial of reasonable opportunity. We therefore hold that the applicant has been denied reasonable opportunity by the omission of the disciplinary authority in not communicating the reasons for disagreement with the finding of the inquiring officer to the applicant.

6. Coming to the merits of the matter, we note that in this case the applicant accepted the deposit of Rs.870/- on 8.11.1991. He has made the necessary entry in the Pass Book as also in the Branch Office S.B.Journal on the very same day. But he has not taken it into Branch Office Account on 8.11.1991. The fact that he has made necessary entry in the Branch Office S.B.Journal on the very same day would prima facie indicate that he had no mala fide in not taking it into Branch Office Account. If his object was to commit temporary misappropriation, then he would not have taken this amount into the Branch Office S.B.Journal. His lapse in not taking the amount

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into Branch Office account must therefore be held as a mistake. It has been rightly pointed out by the learned Senior Standing Counsel that the fact that the applicant had received Rs.870/- on 8.11.1991 would indicate that this amount was with him from 8.11.1991 to 22.11.1991 when the amount was credited under the head UCR. During this period the amount was not brought into the Government account and therefore the finding that the applicant has temporarily misappropriated this amount cannot be assailed. We have considered the above submission carefully. In consideration of the facts and circumstances of the case, the inquiring officer had held that the charge has not been proved. The applicant's bona fide is also brought out by the fact that he has entered the amount on the very same day in the Branch Office S.B.Journal which is one of the Accounts maintained in the Branch Office. But the fact remains that this amount was with the applicant from 8.11.1991 till 22.11.1991 when this omission of the applicant to take the amount into Branch Office account was detected during visit/inspection of his superior authority and on the very same day he credited the amount as indicated above. For this lapse of the applicant in not taking the amount in the Branch Office account on the very same day and delaying it by 14 days, we feel that the punishment of removal from service is shockingly disproportionate. It is also to be noted that originally the ED Agents Conduct & Service Rules provided for the penalties of recovery, removal from service and dismissal from service. Later on by an amendment dated 16.5.1991 certain other punishments have been provided for. According to Director General, P & T's instructions, three new penalties ^{which} have been

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introduced by the orders dated 16.5.1991 and 22.4.1993 can also be imposed on ED Agent where disciplinary proceedings have been initiated on or after 16.5.1991. In the instant case disciplinary proceeding has been instituted on 7.4.1992 and therefore any of these newly added penalties could also be imposed on the applicant. We however leave it to the disciplinary authority to decide whether some other form of lesser punishment should be imposed on the applicant or not. In case the respondents decide to go ahead with the imposition of some other form of lesser punishment, then the disciplinary authority has to communicate the reasons for his disagreement with the finding of the inquiring officer to the applicant and give him a reasonable opportunity to represent against the reasons for such disagreement and only thereafter and after taking into consideration such representation as the applicant may make, the order of punishment could be passed. If the respondents propose to proceed further in the matter, then the further action in terms of our observation and direction above should be completed within a period of 90 (ninety) days from the date of receipt of copy of this order.

7. In the result, 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)

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(SOMNATH SOM)
30.2.99
VICE-CHAIRMAN