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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 224 OF 1995
Cuttack, this the 17th day of August, 2001.

BAIRAGI PRADHAN.

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APPLICANT.

VRS.

UNION OF INDIA & ORS.

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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
17/8/2001

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CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 224/1995.
Cuttack, this the 17th day of August, 2001.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

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SHRI BIRAGI PRADHAN,
Aged about 35 years,
S/o. Late Nakula Pradhan,
Resident of village-post; Jannibili,
via; Dharakote,
Ps: Aska, Dist. Ganjam, EDBPM, Janibali BO...
Jannibili, Ganjam. Applicant.

By legal practitioner : Shri G.K. Nanda,
Advocate.

: VERSUS :

1. Union of India represented through the Postmaster General, Berhampur Region, Berhampur Dist. Ganjam.
2. Director of Postal Service, Berhampur (GM) Region, Office of the PMG, Berhampur, GM Region, Berhampur, Dist. Ganjam.
3. Superintendent of Post Offices, Aska Postal Division, At/PO: Aska, Dist. Ganjam. Respondents.

By legal practitioner: Mr. A.K. Bose, Sr. Standing Counsel (Central).

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O R D E R

S. J. S.
MR. SOMNATH SOM, VICE-CHAIRMAN:-

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 4-4-1990 at Annexure-5 removing him from the post of E.D.B.P.M., Janibili Branch Post Office on the grounds urged in

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his Original Application.

2. Respondents have filed their counter opposing the prayer of applicant and the applicant has filed rejoinder. For the purpose of considering this Original Application, it is not necessary to go into too many facts of this case.

3. We have heard Shri G.K.Nanda, learned counsel for the applicant and Shri Anup Kumar Bose, learned Senior Standing Counsel appearing for the Respondents and have also perused the records.

4. The admitted position is that while the applicant was working as Extra Departmental Branch Post Master, Jannibilli Branch Post Office, disciplinary proceedings were initiated against him in which there were two charges. The first charge was that he received two telegraphic money orders dated 27.6.1988 from Surat Head Post Office for Rs.1000/- each on 30.6.1988 but without making payment to the payee Malati Nayak, he took thumb impression of some other person, wrote out the name of a fake witness of Hari Gouda and did not make payment of the amount of Rs.2000/- (Rupees Two thousand) to the payee Malati Nayak. This charge also includes another instance of receipt of Varachha Road money order dated 11.7.1988 for payment to one Raju Sethy. This money order was received on 18.7.88. It was alleged that the applicant wrote out the name of

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Shri Raju Sethy in the space provided for signature of the payee and the name of Hari Gouda as witness and showed payment of Rs. 400/- but actually misappropriated the amount. The third element of charge no.1 is similar misappropriation of money order dated 27.7.1988 of Rs.160/- payable to one Smt. Patta Naika but actual payment was not made to her and it is alleged that the payment endorsement in the money order was all forged. The second charge is that he did not maintain the Branch Office journal from 12.5.1987 to 21.8.1988. Applicant having denied the charges, detailed enquiry was made and the Inquiring Officer in his report at Annexure-4 held both the charges proved. After taking into consideration the report of the I.O., the Disciplinary Authority in his impugned order at Annexure-5 removed the applicant from service and his appeal dated 2.7.1990 was rejected by the Appellate Authority on 24.1.1991 at Annexure-7. Applicant has stated that he filed a petition on 28.4.1991 addressed to the Postmaster General Berhampur but he did not receive any reply to this. He subsequently sent reminders on 24.2.1994 and 5.3.1994 and ultimately he was informed in letter dated 1.7.1994 that his petitions have not been addressed to the proper authority i.e. Member (Personnel), Postal Service Board and is also time barred. In the context of the above fact, the applicant has come up in this petition with the prayers referred to earlier.

S. J. S.

The grounds urged by the learned counsel for the applicant in support of his prayer are discussed below. It has been submitted by learned counsel for the applicant that according to Rule -80 of Postal Manual, enclosed by the Respondents at Annexure-18 to the counter, in case of criminal action involving loss of public fund, the prosecution will be the general rule and departmental action should not precede prosecution. It is submitted by learned counsel for the applicant that in this case allegation is that of misappropriation of amount exceeding Rs. 2000/- and therefore, under Rule-80 prosecution should have been drawn against the applicant by filing FIR in the police station but instead of that the concerned officer directed the applicant to make good ~~at~~ the amount and immediately the applicant repaid the amount involved in the four money orders and thereafter the disciplinary proceedings were initiated and Cr. prosecution has not been lodged on the ground that there is no loss to the Department. We do not see how the applicant can make a grievance that the Departmental Authorities did not proceed against the applicant criminally. It was open for the Departmental Authorities to initiate disciplinary proceedings against the applicant for his alleged lapses and we find no illegality on the part of the Departmental Authorities in initiating the disciplinary proceedings against the applicant. This contention is accordingly rejected. It has been submitted by learned Senior Standing Counsel that the appeal filed by the applicant was rejected

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by the Appellate Authority in his order dated 24.1.1991 at Annexure-7. The applicant has not prayed for quashing the order of the Appellate Authority. Moreover, even though the Appellate Authority disposed of the appeal on 24.1.1991, the petitioner has approached the Tribunal only on 15.3.1995 and therefore, the Original Application is barred by limitation. It is submitted in reply by the learned counsel for the applicant that after receipt of the Appellate order, he filed petition on 20.4.1991 (Annexure-8) addressed to the Postmaster General but in reply it was ^{not} intimated to the applicant that he has to file a petition before the Member (P) Postal Service Board and only after on his sending reminders he was informed of this in letter dated 1.7.1994 and therefore, the Original Application is within the time. Clause-B of sub-section (1) of Section -21 speaks of appeal and representation and therefore, the petitioner should have approached the Tribunal after his appeal was rejected. The fact that he has filed a further representation to the Postmaster General, who was not the Reviewing Authority can not help him in saving the limitation. Therefore, we hold that the OA is barred by limitation.

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5. Even then we have looked into the matter on merits. It has been submitted by learned counsel for the applicant that the thumb impression and signature on the four money orders were not sent to the handwriting experts. Therefore, the conclusion of the Inquiring Officer and the Disciplinary Authority that this thumb impression and signature were forged is not legally sustainable. On going through the report of the I.O. we find that the

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payees in case of these money orders i.e. Maleti Nayak, Raju Sethy and Patta Naika appeared before the I.O. and denied to have received payment of the money order amount. So called witness Hari Gouda also appeared and stated that he has not witnessed the payment. Enquiry Officer has noted that Hari Gouda is illiterate and unable to sign and gives thumb impression only and therefore, he could not have signed as witness with regard to the payment of some of these money orders.

With regard to charge No. 2, the I.O. noted that the applicant had nothing to say in defence. In consideration of all the above, it can not be said that the findings arrived at by the I.O. and the Disciplinary Authority are based on no evidence and are patently perverse. It is also to be noted that the Disciplinary proceedings are not conducted strictly in terms of Indian Evidence Act and when the alleged lapses with regard to payment in respect of four money orders have been held to have been proved by the I.O. on the basis of other evidence, including the statement given by the applicant himself at the time of preliminary enquiry it can not be said that non-examination of the Govt. examiner of questioned documents has resulted in denial of reasonable opportunity to applicant.

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We also find that in this case the applicant being the EDBPM is proved to have misappropriated money orders including Telegraphic money orders which are sent with considerable sense of urgency and therefore, the punishment of removal can not be said to be disproportionate.

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6. In the result, therefore, we hold that the application is without any merit and the same is rejected. No costs.

(G. NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN (201).

KNM/CM.