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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 121 OF 1994

Cuttack, this the 5th day of February, 1998

Ganesh Chandra Patra

....

Applicant

Vrs.

Union of India and others

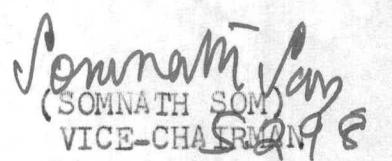
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Respondents

(FOR INSTRUCTIONS)

1. Whether this be referred to the Reporters or not? Yes,
2. Whether this be circulated to all the Benches of the NO. Central Administrative Tribunal or not?

  
(S.K. AGARWAL) SP 188  
MEMBER (JUDICIAL)

  
(SOMNATH SOM)  
VICE-CHAIRMAN

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CUTTACK BENCH: CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI S.K.AGARWAL, MEMBER(JUDICIAL)

....

Ganesh Chandra Patra, aged about 32 years,  
son of late Prabhat Patra, Vill & PO-Panchayukhi,  
Via-Baliapal, District-Balasore ....

Applicant

By the Advocates - M/s A.Deo, B.S.Tripathy,  
D.K.Sahoo & P.K.Misra.

Vrs.

1. Union of India, represented by its Secretary, Department of Posts, Dak Bhavan, New Delhi.
2. Chief Postmaster General, Orissa Circle, At/PO-Bhubaneswar, Dist. Khurda.
3. Director of Postal Services (Hqrs), Office of the Chief Postmaster General, Orissa Circle, At/PO-Bhubaneswar, Dist. Khurda.
4. Superintendent of Post Offices, Balasore Division, At/PO/Dist. Balasore.
5. Shri M.N.Das, Inquiry Officer-cum-Assistant Superintendent of Post Offices, Balasore Division, At/PO/Dist. Balasore

.... Respondents.

By the Advocate - Shri Ashok Misra,  
Senior Panel Counsel.

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the

order dated 9.12.1992 (Annexure-4) removing him from service and the order dated 28.5.1993 (Annexure-6) rejecting his appeal. There is also a prayer for a direction to the respondents to reinstate the applicant in service with full wages and other service benefits.

2. Facts of this case, according to the applicant, are that he was working as E.D.B.P.M., Panchamukhi B.O. In 1988 disciplinary proceedings were drawn up against him in which there were three charges. The first charge was that on 26.4.1988 he accepted a sum of Rs.123/- for depositing in 5-Year Recurring Deposit Account No.170702 in the name of Janaki Sahu, but the amount was not credited to the B.O. Account. The second charge was that on 24.5.1988 he accepted a sum of Rs.101.20 for depositing in 5-Year R.D.Account No.170703 of one Smt.Malati Giri, but the amount was not credited into the Branch Office Account. The last charge was again about accepting a sum of Rs.165.30 for depositing in Five-Year R.D.Account No.170745 of Subrata Kumar Nayak, but he did not credit the amount in the B.O.Account. Detailed enquiry was conducted into the charges by the inquiring officer who submitted his report on 10.9.1992 to respondent no.4. Respondent no.4 issued a showcause notice to the applicant enclosing a copy of the enquiry report. This showcause notice dated 16.9.1992 is at Annexure-2. In response, the applicant submitted his explanation which is at Annexure-3. Respondent no.4, however, passed the impugned order of removal from service at Annexure-4 without taking into account the explanation submitted by the applicant. After receipt of the impugned order of removal from service, the applicant preferred an appeal on 19.1.1993. His

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appeal is at Annexure-5. Respondent no.3, the appellate authority rejected the appeal without considering the points raised by the applicant in his appeal. On the above grounds, the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have submitted that there were three charges in the disciplinary proceedings against the applicant. The third charge covered two accounts, R.D.Account No.170746 in which depositor is Puspalata Nayak, and R.D.Account No.170745 in which depositor is Subrat Kumar Nayak. Respondents have stated that in cases of all these four accounts, the applicant accepted money from the depositors and entered it in the Pass Books of the depositors, but did not credit the amounts in the Post Office Account. Subsequently, on detection, he credited the amounts along with interest for the intervening period by filling in the pay-in-slips himself. Respondents have stated that although there was no loss to the Department in this case, the applicant misappropriated the deposit amounts for certain periods and exhibited serious lapses for which proceedings were drawn up against him. In course of the proceedings, all reasonable opportunity was given to him to put forth his case. After completion of the enquiry, copy of the enquiry report was also supplied to him and his representation was also considered. But considering the lapses proved against the applicant, the impugned order of punishment has been passed. The appellate authority has rejected his appeal after considering his representation and through a speaking order. On the above grounds, the respondents have opposed the prayer made by the applicant.

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4. We have heard the learned lawyer for the applicant and Shri Ashok Misra, the learned Senior Panel Counsel appearing on behalf of the respondents, and have also perused the records.

5. It is the well settled position of law that in a departmental enquiry the Tribunal does not act as the appellate authority and cannot substitute its judgment for the findings arrived at by the disciplinary authority. The Tribunal can act only if in course of the enquiry the principles of natural justice are violated, if reasonable opportunity is not given to the charged officer and as a result, he is prejudiced. Interference by the Tribunal would also be called for if the findings are based on no evidence or on such evidence on the basis of which no reasonable person could come to the finding arrived at. In the present case, the applicant has not alleged denial of reasonable opportunity or violation of rules of natural justice. In paragraph 5(iii) of his application, he has submitted that respondent no.4 should not have come to hold that all the charges were proved when the finding of the inquiring officer is that the charges levelled against the applicant are not proved and established fully. We are unable to accept this submission of the applicant for the simple reason that he has not enclosed a copy of the enquiry report even though it is noted that in letter dated 16.9.1992 (Annexure-2) a copy of the enquiry report was supplied to him. In the absence of the enquiry report, it is not possible to hold that the inquiring officer has held that the charges against the applicant have not been proved. From the impugned order of punishment, we note that the disciplinary authority has mentioned that the <sup>and</sup> inquiring officer has not discussed each article of charges separately but concluded that a part of

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S.298*

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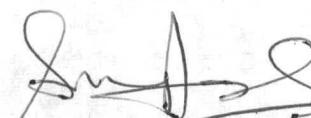
the charge is not proved to the extent that the acceptance of the <sup>by</sup> deposits the S.P.S. and making initial in support of such deposits in certain Exhibits as per article of charge by the S.P.S. is not proved. The disciplinary authority has disagreed with this part of the finding. We have gone through the explanation given by the applicant, the order of the disciplinary authority, his appeal petition and the order of the appellate authority. In course of his submission, the learned lawyer for the applicant submitted that all the transactions which were subject-matter of the charges were made by the applicant's wife who worked as his substitute and because of this he should not be held guilty of the lapses. This contention is without any merit because a substitute, under the departmental rules, acts at the risk and responsibility of the original incumbent. In this case, there is a certain pattern of behaviour of the applicant where <sup>and</sup> on repeated occasions he has accepted deposits made endorsement to that effect in the Pass Books of the depositors, but has not credited the amounts in the Branch Office Account. No doubt he has deposited the amounts later <sup>along with interest on being</sup> S. Jom. detected and there has not been any loss to the Department. But this proves temporary misappropriation and that too, on several occasions. In view of the above, we cannot hold that the finding of the disciplinary authority that the charges have been proved against the applicant is without any basis. This contention of the applicant is, therefore, rejected.

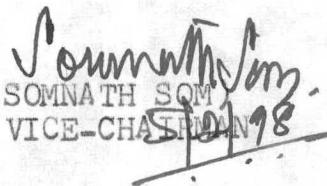
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6. As regards the submission of the applicant in his representation and of the learned counsel appearing for the applicant during hearing that the punishment of removal from service is

excessive and out of proportion to the lapses held to have been proved against him, we are unable to accept this contention firstly because this is a matter which is primarily for the disciplinary authority to decide. Moreover, in this case, there are repeated instances of temporary misappropriation which have been held to have been proved. The applicant has himself given statement admitting his lapses. Therefore, this is not a fit case where the Tribunal should interfere in the matter of punishment.

7. In the result, therefore, we hold that the application is without any merit and the same is rejected but, under the circumstances, without any order as to costs.

  
(S.K. AGARWAL) 5/21/78  
MEMBER(JUDICIAL)

  
(SOMNATH SOM  
VICE-CHAIRMAN 5/21/78

AN/PS