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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 713 OF 1993.

Cuttack, this the 31st day of August, 1999.

MAHENDRA KUMAR BISI.

....

APPLICANT.

VRS.

UNION OF INDIA & OTHERS.

....

RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? Y
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

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CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 713 OF 1993.

Cuttack, this the 31st day of August, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
&
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL)

....

Mahendra Kumar Bisi,
Aged about 38 years,
Son of late Kabiram Bisi,
At/Po. Kantesira, Dist. Kalahandi.

.... APPLICANT.

By legal practitioner; M/s. R. N. Naik, A. Deo, B. S. Tripathy, P. Panda,
Advocates.

- Versus -

1. Union of India represented by its
Secretary in the Department of Posts,
Ministry of Communication, Dak Bhawan,
New Delhi.
2. Chief Postmaster General,
Orissa Circle, Bhubaneswar,
Dist. Khurda.
3. Director of Postal Services,
O/O. the Chief Postmaster General,
Orissa Circle, Bhubaneswar, Dist. Khurda.
4. Superintendent of Post Offices,
Kalahandi Division, At/Po. Bhawanipatna,
Dist. Kalahandi.

.... RESPONDENTS.

By legal practitioner : Mr. A. K. Bose, Senior Standing Counsel.

16/08/99

...

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, applicant has prayed for quashing the order dated 21-10-1992 (Annexure-2) of the Disciplinary Authority removing him from service and the order dated 8-7-1993 (Annexure-3) of the Appellate Authority rejecting his appeal. Second prayer is for a direction to the Respondents to reinstate the applicant in service with full backwages and consequential service benefits.

2. Facts of this case, according to applicant are that when he was working as Extra Departmental Branch Post Master Kantesira Branch Post Office under Kesinga Sub Office, a proceeding was initiated against him. There were three charges. The first charge was that he received a sum of Rs. 300/- on 16-3-1988, Rs. 400/- on 14-5-1988 and Rs. 200/- on 14-6-1988 from Smt. Puspanjali Roy through her husband Shri Uttam Ch. Roy for depositing in SB A/C No. 208180 but he did not credit the amount in the Post Office records on the concerned dates. The second charge is that while functioning as EDBPM, on 20.7.1988, there was shortage of cash amounting to Rs. 199.22 in the cash balance of the Branch office and he could not make good the shortage immediately. The third charge is that he received total amount of Rs. 220/- plus Rs. 61/- on dated 15.9.87, 6.11.1987, 24.12.1987, 18.2.1988, 16.3.88 and 9.7.1988 in respect of deposits in RD A/C. No. 4400551 but he did not take the amount received in the post office account and misappropriated the above amount. Proceeding was initiated against the applicant and against the punishment

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applicant came up before this Tribunal in OA No. 428 of 1990. The Tribunal set aside the order of punishment in order dated 10.7.1992 on the ground that a copy of the enquiry report, had not been supplied to applicant and he had not been given an opportunity to make representation against the enquiry report. After the original punishment order was quashed a copy of the enquiry report was supplied to applicant. He submitted his representation. The Disciplinary Authority, thereupon passed the impugned order of removal from service at Annexure-2. His appeal was also rejected in the impugned order at Annexure-3. In the background of the above facts, applicant has come up with the prayers referred to **earlier**.

3. Respondents, in their counter, have stated the above facts and have taken the stand that the disciplinary proceeding against applicant was concluded after giving the petitioner all opportunity and there was no violation of principles of natural justice. They have also stated that the charges against the applicant are serious and the charges have been proved on the basis of evidence. They have further stated that the punishment imposed is a just punishment, in consideration of the nature of the lapses proved against the applicant and on the above grounds, they have opposed the prayers of applicant.

4. We have heard learned counsel for the petitioner and Mr. A.K. Bose, learned Senior Standing Counsel (Central) appearing for the Respondents and have also perused the records.

5. Petitioner has challenged the impugned order of punishment and the order of the Appellate Authority on

the following grounds:

- a) There was no material on record to come to a positive finding that the applicant is guilty of the charges;
- b) Applicant was not supplied the documents asked for by him and therefore, he has been denied all reasonable opportunity;
- c) Even though the applicant had deposited the amount in question, this fact was not brought into the record and this has vitiated the entire proceeding;
- d) The Disciplinary Authority has not taken into consideration the discrepancies in the evidence of State witnesses and has blindly gone on the report of the enquiry officer;
- e) The appellate Authority has passed a cryptic non-speaking order without applying judicious mind and without giving the applicant a personal hearing though it was mandatory;
- f) The disciplinary Authority proceeded on the basis of suspicion and suspicion can not take the place of proof.

S. J. M.
We have considered the above submission of the applicant, carefully and these are discussed with *below. S. J. M.*

6. The first contention of applicant is that there was no material on record to hold that the charges have been proved. Unfortunately, neither the applicant nor the Respondents have annexed a copy of the enquiry report even though a copy

of the enquiry report was available with both sides. In view of the applicant not submitting a copy of the enquiry report, it is not possible to hold that the Inquiring Officer has come to the finding against the weight of the evidence. In any case, law is well settled that in a disciplinary proceeding, the Tribunal can not act as an Appellate Authority and can not substitute, in place of the findings and conclusions arrived at by the Inquiring Officer, and the Tribunal Authority. *Disciplinary* *their findings* *J. Som* *A. Som.* The Tribunal can interfere only if there has been denial of reasonable opportunity, violation of principle of natural justice or if the findings are based on no evidence and are patently perverse. The evidence on which the disciplinary Authority has come to the findings are being examined only from these limited point of view.

7. As regards the first charge that the applicant did not receive Rs. 900/- on three dates on behalf of the SB A/c. holder and did not credit the amount to the pass book, the applicant had taken the stand that the amounts were given to him as loan by the husband of the account holder. The husband of the account holder was examined and he stated in his deposition that he gave the amount to applicant by way of depositing in the account of his wife alongwith paying slip and pass book but these amounts have not been given as loan. The findings of the I.O. and the disciplinary Authority rejecting the above contention of applicant can not be said to be based on no evidence.

J. Som

8. As regards the second charge about there being shortage of Cash, applicant had taken the stand that the Inspecting officer did not give him time to obtain money from his house to make up the shortage in cash. This explanation is totally unacceptable because in the cash, there should not be any shortage and even granting the applicant's stand, he should not have taken away the money from the office cash and kept it his own house. The allegation that the shortage of cash has been proved, can not also, therefore, be said to be based on no evidence.

9. As regards the third charge i.e. also about receipt of amount by way of deposit and not crediting the same. In this case, also applicant's stand is that the depositor had given the amount to him by way of loan and not for the purpose of depositing the same in the account. The depositor has been examined and he has stated that he had given the money to applicant alongwith pass book and paying slip for the purpose of depositing in his account. The findings of the enquiry officer and the Disciplinary Authority with regard to this charge, also can not be said to be based on no evidence. We also hold that in the light of the above discussions, it can not be held that the findings of the Disciplinary Authority are patently perverse.

10. The second point taken by applicant is that he was not supplied with documents asked for. From page-2 of the report of the Disciplinary Authority, it appears that all the documents through which the Article of charges were proposed to be proved, were given to him for the perusal and he also took the extracts of the same. He also noted in

S. Som.

the order sheet that he would submit the list of defence documents and witnesses within four days. The applicant had not made any averment as to what documents, he had asked for and which were not supplied to him. In view of this, it can not be said that the documents asked for, were not supplied to him. This contention is also held to be without any merit and is rejected.

11. The third contention of the applicant is that he deposited the amount in Annexure-1, but this fact has not been taken into account. The fact that the applicant had deposited the amount later on has not in any way, reduced the gravity of his lapse. In any case, the Disciplinary Authority has examined this aspect in his order and has pointed out that the applicant had deposited the amount of Rs. 5,950/- which is much more than the amount involved in these charges. The above amount of Rs. 5,950/- includes several other amounts misappropriated by him which was not the subject matter of this charge. In any case, the fact that he had repaid the amount at a later stage, after detection does not in any way take away from his lapse with which he has been charged in this proceeding.

12. The next contention is that the Disciplinary Authority has ignored the discrepancies in the evidence of the State witnesses. As we have earlier noted that it is open for the Disciplinary Authority to take into consideration the evidence and come to a finding and it is not open for the Tribunal to re-assess the evidence and come to a different finding. This contention, is also held to be without any merit and is rejected.

Scm.

13. It is further stated that the Appellate Authority has passed a cryptic nonspeaking order. We have gone through the order of the Appellate Authority at Annexure-3. The applicant has not annexed a copy of the appeal petition and therefore, it is not possible for us to know as to what point he has urged in his petition and which has been ignored.

14. As regards the next point that the Disciplinary Authority did not give him a personal hearing, we find from the explanation of applicant, at Annexure-1 that he did not ask for personal hearing. Applicant has stated that giving of personal hearing is mandatory. There is no such rule that the Disciplinary Authority before passing the order must give personal hearing to the charged official. This contention is also, therefore, held to be without any merit and is rejected.

15. In this case, applicant has been proved to have misappropriated the amount entrusted to him by the depositor over a period of time. This establishes a pattern of behaviour on his part. There is also the proved allegation of there being shortage of office cash. In consideration of this, the penalty of removal of service can not be said to be disproportionate to the gravity of charges.

16. In consideration of the above, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him in this Original Application which is accordingly rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN