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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 77 OF 1994
Cuttack, this the 29th day of October, 1999

Sri Pramod Kumar Sahoo 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
29.10.99.

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CORAM:

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

Sri Pramod Kumar Sahoo, son of Haladhar Sahoo,
At/PO-Gobardhan, Via-Raisuan, District-Keonjhar

..... Applicant

Advocate for applicant - Mr.P.K.Padhi

Vrs.

1. Union of India, represented through its Secretary, Ministry of Communication, Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, Keonjhar Division, At/PO/District-Keonjhar 758 001.
3. Director of Postal Services, O/o Chief Post Master General, At/PO-Bhubaneswar, District-Khurda

..... Respondents

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

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 31.7.1992 (Annexure-2) removing the applicant from service and the order dated 12.1.1993 (Annexure-3) of the appellate authority rejecting his appeal. The applicant has also prayed for a direction to the respondents to allow him to join his service.

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2. The case of the applicant is that he had been working as EDBPM, Gobardhan Branch Post Office in Keonjhar District from 22.9.1992. He was put off duty on 2.5.1989 on the allegation of temporary misappropriation in some Savings Bank / Recurring Deposit

Pass Books and 12 articles of charge were drawnup against him. Out of these, articles 7, 8 and 9 were held not proved during enquiry and it is not necessary to take note of these charges any further. Superintendent of Post Offices, Keonjhar Division (respondent no.2) ordered enquiry. Simultaneously, a criminal case was also started against the applicant in the court of the learned Chief Judicial Magistrate, Keonjhar, in which the applicant was acquitted. The applicant had requested for adjourning the departmental proceedings until finalisation of the criminal case in his letter at Annexure-1. But, according to him, his prayer was turned down. The applicant has stated that the disciplinary authority did not apply his mind in judicious manner and was predetermined to remove the applicant from service. It is also stated that the applicant called for certain relevant records for taking extracts but this was not allowed and because of this, the applicant was prejudiced. The applicant has enclosed at Annexure-4, the ordersheet of the inquiring officer dated 31.12.1990 in which his prayer for supplying of documents has been rejected. Against the order of the disciplinary authority removing the applicant from service, the applicant filed appeal, but his appeal was also rejected in the impugned order at Annexure-3. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

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3. Respondents in their counter have stated that while the applicant was working as EDBPM, Gobardhan Branch Post Office, he accepted money from various depositors on different dates for depositing in their SB/RD Accounts standing at the Branch Post Office. The applicant received the money from the depositors/messengers for depositing in the Pass Books, made entries in the Pass Books showing the deposit and authenticated the deposit with the dated initial and office date stamp impression, but did not make entries in respect of those deposits in the Branch Office Journal, Branch Office Account Book, Branch Office S.B.Journal and B.O. Daily Accounts. He also did not credit the amounts into Government Account. He committed these mistakes during the period from 1986 to 1989. He was put off duty when these facts came to notice in 1989. The matter was also entrusted to the police for investigation which ended in GR Case No. 32 of 1990 and T.C.No. 67 of 1991 under Sections 409, 468 and 420 of Indian Penal Code in the court of the learned Chief Judicial Magistrate, Keonjhar. The respondents have stated that prior to 1989 there was provision in Rule 80 of Postal Manual, Vol.III not to start any departmental proceedings where police/court cases are pending. But consequent upon the decisions of the Hon'ble Supreme Court and Bangalore Bench of the Tribunal, Rule 80 was amended providing that departmental proceedings can be started simultaneously with criminal prosecution/police investigation. The relevant circular of the Director-General, Posts, dated 16.1.1989 enclosing copy of Rule 80, as amended, is at Annexure-R/1. It is stated

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that according to the amended Rules 80 and 81 departmental proceeding was started against the applicant. The applicant was served with statement of imputations, list of documents and list of witnesses which are at Annexure-R/2. On receipt of the written statement of the applicant, an inquiring officer was appointed. The applicant was also permitted to engage one defence assistant. The inquiring officer held nine out of 12 charges as proved. The report of inquiring officer was also supplied to the applicant who submitted a representation after getting the copy of the enquiry report. Respondent no.2 on getting the representation, considered all the materials and imposed the punishment of removal from service in the order dated 31.7.1992 at Annexure-2 of the O.A. The appeal of the petitioner was also rejected by the appellate authority in his order dated 12.1.1993 at Annexure-3. The criminal case was disposed of by the learned Chief Judicial Magistrate, Keonjhar, on 28.4.1993 acquitting the applicant. It is stated by the respondents that the learned Chief Judicial Magistrate in his judgment found that the applicant received the amounts from the depositors and made entries in the Pass Books showing the deposits with his dated initial and office date stamp, but did not credit the amounts in Government Account nor did he reflect the deposits in the post office records. The learned Chief Judicial Magistrate came to the conclusion that the money was lying unaccounted for with the applicant and was recovered from him at the time of inspection and the mistake of the applicant was that he did not maintain the accounts. On the above grounds, the learned Chief Judicial

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Magistrate held that the criminal charge has not been proved, and the applicant has been acquitted. The respondents have further stated that all the relevant documents were supplied to the applicant. The documents which were not considered by the inquiring officer to be relevant were not supplied. Some other documents were also not available. The case of the applicant was considered very judiciously by the disciplinary authority. The respondents have also stated that the applicant has no right of inspection of documents which are not relatable to the charges. In support of their contention, the respondents have enclosed the relevant portion of the extract of Ministry of Home Affairs' O.M. dated 25.8.1961 at Annexure-R/4. The respondents have stated that all reasonable opportunity was provided to the applicant in course of the enquiry and on the above grounds they have opposed the prayers of the applicant.

4. We have heard Shri P.K.Padhi, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have also perused the records. The learned counsel for the petitioner has filed written note of arguments which has also been taken note of.

5. The first submission made by the learned counsel for the petitioner is that the applicant in his letter at Annexure-1 had prayed for staying the departmental proceedings till the finalisation of the criminal case against him/otherwise his case before the trial court would be prejudiced. This contention is without any merit because ultimately in the criminal case the applicant has been acquitted and therefore by

not staying the departmental proceedings the applicant's case before the trial court has not been prejudiced in any way.

6. The second contention of the learned counsel for the petitioner is that according to the departmental instructions where criminal case and departmental proceedings are both under contemplation, the departmental proceeding should await till the criminal case is finalised. The respondents have pointed out that this was the instruction originally. But subsequently the relevant Rules 80 and 81, copies of which have been enclosed to the counter, have been amended and as per the amended Rules, departmental proceedings can continue simultaneously with the criminal case. As per the subsequent decision of the Hon'ble Supreme Court also the departmental proceedings can be initiated and pursued even when the applicant is being proceeded against before the trial court for a criminal offence. In view of this, the above contention of the learned counsel for the petitioner is also held to be without any merit and is rejected.

7. The next contention of the learned counsel for the petitioner is that once the applicant has been acquitted in the criminal case, the departmental proceeding based on identical set of facts cannot be sustained. In support of his contention, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Capt. M.Paul Anthony v. Bharat Gold Mines Ltd. and another, AIR 1999 SC 1416. Facts of Capt.M.Paul

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Anthony's case (supra) are widely different from the present case. In that case, the person was criminally proceeded against on the basis of search and seizure of incriminating materials. In the criminal case the person was acquitted. In the departmental proceeding, however, he was found guilty and was punished. The Hon'ble Supreme Court noted that the subject-matters in the criminal case and the departmental proceedings were the same and witnesses were also the same and therefore it was held that when search and seizure could not be proved in the criminal case, in the departmental proceedings on the same set of evidence, search and seizure could not be held to have been proved. In the instant case, from the judgment of the learned Chief Judicial Magistrate which is at Annexure-R/3 it is seen that the applicant was proceeded against under Sections 409, 468 and 420 of Indian Penal Code. The learned Chief Judicial Magistrate gave the finding that the applicant did receive the money given to him by the depositors and he entered the amounts in the Pass Books and initialled the entries with his dated signature and date stamp but did not take the amounts into Government Account nor did he enter the same in the Post Office accounts. The learned Chief Judicial Magistrate held that the relationship between a Banker and customer is that of a debtor and creditor and money deposited with a Bank is not trust money which the trustee must preserve and not use. It was also held by the learned Chief Judicial Magistrate that mere retention of money in the absence of any evidence of dishonesty does not amount to criminal misappropriation. On those amongst other grounds the applicant was acquitted. In the departmental proceedings, however, the charges are by

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and large that he failed to maintain absolute integrity and devotion to duty by his actions. From this it is clear that the scope of the criminal trial and the departmental proceeding in the instant case is different and therefore the decision of the Hon'ble Supreme Court in Capt. M.Paul Anthony's case(supra) is not applicable to the case of the petitioner. This contention of the learned counsel for the petitioner is therefore held to be without any merit and is rejected.

8. The last contention of the learned counsel for the petitioner is that the applicant had asked for certain documents which were not supplied to him. The petitioner has not enclosed a copy of his letter asking for the documents. But he has enclosed a copy of the ordersheet dated 31.12.1990 at Annexure-4 to the OA. From this ordersheet it appears that 31.12.1990 was the first date of the enquiry in the departmental proceedings. Three documents were not available and therefore could not be supplied to the applicant. These are: (i) Gobardhan B.O. Daily Account dated 20.12.1986; (ii)opinion of fingerprint expert in respect of thumb impression of witness nos.6,7 and 8; and (iii) counter foil of SB 103 . Besides, four other documents were not considered relevant to the charge by the inquiring officer and as such were not supplied. The point for consideration is if by denial of these four documents the applicant has been prejudiced in such a manner as to vitiate the entire proceedings and the punishment. For considering this matter, one has to refer to the charges. The applicant has not enclosed the charges or the explanation submitted by him. The charges have been enclosed by the respondents at Annexure-R/2 of the

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counter. The explanation of the applicant can be taken note of from the order of the disciplinary authority because the report of enquiry has not been enclosed by the petitioner even though he has been supplied with the copy of the same. As earlier noted there were 12 charges of which charge nos. 7,8 and 9 were held not proved. The other charges are discussed below. Charge no.1 was that he accepted Rs.100/- and Rs.150/- on 26.12.1988 and 17.1.1989 respectively for depositing in the SB Account No. 742681 of Kumari Damayanti Nayak. He entered the amounts in the Pass Book under his initial and date stamp of the Branch Office, but did not enter the deposits in the Branch Office S.B.Journal and did not credit the amounts in the account of S.B.Deposits in the Branch Office Accounts on the respective dates. The first of the four documents asked for by him and which was not supplied to him relates to this account No.742681. As is seen from this charge, it relates to acceptance of money on 26.12.1988 and 17.1.1989 from the depositor. The applicant however asked for copy of the pay-in-slip dated 24.12.1985 and SB 7 dated 4.2.1986 in respect of Account No. 742681. Thus the first document relates to certain transactions dated 24.12.1985 and 4.2.1986 which were years earlier to the dates of deposit on 26.12.1988 and 17.1.1989 which are the subject matter of the first charge. Therefore, it is clear that by denial of this document under item no.1 of Annexure-4 the applicant's case could not have been prejudiced in any way. The second charge is that in respect of S.B.Account No. 743677 of Jagannath Khatua he

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received several deposits on 24 different dates ranging from 13.2.1987 to 18.3.1989 and even though he made entries in the concerned Pass Book, he did not take the amounts in the Branch Office Accounts and also did not credit the amounts in the Branch Office Accounts. This Account appears to be a monthly deposit account and almost every month an amount of Rs.10/- to Rs.180/- has been deposited by the account holder. None of the other three documents which was not supplied to him relates to this charge. The third charge is also regarding acceptance of deposits in respect of SB Account No.742708 and in this case also in respect of deposits on four dates the applicant entered the amounts in the Pass Book but did not credit the amount in the Branch Office Account and did not take the same into Government Cash. The fourth charge is again in respect of two deposits of holder of Account No.741162. Charge no.5 relates to similar action and non-action by the applicant in respect of SB Account No. 741 009 of Prasanna Sahoo. Under charge no.6 it has been stated that the applicant accepted a sum of Rs.800/- on 27.12.1988 for depositing in the S.B.account No. 743981 of Smt.Shanti Bewa and entered the same in the Pass Book but did not again take that amount in the Branch Office Account or Government Cash. The second document asked for by the applicant and which was not considered relevant relates to this Account No.743981. The applicant asked for copy of the pay-in-slip dated 27.12.1988 in respect of Account No. 743981. In this case the pay-in-slip is not relevant because the charge is that the applicant entered the amount of Rs.800/- in the Pass Book and put his initial and date stamp of the

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Branch Office. By this the applicant acknowledged to have received the money from the depositor Shanti Bewa. His lapse is with regard to not crediting the amount in the Government Cash and also in not taking the amount in the Branch Office account. The pay-in-slip given by the depositor has therefore no relevance to this charge. The next charge which has been proved is charge no.10. This relates to S.B. Account No.743827 and the date of deposit is 18.2.1988. This charge has no reference to the other two documents which were not given to the applicant. Charge no.11 relates to S.B.Account No. 742243 in respect of which the applicant accepted a deposit of Rs.25/- on 8.8.1985. This charge has also no relevance to the two documents. Charge no.12 relates to R.D.Account No.1360281 of Kumari Madhusmita Behera, minor daughter of Sarat Kumar Behera. The third document which was not given to him is B.O.Daily Account of Gobardhan Branch Office dated 22.3.1989. This date has no reference to any of the charges except charge no.12. In charge no.12 it is alleged that the applicant accepted deposits on sixteen occasions on different dates and the last date is 22.3.1989. Branch Office Daily Accounts of 22.3.1989 cannot be said to be a relevant matter because the allegation in Charge No.12 is that even though the applicant received the deposit in respect of the account of Madhusmita Behera and entered the amounts in the Pass Book, he did not take those into Branch Office Accounts. This Branch Office Account of 22.3.1989 is relatable to only one out of 16 deposits which are the subject matter of charge under

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item no.12. The last document asked for by him is with regard to S.B.Account No. 741005. This relates to charge no.9 which has been held as not proved. Therefore, the applicant has not been prejudiced in any way by non-supply of the fourth document because the charge to which it is relatable has been held as not proved. In consideration of the above, we find that the decision of the inquiring officer in holding that these four documents are not relevant cannot be found fault with. As earlier noted, one of the documents relates to transaction of a particular S.B.Account but of a date which was three years earlier. The other documents had been rightly held to be irrelevant. In view of this, we hold that by non-supplying these documents, the applicant has not been prejudiced in any way.

9. We have carefully gone through the elaborate order of the disciplinary authority. We find that in this case the applicant has indulged in a pattern of behaviour held proved against him in which he had accepted money given to him in good faith by the depositors. He had entered the amounts in the concerned Pass Books and signed the same and put the Date Stamp of the Post Office. Such action on his part is calculated to create an impression in the mind of the depositor that the money has been properly accounted for in the Post Office. But as a matter of fact he did not enter any of these amounts in the Post Office Accounts and S.B.Journal and also did not take the money into Government cash. The disciplinary authority has held that by this type of conduct the applicant has proved himself to be unfit for retention in Government service. We find the conclusion as eminently reasonable under the

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facts and circumstances of the case. We therefore find that the order of the disciplinary authority is unassailable. The appellate authority has also passed a reasoned order. In view of this, we hold that the applicant is not entitled to the relief claimed by him.

10. In the result, therefore, the Original Application is held to be without any merit and is rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)

VICE-CHAIRMAN

29/10/99

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