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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 700 OF 1993
Cuttack, this the 15th day of September, 1999

Budhu Bhoi 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)
VICE-CHAIRMAN
15.9.99

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CORAM:

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

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Budhu Bhoi, son of late Pruthiraj Bhoi, Ex-Postman,
Barpalli, Sub-Post Office, resident of Melchamunda,
PO-Melchamunda, District-Sambalpur Applicant

Advocates for applicant - M/s S.C.Ghose
S.Ghose
R.C.Sahoo.

Vrs.

1. Union of India, represented by the Chief P.M.G., Orissa,
Bhubaneswar, District-Khurda.
2. Director of Postal Services, Orissa, Bhubaneswar,
District-Khurda.
3. Senior Superintendent of Post Offices, Sambalpur
Division, At/PO/Dist.Sambalpur.... Respondents

Advocate for respondents - Mr.S.B.Jena,
A.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S.Som.

In this Application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for quashing the order of dismissal passed against
the applicant and to reinstate him in service.

2. The case of the applicant is that while
he was working as Postman in Barpali Sub-Post Office,
departmental proceedings were drawn up against him on the

charge that he was entrusted on 26.2.1985 for making payment of four Money Orders to the payees. He did not make payment to the payees but showed payment in the relevant records and misappropriated the amount. After an enquiry was conducted in which the charge was held proved, the applicant was dismissed from service. His appeal was also rejected. The applicant came up before the Tribunal in OA No.90/90 which was disposed of in order dated 29.4.1992. The order of dismissal was set aside and the case was remanded to the disciplinary authority with a direction to serve a copy of the enquiry report on the applicant, consider his representation and take further action. Accordingly, the applicant submitted his representation on 3.7.1992 and in order dated 4.9.1992 the disciplinary authority passed the order of removal from service. His appeal was also rejected by the appellate authority in order dated 8.7.1993. In the context of the above facts, the applicant has come up with the prayer referred to earlier.

3. Respondents in their counter have stated that in the enquiry the charge was held proved against him. The applicant was given all opportunity to present his case in the enquiry and the first order of dismissal from service was passed against him. The respondents have also mentioned about the order of the Tribunal in OA No.90/90 and have stated that in pursuance of the order, a copy of the enquiry report was served on the applicant and after taking into account his representation, the impugned order of punishment of removal from service was passed and the appeal was also rejected. On the above grounds, the respondents have opposed the prayer of the applicant.

J Som.

4. We have heard Shri S.C.Ghose, the learned counsel for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel for the respondents and have perused the records.

5. The petitioner has mentioned in his OA that in spite of his repeated requests copies of documents and statements of witnesses were not supplied to him. The petitioner has not indicated what documents he asked for. He has also not enclosed copy of any letter showing that he had asked for certain documents. In view of this, it cannot be held that the applicant did ask for certain documents and those documents were relevant and were not supplied to him. This contention of the applicant is therefore held to be without any merit and is rejected.

6. The second ground taken is that in the original proceedings, written arguments were submitted by the prosecution side on 26.9.1986 and the applicant was directed to submit his written arguments on the very next day. This point is also not valid because the original order of dismissal was set aside and the applicant was given an opportunity to file a representation and he did file such representation. He had thus an opportunity to had file a representation presenting all that he/ to say in his written brief earlier. This contention is also held to be without any merit and is rejected.

7. It is submitted by the learned counsel for the petitioner that the applicant has not been given personal hearing and thus his constitutional right has been violated. In the instant case the charge was served on the applicant on 22.2.1986, but he did not submit any explanation against the charge. After the original order of dismissal from service was set aside and he was given opportunity to file a representation, he did not ask for any personal hearing. The disciplinary authority in

Idm.

paragraph 1 of his order dated 4.9.1992 has specifically mentioned that the applicant did not ask for personal hearing so far. In view of this, it cannot be said that not giving him personal hearing has resulted in denial of reasonable opportunity when the applicant himself did not ask for the same. In the order of the Tribunal it was mentioned that the applicant should be given a personal hearing if he asked for the same. But as he did not ask for personal hearing. this contention is also held to be without any merit and is rejected.

8. Next it is submitted by the learned counsel for the petitioner that in the enquiry the charge has been wrongly held proved and material witnesses have not been examined. To consider this submission it is necessary to go into the charge and the finding of the disciplinary authority. It is necessary to note that the applicant has not enclosed a copy of the enquiry report which has been served on him and therefore it is not possible to examine if the finding of the inquiring officer is based on evidence on record. In any case the applicant has also not prayed for quashing the finding of the inquiring officer. It is also to be noted at this stage that in disciplinary proceedings the Tribunal does not act as an appellate authority and can only interfere if the findings of the disciplinary authority are based on no evidence or are patently perverse. The charge and the finding of the disciplinary authority are being examined in the context of the above well settled position of law.

9. The charge against the applicant is that on 26.2.1985 he was entrusted with four Money Orders, viz., Kamakhyanagar M.O.no.2108 dated 12.2.1985 for Rs.50/-, Rajborasambar M.O.No. 2958 dated 22.2.1985 for Rs.100/-, TPO-C 1681 M.O.No. 3403 dated 15.2.1985 for Rs.50/-, and Rasol M.O.No.2997 dated 22.2.1985 for Rs.200/-. After

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completion of his day's work he returned the Money Orders to the Sub-Post Master, Barpali S.O. and showed that the amounts have been paid to the respective payees. As earlier noted the applicant did not submit any explanation to the charge. Prior to framing of charge, an enquiry was conducted and written statements of the payees were taken. They denied to have received the money. The applicant also gave a written statement admitting that he had not paid the amounts to the payees and had misappropriated the same. The applicant had later on credited the M.O. amounts to the Government Account, but he took the plea that he had credited the amounts under pressure from superior officers. The disciplinary authority has come to the finding on the basis of statements of three payees that these Money Orders were actually not paid to them and the applicant had wrongly shown the Money Orders as having been paid. In consideration of the above, it cannot be said that the findings of the disciplinary authority are based on no evidence.

10. Lastly it is submitted by the learned counsel for the petitioner that the applicant was originally appointed as Extra-Departmental Packer and because of his sincere and hard work he was promoted as Postman. The amount involved in these Money Orders is only Rs.400/- and this is the first time that the applicant has been found guilty of any lapses. In view of this, it is urged that the punishment of removal from service imposed on the applicant is disproportionate to the lapses proved against him. We have considered the above submission carefully. The applicant was working as a Postman and his primary duty was to deliver letters, Money orders, V.P. articles, etc. He has misappropriated the Money Orders entrusted to him and therefore his lapse in this regard is

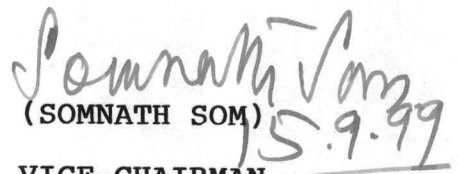
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quite serious and the disciplinary authority was bound to take a very adverse view and to impose a major punishment on him. In consideration of the above, the punishment imposed on the applicant cannot be held disproportionate to the lapses proved. This contention is also held to be without any merit and is rejected.

11. In the result, we hold that the O.A. is without any merit and the same is dismissed but without any order as to costs.


(G.NARASIMHAM)

MEMBER(JUDICIAL)


(SOMNATH SOM) 15.9.99
VICE-CHAIRMAN