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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 75 OF 1993.

Cuttack this the 24<sup>th</sup> day of April, 1998.

A. DANDAPANI DORA.

....

APPLICANT.

-Versus-

UNION OF INDIA & 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*

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN. 98

*S. K. Agarwal*  
(S. K. AGARWAL)  
MEMBER (JUDICIAL) 34/4/98

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 75 OF 1993.

Cuttack this the 24th day of April, 1993.

CORAM:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN.

AND

THE HONOURABLE MR. S.K. AGARWAL, MEMBER (JUDICIAL).

....

Shri A. DANDAPANI DORA,  
aged about 37 years,  
Son of A. Jadhavir Dora,  
Ex-BPM, Talasara, At/Po. Talasara,  
Via. Sumandal, Dist. Ganjam.

.... Applicant.

By legal practitioner :- M/s. P. V. Ramdas, D. N. Mohapatra, P. V. B. Rao,  
Advocates.

- Versus -

1. Union of India represented by the  
Chief Postmaster General, Orissa  
Circle, Bhubaneswar-751 001.
2. Director, Postal Services, Berhampur (Gm) Region,  
Berhampur, Dist. Ganjam.
3. Senior Superintendent of Post Offices,  
Berhampur (Gm) Division, Berhampur,  
Dist. Ganjam.

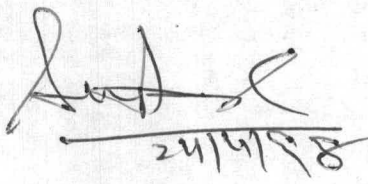
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Respondents.

By legal practitioner :- Mr. Ashok Mishra, Senior Standing Counsel,  
(Central).

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24/4/93

O R D E R

MR. S.K. AGARWAL, MEMBER (JUDICIAL) :-

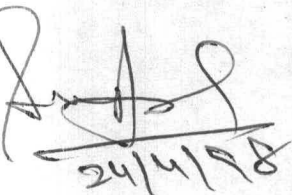
In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed to set aside the order of removal from service passed by the Respondent No.3, vide Annexure-3 with a direction to the Respondents, to reinstate the applicant in his service with all consequential benefits.

2. In brief, the facts of the case, as stated by the applicant, are that the applicant was a Branch Postmaster in the Village Talasara in account with Sumandal S.O. in the District of Ganjam, who was appointed by the Superintendent of Post Offices, Berhampur by an order dated 03-11-1975. In the year, 1982, the applicant, was laid up with a strange ailment as a result of which, he could not attend to his normal duties. He applied for leave by providing a substitute to work in his place, and he was informed by the A.S.P.O I/c, Chatrapur Sub-Division that he was granted leave without Allowance for sixty days from 02-03-1982 to 30-09-1982. The applicant was to join his duty, after expiry of the leave period, but he could not do so as the disease worsened and he was removed to MKCG Medical College Hospital, Berhampur. On recovery, when the applicant wanted to join his duty, he was not allowed to do so. Thereafter, the applicant submitted representation on 19.9.86 to the Superintendent of Post Offices, Berhampur. The applicant

  
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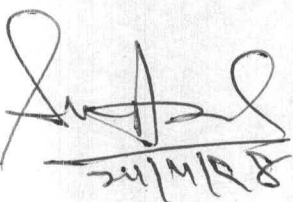


was informed that he has resigned from service on 29.9.82 and hence his nominee was allowed to function in his place. It is stated that the applicant has not tendered any resignation and even if, such resignation is made, the same has been withdrawn before it was accepted. The representation to this effect was made to the Superintendent of Post Offices on 6.9.1987 requesting him to allow the applicant to join in his post. The Superintendent of Post Offices, instead of allowing him to join his duty, started a disciplinary proceeding on 21.4.1987. The sole charge, against the applicant was that he remained absent without obtaining prior permission w.e.f. 1.10.1982 to 17.9.1986. Enquiry was made and the Inquiring Officer in his report dated 6.6.1988 held that the charge against the applicant has not been proved. But the Disciplinary authority however, disagreed with the findings of the Inquiring Officer and imposed penalty of removal from service vide order dated 12.9.1991 (Annexure-3). Against this order, the applicant preferred an appeal which was also rejected vide order dated 10.4.1992 (Annexure-4). It is stated that the disciplinary authority where disagreed with the findings of the Inquiring Officer, must give reasons for his disagreement. But in this case, the Disciplinary Authority, has not rendered the reasons for the disagreement and hence the order passed by the Disciplinary Authority is not in conformity with law and as such is liable to be quashed. It is further stated that the Disciplinary Authority did not

  
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consider the fact that the absence from duty was beyond the control of the applicant and this absence was not wilful. Therefore, it is stated that the penalty of removal is severe and as such is liable to be quashed.

3. Counter has been filed by the Respondents. In the counter it is stated that the applicant applied leave from 2.3.82 to 30.9.1982 and on 29.9.1982, the applicant submitted his resignation from the post of Branch postmaster. Thereafter, the applicant remained absent without any information and undergone C.T. training in the Government Secondary Training School, Khalikote (GM). Thus, another person was appointed as Branch post master, Talasara in place of the applicant. After a lapse of four years the applicant submitted one representation i.e. on 17.9.1986 requesting to allow him to continue/join as Branch postmaster of the said post office. Since the period of authorised leave and unauthorised absence of the applicant exceeded the permissible limit as per rule-5 of EDA's conduct and Service Rules, 1964, disciplinary proceeding under Rule-8 of EDAs (Conduct and Service) Rules, was initiated against the applicant on 21.4.1987. During the course of enquiry, the applicant filed a case before this Tribunal bearing OA No. 156/87 and this Tribunal vide its order dated 9.3.89 directed the disciplinary authority to pass final orders, within 45 days.

  
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Accordingly, a copy of the enquiry officer's report was supplied to the applicant and after due consideration of the defence statement of the applicant, report of Inquiry officer and documents exhibited during the departmental enquiry, final order was passed by the Disciplinary Authority on 12. 9. 91 removing the applicant from service. The applicant, thereafter preferred an appeal to the Director of Postal Services, Berhampur Region who after going through the records of the case, upheld the orders of the Disciplinary Authority vide Annexure A/1 . It is stated in the counter that the disciplinary authority while passing the order has discussed quite elaborately the reasons of the disagreement with the findings of the Inquiring Officer (Annexure-A/3). The findings of the Inquiring Officer contained in Annexure A/2 , was found faulty and therefore, the Disciplinary Authority, has discussed every inch of the IO's report in its decision vide Annexure-A/3 attached to the application. The applicant has preferred an appeal against the order of dismissal to the appellate authority and the appellate authority has confirmed the order of the disciplinary authority. In this way, as per counter filed by the respondents,, Respondents have requested to dismiss this Original Application with costs.

*[Handwritten signature]*  
24/11/98

4. We have heard Shri P.V. Ramdas, learned counsel for the applicant and Mr. Ashok Mishra, learned Senior Standing Counsel appearing on behalf of the Respondents.

5. Learned counsel for the applicant has argued that the Senior Superintendent of Post Offices when disagreed with the findings of the I.O., he must state the reasons for such disagreement. But the reasons for disagreement are not explicitly clear in the impugned order at Annexure-3. It is also stated by the learned counsel for the applicant <sup>was</sup> that absence from duty beyond his control and such absence was not wilful. Therefore, the penalty of removal from service is too high and severe.

On the other hand, learned counsel for the Respondents objected to the arguments advanced by the learned counsel for the applicant and submitted that detailed reasons have been given in the impugned order at Annexure-3 and looking to the period of unauthorised absence, the penalty of removal, can not be said to be excessive.

6. We have given thoughtful consideration to the contentions of the both parties, and perused the whole record.

7. In this connection, rule 15 of the CCS(CCA) Rules is to be referred to. Rule 15(2), provides that the disciplinary authority shall, if he disagrees with the findings of the Inquiry officer on any article of charges, reasons for



such and record its own findings on such charges if the evidence record is sufficient for the purpose. In the case of NARAIN MISHRA VRS. STATE OF ORISSA REPORTED IN 1969 SLR 657 (Sc), it was held that if the Disciplinary Authority differed from the conclusions arrived at by the E.O., then it was incumbent upon the Disciplinary Authority that the attention of the delinquent should have been drawn to this fact and his explanation if any should have been obtained. We are fully aware of this fact that the Disciplinary authority, has every right to disagree with the findings of the Inquiry Officer. However, at the same time, we can not also turn a Nelson's eye to the fact that the Disciplinary Authority is statutorily required to record the reasons for its disagreement. In our view, the reasons recorded by the Disciplinary authority in the impugned order at Annexure-3 can not pass the test of either reasonableness or cogency. The Disciplinary action has a far-reaching effect on the career of an employee and more so in the case of an employee. Therefore, while disagreeing with the findings of the I.O., must record good and sufficient reasons. In case, the Disciplinary Authority disagrees with the findings of the Inquiring Officer, on any article or charge, he has to record sufficient reasons for such disagreement. Reasons for such disagreement is to indicate to the employee as to why the Disciplinary Authority has differed with the view express

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by the Inquiring Officer. Otherwise, recording of reasons would be an exercise of futility.

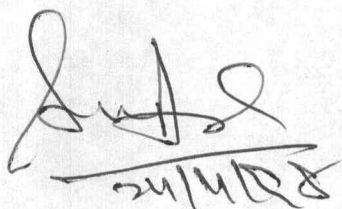
3. In the instant case, the Disciplinary Authority after disagreeing with the findings of the I.O., did not communicate the reasons for such disagreement with the findings of the I.O. Therefore, the applicant could not submit his explanation to the reasons of disagreement and without considering the defence of the applicant, impugned order of removal was passed against the applicant. In the case of STATE OF PATIALA VRS. RAM GOPAL GUPTA AND OTHERS REPORTED IN 1998 LAB.I.C. 550, it was held as follows:-

"In case, the disciplinary authority disagrees with the findings of the enquiry authority on any article or charge, it has to record its reason for such disagreement. The purpose of recording the reasons for disagreement is to indicate to the employee as to why the disciplinary authority has differed with the view expressed by the enquiry officer. Otherwise the recording of reasons would be an exercise of futility. The requirement of recording reasons implies a need for communication thereon."

  
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9. In the instant case, in our view, the reasons recorded by the Disciplinary Authority for its disagreement can not be passed the test of either reasonableness or cogency. Moreover, whatsoever reasons has been given by the Disciplinary authority for its disagreement with the report of the I.O. that has not been communicated to the applicant. In this way, the Disciplinary Authority has violated the principles of natural justice and the impugned order of removal <sup>is</sup> passed without following due process of law. Therefore, the impugned order at Annexure-3 dated 12.9.1991 is liable to be quashed, in the circumstances mentioned above and the case to be remitted back to the Disciplinary Authority with the following directions;

- (i) Disciplinary Authority shall take up and proceed with the D.E. from the stage where he is required to exercise his powers under rule 15(2) CCS(CCA) Rules with reference to the EO's report.;
- (ii) The Disciplinary Authority, shall after giving notice to the applicant of his intention to differ from the EO's report and reasons therefor, afford applicant a reasonable opportunity to represent and be heard;

  
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- (iii) Thereafter the Disciplinary Authority shall pass appropriate orders according to law;
- (iv) The above directions should be complied with as expeditiously as possible and preferably within four months from the date of receipt of a copy of the judgment.

9. With the above directions, the Original application is allowed. There would be no order as to costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN 24/4/98

*S. K. Agarwal*  
(S. K. AGARWAL) 24/4/98  
MEMBER (JUDICIAL)

KNM/CM