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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 68 OF 1993  
Cuttack this the 14<sup>th</sup> day of February, 2000

Narendra Pruseth

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*M. A. 2170*

14-2-2000  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)



**CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 68 OF 1993  
Cuttack this the 14th day of February, 2000

**CORAM:**

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

**Sri Narendra Pruseth, F.D.B.P.M.,  
Phulbari (Discharged) at present  
residing At/Po: Phulbari, Via: Badagaon  
Dist: Sundergarh**

... Applicant

By the Advocates : M/s.S.K.Padhi  
Sandeep Parida  
Miss. D.Mohapatra

**-Versus-**

1. Director of Postal Services, Sambalpur Region, Sambalpur-1
2. Senior Superintendent of Post Offices, Sundergarh Division, Sundergarh-770001
3. Union of India represented through its C.P.M.G., At/Po: Bhubaneswar, Orissa

### ... Respondents

By the Advocates : Mr.J.K.Nayak  
Addl. Standing Counsel (Central)

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, Narendra Pruseth, who was removed from service as F.D.B.P.M. in a disciplinary proceeding by the disciplinary authority (Res.?) challenges the order of removal and prays for reinstatement with consequent service benefits.

In Memo dated 28.2.1991 (Annexure-R/1) he was served with charge containing allegation that while serving as F.D.B.P.M., Phulbari Branch Office in account with Bargaon S.O. had accepted an amount of Rs.1880/- on 22.8.1990 and another amount of Rs.1500/- on 4.9.1990

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Shri Pramod Kumar Sa, the husband of Smt. Parbati Sa, holder of S.B. Account No. 46335 for crediting the amounts in that account and that though he has endorsed the receipt of these amounts in the Passbook did not take the amounts into Govt. account on the respective dates of deposit or thereafter. The charge memo was received by the applicant on 6.3.1991 and he submitted written statement on 13.3.1991 submitting that he should be heard in person. Thereafter the enquiring officer and the presenting officer were appointed and the enquiry was completed on the first sitting of the enquiry, i.e. on 26.4.1991. The enquiring officer held the charge proved and submitted report to the disciplinary authority, who supplied a copy of the enquiry report to the applicant in letter dated 30.4.1991 giving 15 days time to submit representation, if any. But no representation was received from the applicant and thereafter the disciplinary authority through impugned order dated 17.7.1991 under Annexure-1 passed penalty of removal from service. The applicant preferred departmental appeal, which was disposed of in order dated 9.3.1992 confirming the order of removal passed by the disciplinary authority.

In this application, it is the case of the applicant that the procedure adopted in the enquiry is bad and illegal inasmuch the applicant had not been supplied with copy of the statement of Smt. Parbati Sa made during preliminary enquiry; that he was not allowed to examine or cross-examine Parbati Sa, Promod Kumar Sa or Sarat Kumar Sa; that the enquiring officer had grossly misunderstood the explanation submitted by him; that the completion of the enquiry on a single day



would reflect the arbitrariness of the enquiring officer and so on.

2. In the counter the stand of the Department is that the applicant has been afforded reasonable opportunity to defend himself, bearing in mind the principles of natural justice. In fact the written statement of Smt. Parbati Sa, during preliminary enquiry was offered to the applicant for perusal and to take extract/copy thereof vide Annexure-R/5. The applicant in fact admitted the charge in toto during enquiry held on 26.4.1991 and as such enquiry was closed on that day. The applicant had never asked to crossexamine the other witnesses. A copy of the enquiry report was supplied to him with instruction to submit representation, if any, even 15 days thereafter.

Though he received the copy of on 6.5.1991, he did not submit any representation and finally the impugned order dated 17.7.1991, i.e. more than two months thereafter has been passed.

No rejoinder has been filed by the applicant.

3. We have heard Shri S. Parida, learned counsel for the applicant and Shri J.K. Nayak, learned Addl. Standing Counsel appearing for the respondents. During hearing the learned counsel for the applicant filed a copy of judgment dated 9.8.1995 of the learned J.M.F.C., Rajgangpur in G.R. Case No. 314/91. We have perused the same so also the records.

Annexure-1 is the impugned order dated 17.7.1991 wherein there is averment that copy of the enquiry report was sent to the applicant in letter dated 30.4.1991 directing him to submit representation, if any, within 15 days of receipt of the report and that copy was



received by him on 6.5.1991. This has not been denied by the applicant. Similarly, facts mentioned in the enquiring report under Annexure-R/7 to the effect that the applicant admitted the charge brought against him has also not been denied by the applicant, though the version of the applicant is that enquiring officer had not properly understood his admission. We have carefully gone through this enquiry report under Annexure-r/7 in which it has been clearly mentioned that the applicant also admitted categorically the charge brought against him. If indeed he thought the enquiring officer had not understood him properly nothing prevented him from submitting representation to the disciplinary authority on receipt of the copy of enquiry report in support of his innocence. But for the reason best known to him he did not choose to do so. Since the charge was admitted during enquiry, there was no necessity for examination of the witnesses of the Department as indicated above by the applicant.

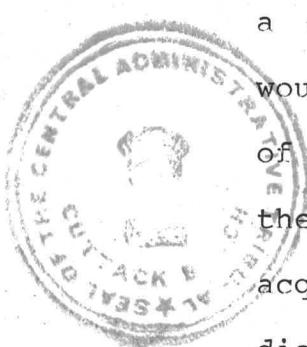
As to non supply of copy of the statement by Smt. Parbati Sa during preliminary enquiry, the version of the Department is that the applicant was given due opportunity to peruse the same and take extract of the same. This has not been denied by the applicant. Even assuming, Parbati Sa would have been examined, she would have at best said that she had instructed her husband to deposit the amount by going to the Post Office in her Account and certainly she would not have said that she had personally went to the Post Office and entrusted these amounts to the applicant. Hence her evidence, which according to applicant is crux of the matter is not that relevant for proving the entrustment.



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Copy of the judgment dated 9.8.1995 in G.R.Case No.314/91 reveals that for non accounting of these two amounts, the criminal case was instituted under Section 409 I.P.C. against the applicant and that through this judgment the applicant has been acquitted of the charge on the ground that the evidence on record failed to establish the charge beyond all reasonable doubts. A consequent acquittal in a criminal case on the same subject matter would not by itself obliterate the findings and the order of punishment passed by the disciplinary authority long prior to this judgment. Moreover, law is well settled that appreciation of evidence in a criminal case greatly differs from appreciation of evidence in a disciplinary proceedings. In a criminal case charge has to be established beyond all reasonable doubts whereas in a disciplinary proceeding technical rules of evidence would not apply and therefore, through mere preponderance of probabilities charge can be proved. Hence acquittal in the criminal case, more so, when it is not an honourable acquittal, will in no way affect the order of the disciplinary authority.

We are aware of the decision of the Apex Court in **Capt. M.Paul Anthony v.Bharat Gold Mines Ltd. & Anr.** reported in 1999(1) S.C. Services Law Judgments 429 as referred by the learned counsel for the applicant. In that case the departmental proceeding was disposed of ex parte in the absence of the delinquent and thereafter on the same set of evidence as relied in the departmental proceedings, the applicant was acquitted in the connected criminal case. When the concerned employee prayed for reinstatement in view of his acquittal by the Criminal Court, the Department refused to do so. Thereafter, he



preferred O.J.C. The Apex Court, ultimately quashed the punishment order of removal passed in the departmental proceeding on the ground that the departmental proceeding and the criminal case were based on the same set of facts and evidence.

The charge memo in the instant case under Annexure-R/1 reveals that the Department placed reliance on four witnesses and 10 documents, wheras the judgment in the criminal case which was pronounced long after filing of this Original Application reveals that only names of two Prosecution Witnesses whose names do not find place in the list of witnesses enclosed to charge sheet and does not reveal any document finding place in the list of documents as having been exhibited. In this view of the matter the decision in the case of Capt.M.Paul Anthony(Supra) is distinguishable and would not apply to this application.

In view of our discussion above, we do not see any merit in this application which is accordingly dismissed, but without any order as to costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
14.2.2000

B.K.SAHOO



14.2.2000  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)