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**CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 299 OF 1995  
Cuttack this the 18th day of January, 1999

Krishna Chanda Ganik

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to 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)  
*18.1.99*  
VICE-CHAIRMAN

*18-1-99*

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

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CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION No.299 OF 1995  
Cuttack this the 18<sup>th</sup> day of January, 1999

CORAM:

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

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Krishna Chandra Ganik,  
S/o. Late Bidyadhar Ganik  
Vill/Po:Chhamunda, Via:Juromara  
Dist:Sambalpur

...

Applicant

By the Advocates : Mr.P.K.Padhi

-Versus-

1. Union of India through it's Secretary,  
Ministry of Communication, Dak Bhawan,  
New Delhi-110001
2. Director of Postal Servies,  
Office of Post Master General,  
Sambalpur Region, Sambalpur
3. Sr. Superintendent of Post Offices,  
Sambalpur Division,  
At/Po/Dist:Sambalpur

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Respondents

By the Advocates : Mr.Ashok Mishra

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ORDER

MR.G.NARASIMHAM, MEMBER(J): Applicant, Krishna Chandra Ganik, an employee of the Postal Department seeks to quash the order of recovery dated 30.9.1993 amounting to Rs.15,000/- from him in 30 equal monthly instalments (Annexure-5) passed by the disciplinary authority (Res.3) and confirmed by order dated 30.6.1994(Annexure-6) by the appellate authority (Res.2).

At the relevant time he was in charge of Assistant Post Master at Sambalpur Head Post Office. In the disciplinary proceeding initiated under Rule 16(CCS(CCA) Rules, 1964, the imputation against him was that on 22.10.1991 and 23.10.1991 he had allowed withdrawals of Rs.19,600 from Sambalpur Head Office R/D Account Nos. 14517, 14335, 14658 and 14180 on 22.10.1991 without observing the procedure laid down in Rule-113 of Post Office S.B.Manual Volume-1(Annexure-R/8) resulting in loss of Rs.19,600 to the department as withdrawals were subsequently detected to be fraudulent. On the same day, on 22.10.1991 he allowed payment of cash advance of Rs.50,000 to Shri Pradip Kumar Routray, N.S.C. Counter Assistant of that Head Office from the Treasury Sambalpur Head Office without observing the procedure in Rule-38 of Postal F.H.B.Volume II, which enabled Shri Routray to utilise amount of Rs.19,600 towards fraudulent withdrawals from the aforesaid accounts. Thus according to disciplinary authority, by violating the aforesaid rules the applicant committed misconduct under Rule-3(i)(ii)

and (iii) of CCS(Conduct) Rules, 1964.

When the applicant was asked to submit his representation on these imputations under Annexure-1, the applicant in his letter dated 3.12.1992(Annexure-2) addressed to Respondent No.3 sought supply of nine documents to enable him to submit the representation. He was ultimately allowed to peruse some of documents, but four documents, i.e. Hand to Hand Book of N.S.C.Counter Assistant, R.D. list of transactions dated 22.1.1991, copy of Postmaster error book and order book and error book of Treasury branch were not not made available to him for perusal. Ultimately the applicant submitted representation daed 13.7.1993 and after considering the same the disciplinary authority passed the impugned order under Annexure-5. This order has been challened by the applicant in appeal before Res.2 under Annexure-4. Ultimately the appellate authority confirmed the order of the disciplinary authority.

The disciplinary authority in his order under Annexure-5 held that though the Counter Assistant Shri P.K.Routray had signed below the signature of depositors noting "C" and "V", the Ledger Assistant Nakula Jagdala had not signed below the signatures of the depositors in token of his comparison of those signatures with the signatures bearing in the ledger as per provision of note below of Rule-113 of S.B.Manual, VolI and under such circumstance the applicant in the capacity of Assistant

Postmaster could not have allowed the withdrawals in toto. As to the second part of imputation <sup>that</sup> the applicant allowed cash advance of Rs.50,000 to Shri Routray, the Counter Assistant, <sup>through</sup> the disciplinary authority observed that this has not been established fully in absence of hand to hand receipt book of the N.S.C. Counter Assistant, it cannot be said that the department had sustained loss of Rs.19, 000/-. It follows that the disciplinary authority could not fully hold the applicant responsible for the same. The appellate authority did not interfere with the order of the disciplinary authority observing that the applicant sitting in Supervisory capacity had certain checks to carry out so that the payment is made to the correct payees and the applicant had not exercised this check before admitting the withdrawals.

These facts are not in controversy.

2. The grievance of the applicant in this application is that Dayasagar Jagat, the then Assistant Superintendent of Post Offices of the Office of Res.3 was then officiating as Postmaster of Sambalpur Head Office and as he was involved in that case and in order to save him, Res.3 suppressed the four documents which were not made available to him for perusal. It is further stated by the applicant that this Dayasagar Jagat was also entrusted to investigate into this case. Hence the entire proceeding is not fair and not according to law. Though the Ledger Assistant, during preliminary inquiry,

admitted that he had verified the specimen signature of the depositors, this fact has not been taken into consideration by the disciplinary authority or the appellate authority. Non-supply of the aforesaid four documents or depriving of the opportunity for perusal of the same amounts to violation of natural justice for which he could not effectively defend himself.

3. The department in their counter though specifically did not deny the averment of the applicant that Shri D.S.Jagat, the then Postmaster incharge involved in this case investigated into the matter, had taken the plea that during preliminary inquiry the applicant was examined by Shri K.C.Ghadei, the then S.D.I.(P) Sambalpur East Division and the statement of the applicant so recorded by Shri K.C.Ghadei has been annexed as Annexure R/3. In that statement the applicant clearly admitted that S.B. 7 had not been signed by the Ledger Assistant and that Ledger Assistant had also not verified the signature of the depositors. Xerox copies of those withdrawals S.B. 7 have been annexed as Annexures R/4 to R/7. Thus in the counter the respondents take the plea that the orders of the disciplinary authority and the appellate authority have been passed according to law.

4. The applicant on 24.12.1998 filed rejoinder specifically stating that when he detected that the withdrawal forms(S.B. 7) were not signed by the Ledger Assistant, he ascertained from the Assistant that the

latter had ~~not~~ verified the signatures of the depositors and thereafter, the applicant had mentioned this irregularity in the error book of the Postmaster, who himself involved in this case and managed to suppress the document. Had he really allowed payment of cash advance of Rs.50,000 to N.S.C. counter Assistant, the same would have been reflected in the hand to hand book of N.S.C.Counter Assistant. A copy of the charges framed against this Postmaster, D.S.Jagat has been annexed as Annexure-A to the rejoinder.

5. This application was admitted on 7.6.1995 on which day as an ad interim measure, direction was issued to respondents that no further recovery shall be made from the pay of the applicant until further orders. This order is still in continuance.

6. After the filing of rejoinder the respondents were allowed time for reply, if any, but no written reply to this rejoinder has been filed.

7. We have carefully heard the submissions of Shri P.K.Padhi, learned counsel for the applicant and Shri Ashok Mishra, learned senior counsel appearing on behalf of the departmental respondents and have perused the record.

There is no dispute that D.S.Jagat was Postmaster incharge of Sambalpur Head Office during the relevant time. Annexur-A to the rejoinder reveals that he had also been proceeded for various irregularities right from the date 23.6.1991 including the relevant dates,

viz., 22.10.1991 and 23.10.1991. As earlier observed that there has been no specific denial in the counter that this D.S.Jagat has also been involved in this particular case. It is also not in dispute that the applicant made a request to the disciplinary authority for supply of the relevant error book and hand to hand book of the Counter Assistant, besides other documents for filing show cause. Admittedly these two documents were not made available for his perusal. It is not the case of the respondents that these two documents were lost or destroyed. The contention of the applicant which also finds support from the rejoinder that he specifically recorded in the error book that the Ledger Assistant though not signed in S.B. 7 (withdrawal form), compared and verified the signature of the depositors. It is also the further plea of the applicant that the fact whether he had in fact allowed payment of cash advance of Rs.50,000 to N.S.C. Counter Assistant Shri Routray can be ascertained from the hand to hand book of this N.S.C. Counter Assistant.

At this stage it is pertinent to note that in the counter as already stated it has been mentioned that the applicant during inquiry gave statement before Shri K.C.Ghadei that the Ledger Assistant had not verified the signature of the depositors, besides not signing in the S.B. 7 forms, copy of which has been annexed as Annexure-R/3. We have carefully perused this Annexure.

There is no specific denial in the counter that the applicant to the effect that the Ledger Assistant in fact had not recorded

There is no positive statement of the applicant to the effect that the Ledger Assistant in fact had not compared and verified the signature of the depositors. All that the statement reveals that the Ledger Assistant had not signed in the S.B. 7 forms in token of his comparison and verification of signatures. Hence the stand of the applicant that he ascertained from the Ledger Assistant that the latter had verified the signature of the depositors and that the applicant had mentioned so in the error book maintained by the Postmaster can not altogether be ignored.

There is no denial that the error book and hand to hand book of the Counter Assistant can reflect the stand of the applicant, if true. Yet the fact remains that these two vital books have neither been dealt by the disciplinary authority nor the appellate authority in their orders nor made available to the applicant for perusal inspite of his request before filing show cause.

Thus it comes to this that the applicant had been denied the opportunity of perusing these two vital documents which could have elicited some truth before filing show cause. It has been held by the Apex Court in **State of Uttar Pradesh v. Satrughan Lal** reported in AIR 1998(Supp) SC 3038 that opportunity of hearing in a disciplinary proceeding based on principle of natural justice has to be an effective opportunity of hearing and not mere pretence. By not providing opportunity to the applicant, at least to peruse these two vital books which

could have helped him in his defence in filing show cause, the department undoubtedly denied effective opportunity of hearing to the applicant and accordingly violated principles of natural justice. We are, therefore, of the view that this proceeding has become legally defective from the stage the applicant was denied opportunity of perusing those two documents.

8. In the result we quash the orders of the disciplinary authority dated 30.9.1993 and order dated 30.6.1994 passed by the appellate authority. The department, if they so deem fit, may proceed against the applicant afresh on the same imputations after giving him reasonable opportunity as discussed above. The application is allowed, but without any order as to costs.

*Somnath Som*  
 (SOMNATH SOM)  
 VICE-CHAIRMAN 8.1.99

*18.1.99*  
 (G. NARASIMHAM)  
 MEMBER (JUDICIAL)

B.K. SAHOO