

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 171 OF 1995.
Cuttack, this the 15th day of March, 2001.

Biswanath Sahoo.

....

Applicant.

- Vrs. -

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.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

SOMNATH Sahoo
SOMNATH Sahoo
VICE-CHAIRMAN

15.3.2001

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ORIGINAL APPLICATION NO. 171 OF 1995.
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C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE G. NARASIMHAM, MEMBER (JUDICIAL).

..

BISWANATH SAHOO,
Son of Babaj Ch. Sahoo,
Extra Departmental Mailman,
Railway Mail Service N Division,
Jajpur Road, Dist. Jajpur.

Applicant.

By legal practitioner; M/s. G.K. Mishra,
G. N Mishra,
B.K. Raj,
B.K. Mishra,
K. Swain,
D. K. Nanda,
Advocates.

- VERSUS -

1. Union of India represented through the Director General of Posts, Dak Bhawan, New Delhi.
2. Chief Postmaster General, Orissa, Bhubaneswar.
3. Director of Postal Service, Office of the C.P.M.G., Bhubaneswar.
4. Senior S.R.M. N Division, Cuttack.
5. S.R.C., R.M.S. N Division, Jajpur Road, Dist. Jajpur.

.... Respondents.

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

ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, the applicant has prayed for quashing the order dated 10-4-1999 at Annexure-2 ordering recovery of Rs. 2,300/- from the allowances of the applicant and the order dated 1-8-1994 at Annexure-3 of the Director of Postal Services rejecting his appeal against the order of recovery.

2. Respondents have filed counter opposing the prayer of the Applicant.

3. No rejoinder has been filed.

4. For the purpose of considering this Original Application, it is not necessary to go into too many facts of this case. According to the applicant, disciplinary proceedings were initiated against him in Memo dated 5.6.1991 for loss of an accounts bag containing cash remittance of Rs. 2,300/- from Jajpur Railway station to Balibarua. Applicant has mentioned in Para 4.3 of his Original Application that the said account bag was contained in a branch office bag and the branch office bag was closed in a mail bag and the mail bag was closed in a transit bag alongwith the branch office bag for Odapada from Jajpur Road Railway Station. Applicant has stated that the Mail guard in course of the enquiry stated that he has received only 92 bags but notwithstanding this a punishment of severe warning was issued to the applicant by the Disciplinary Authority in his order dated 10.7.1993 at Annexure-1. The Senior Superintendent of R.M.S. in his order dated 12-4-1994 considered that the Disciplinary Authority has taken a lenient view and ordered to award punishment of recovery of entire loss of Rs. 2,300/- from the pay of the applicant.

in 23 equal instalments of Rs.100/- Against this order, the applicant filed an appeal to the Director of Postal Services which was rejected in the impugned order dated 1.8.1994 at Annexure-3. For the purpose of considering the petition, it is not necessary to record all the averments made by the Respondents in their counter because these will be referred to while considering the submission made by the learned counsel for both sides.

5. It has been submitted by learned counsel for the applicant Shri G.N. Mishra that the enquiry officer has held that the charge against the applicant has not been proved. This finding was also accepted by the Disciplinary authority but notwithstanding this the Disciplinary Authority had imposed the punishment of issuance of a severe warning which is itself not legally sustainable. Besides that the Appellate Authority basing on the same stand as has been brought out by the I.O. in course of enquiry imposed the punishment of recovery of Rs.2,300/- from the allowances of the applicant. It is submitted by Mr. Mishra, learned counsel for the applicant that the order of the appellate authority is based on no legally sustainable ground and the punishment ordered is based on no evidence.

6. *S. Jom* We have considered the above submission carefully. The first point to note is that from the averments made by the applicant himself in para 4.3. of his O.A. it is seen that the mail bag which was allegedly lost was not brought independently. It was put inside another bag and both these were put inside one more bag as has been noted by us in an earlier part of this order. Learned counsel for the applicant has stressed the point

that the Mail guard had indicated that he had received only 92 bags and had despatched 92 bags. It is submitted by Shri Mishra, learned counsel for the applicant that as the Mail guard had not indicated that he had received 93 bags no responsibility can be attached on the applicant for losing the 93rd bag which is the bag meant for Balibaruan. On the basis of the records before us we are unable to accept the above submission because we find from the order of the Director of postal Services, at Annexure-3 that on the relevant day the applicant had put his signature in token of receipt of such Mail bags but had taken the stand that he did not count the bags. As the applicant has signed in token of receipt of 93 bags it is not open for him to say later on that he did not count the number of bags and signed in token of receipt without counting the same. In view of this admission by the applicant himself the Departmental Authorities had committed no illegality by not placing reliance on the submission of the mail guard about the receipt of 92 bags by him. The other aspect of the matter is that the I.O. admittedly held that the charge has not been proved. Disciplinary Authority had also accepted the finding of the I.O. but that does not mean that the Appellate authority is debarred from coming to a finding different from the finding arrived at by the I.O. or the Disciplinary Authority. In the instant case on going through the impugned orders of the Appellate Authority and the Director of Postal Services at Annexures-2 and 3 we find that they have given elaborate reasonings in support of their conclusion that the bag was lost due to negligence of the applicant. Law is well settled that

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in the matter of disciplinary proceedings the Tribunal does not act as an Appellate Authority and can not substitute its finding in respect of the finding arrived at by the Disciplinary Authority. Tribunal can interfere only if proper procedure has not been followed, rules of natural justice has been violated or if the findings are based on ^{are} no evidence or ^{or} patently perverse. In the instant case, the ^{A. J. Som} applicant has not urged any ground that while passing the impugned order reasonable opportunity has not been given or rules /procedures have been violated. As a matter of fact we note that before passing impugned order the Appellate Authority issued him notice within a period of six months from 10.7.1993 i.e. by 4.1.1994. In view of this it is not possible to hold that the impugned order has been passed without giving adequate opportunity to the applicant. As we have already noted earlier both the Appellate Authority and the Director of Postal Services have given elaborate reasonings in support of their conclusion and we have gone through it. In view of this it is not possible to hold that their findings are based on no evidence or are patently perverse.

7. In the result, therefore, we hold that the Original Application is without any merit and is rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

S. Somnath
(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.