

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 360 OF 1995

Cuttack, this the 27th day of August, 1999

Sri Guru Prasad Bisoyi .....

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)*  
**VICE-CHAIRMAN**

*27.8.99*

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 360 OF 1995

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**CORAM:**

**HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN**

**AND**

**HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)<**

.....

**Sri Guru Prasad Bisoyi, aged 27 years, son of late Nimai  
Charan Bisoyi, At/PO-Tumbaguda, Via-Jaradagada,  
Dist.Ganjam....**

.....

**Applicant**

**Advocates for applicant - M/s S.K.Mohanty**

**S.P.Mohanty**

**P.K.Lenka.**

**Vrs.**

**1. Union of India, represented by its Secretary, Department  
of Posts, Dak Bhawan, New Delhi.**

**2. Senior Superintendent of Post Offices, Berhampur (Gm)  
Division, District-Ganjam.**

**3. Director of Postal Services, Berhampur Region, Berhampur  
.....**

**Respondents**

**O R D E R**

**SOMNATH SOM, VICE-CHAIRMAN**

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In this Application under Section 19 of  
Administrative Tribunals Act, 1985, the petitioner has prayed  
for quashing the order dated 27.1.1994 (Annexure-3) of the  
disciplinary authority removing the applicant from service and  
the order dated 27.7.1994 (Annexure-5) of the appellate  
authority rejecting his appeal. He has also prayed for  
reinstatement in service with consequential financial  
benefits.

2. The applicant's case is that while he was working as EDBPM, Tumbaguda B.O. chargesheet was issued to him in memo dated 1.6.1991 (Annexure-1). There were two charges. The first charge was that he issued a manuscript receipt on 6.2.1990 for Rs.95/- to Special Officer, Tribal Development Agency, Tumbaguda for telephone charges though a Telephone Receipt Book was supplied to him on 29.12.1989 and was brought into use on 1.1.1990. Even though telephone calls were made on different dates from 4.1.1990 to 6.2.1990 the applicant credited the amount to Government account only on 12.12.1990 in violation of the departmental rules and instructions. The second charge was that while working as EDBPM, Tumbaguda B.O. he issued 15 receipts for money received as telephone charges but he did not credit the amounts in the Government account on the very same day. In respect of receipt no.2 dated 3.2.1990 he credited Rs.6/- on 5.2.1990. Further on 25.5.1990 he credited a sum of Rs.49/- including Rs.3/- collected in Receipt No. 45 dated 22.5.1990 but actual amount collected by him was Rs.51/-. He credited the balance Rs.2/- subsequently on 12.12.1990 along with other telephone revenue collection. Further it is stated that he collected Rs.6/- in receipt no.82 dated 25.9.1990 and Rs.6/- in receipt no. 83 dated 15.10.1990 but credited the amounts on 27.9.1990 and 17.10.1990 instead of on the same dates. The applicant pleaded not guilty to both the charges. The applicant asked for certain documents. The inquiring officer considering the same held that the Cash Account of Special Officer, Tribal Development Agency, Tumbaguda for the period from 4.1.1990 to 6.2.1990 showing payment of Rs.95/- towards telephone call charges is a relevant document and the inquiring officer in his letter dated 14.8.1992 requested Special Officer, T.D.A., Tumbaguda to produce the said document. But there was no response to the letter and the relevant document was not produced causing

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serious prejudice to the case of the applicant. The applicant has stated regarding the evidence given by the prosecution and defence witnesses. He has also stated that during his examination he had stated that the so called hand receipt has not been given to the Special Officer, TDA, Tumbaguda, by him and the handwriting was not his. He has also stated that the EDDA, P.K.Bisoy, who was not examined in the enquiry, had granted that receipt as he learnt from Padma Charan Mohanty, teacher of the village, who was produced as DW 1. He has further stated that Sub-Divisional Inspector (Postal) compelled him to credit Rs.95/- in the Government account and made him give a statement which he complied as per the dictation of the Sub-Divisional Inspector (Postal). The applicant has further stated that as he did not allow the Special Officer to book free calls from the Telephone, the Special Officer threatened him with dire consequences. As regards the second charge the applicant has stated that he was not aware of the accounting procedure. He was under the impression that the amount so collected towards telephone call charges could be credited directly to the Telecom Department. However, he credited the amounts collected towards the telephone charges and there was no mala fide intention. The inquiring officer submitted his report holding the applicant guilty of both the charges. The applicant filed a representation, but the Superintendent of Post Offices in the impugned order dated 27.1.1994 (annexure-3) held that the irregularities committed are serious in nature and ordered that the applicant should be removed from service. His appeal which is at Annexure-4 was also rejected in order dated 27.7.1994/4.8.1994 at Annexure -5. In the background of the above facts, the applicant has come up with the prayers referred to earlier.

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3. The respondents have opposed the prayer of the applicant by stating that he gave a manuscript receipt on 6.2.1990 for Rs.95/- towards telephone charges for the calls made by Special Officer, T.D.A., Tumbaguda, but misappropriated the amount. He had not used the prescribed Telephone Receipt Book supplied to him nor did he show the above amount in any record maintained by him. The second charge is that he collected telephone charges from the members of public on different dates between 3.2.1990 and 21.5.1990 and issued prescribed receipts in proper form but did not credit the amounts in Government account. The applicant admitted in his written statement on 12.12.1990 to have issued the manuscript receipt to the Special Officer, T.D.A., Tumbaguda and admitted his dated signature. This was during the preliminary enquiry after which SDI(P) submitted his report and the applicant was put off duty from 7.1.1991. Charges were issued and the departmental enquiry commenced on 22.1.1991 and completed on 28.7.1993. The applicant was given all reasonable opportunity. Charges were held proved by the inquiring officer and the disciplinary authority. A copy of the enquiry report was supplied to the applicant who represented. After considering his representation, the impugned order of punishment was passed and the appeal of the applicant was also rejected. The respondents have stated that the claim of the applicant for production of the cash account of TDA Office from 4.1.1990 to 6.2.1990 to see whether Rs.95/- was charged in those records was not considered relevant as the charge was based exclusively on the record maintained by the applicant in his capacity as E.D.B.P.M. But the inquiring officer requested the T.D.A. for production of such record which the Authority did not comply. In the process no serious prejudice was caused to the applicant. It is also stated that SDI(P), Parlakhemundi (East) Sub-Division, was directed by respondent no.2 to enquire into the complaint by

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the Special Officer, T.D.A., Tumbaguda, against the applicant regarding non-credit of telephone call amounts. During enquiry the Special Officer handed over the manuscript receipt in support of his complaint showing payment of telephone charges from 4.1.1990 to 6.2.1990. The Special Officer, TDA, Tumbaguda, did not mention the name of the applicant in his complaint but mentioned the same as B.P.M. meaning the applicant. The respondents have indicated the evidence against the applicant and have stated that the findings of the inquiring officer and the disciplinary authority have been rightly arrived at and the punishment has been rightly imposed and on the above grounds they have opposed the prayer of the applicant.

4. We have heard Shri S.P.Mohanty, the learned counsel for the petitioner and Shri S.Bhera, the learned Additional Standing Counsel appearing for the respondents and have also perused the records. The learned counsel for the petitioner filed the deposition of Rankanidhi Nayak, District Welfare Officer, Chatrapur, who was SW 3 in the enquiry proceeding as also three mail lists which have been taken note of.

5. The learned counsel for the petitioner, Shri S.P.Mohanty has taken us through the evidence and what he ~~turned~~ turned <sup>as</sup> ~~as~~ <sup>As</sup> contradictions in the case of the Department. The law is well settled that in a disciplinary proceeding the Tribunal cannot act as an appellate authority and cannot substitute its finding and judgment in place of the finding and decision arrived at by the inquiring officer and the disciplinary authority. The Tribunal can interfere only if there is denial of reasonable opportunity or violation of the principles of natural justice and if the findings are based on no evidence or are patently perverse. We have looked into the matter and considered the submissions of the learned counsel for the petitioner from this limited angle.

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6. The applicant has stated that he called for the relevant Accounts Book from the Tribal Development Agency, Tumbaguda, for checking that the amount of Rs.95/- purportedly given to the applicant by the Special Officer, T.D.A., Tumbaguda, was ~~not~~ accounted for in the accounts of T.D.A. on 6.2.1990, the purported date of receipt of the amount by the applicant. The inquiring officer held that this document is relevant and he asked the Special Officer, T.D.A., Tumbaguda, to produce the document. The Special Officer, TDA, Tumbaguda, did not produce the concerned document and therefore the applicant could not have the opportunity of seeing the document. It is also to be noted that the entire complaint against the applicant was initiated by the Special Officer, TDA, Tumbaguda. It was therefore all the more necessary and incumbent on his part to produce the document to show that the amount of Rs.95/- was actually paid to the applicant on 6.2.1990 and was shown in the accounts of his office accordingly. Denial of opportunity to the applicant to peruse the relevant accounts of TDA, Tumbaguda, assumes greater importance in view of the so called manuscript receipt, copy of which has been enclosed by the respondents as annexure-R/1. Looking at this paper it is very difficult for any reasonable person to term it as a receipt for Rs.95/- purportedly given by the applicant. TDA, Tumbaguda, is a Government agency and the amount of Rs.95/- paid by the Agency for telephone charges has to be credited to the accounts of the Agency in the Government accounts. There such expenditure has to be supported by a voucher. In Government account a receipt voucher invariably records the words "Received the amount - ". Without such an endorsement a document cannot be taken to be a receipt. In Annexure-R/1 there is no mention that this amount of Rs.95/- has been received by the applicant. In view of this, Annexure-R/1 cannot be held to be a receipt purportedly given by the applicant for Rs.95/-. The applicant has denied that this document has been written out by him or signed by

him. He has, on the other hand, brought on record the evidence of the school teacher (DW 1) that the EDDA made out the list of the calls and the corresponding amounts and gave it to the Head Clerk. In the context of the above, denial of opportunity to the applicant to peruse the relevant records of Tribal Development Agency, Tumbaguda, must be held to have resulted in denial of reasonable opportunity.

7. The Special Officer, TDA, Tumbaguda, one Rankanidhi Nayak who later on became District Welfare Officer, Chatrapur, was examined as SW 3. He has stated that he was working as Special Officer, TDA, Tumbaguda from 1989 to July 1991. In his deposition the Special Officer, TDA, Tumbaguda, has also stated that in the so called hand receipt the words "Received Rs.95/-" have nowhere been mentioned. He has not explained how in the absence of that it could be possible for him to charge this amount to his office accounts. He has also not stated if the amount was actually taken in the office account of TDA, Tumbaguda. This witness has admitted that he is aware that for making calls from Public Call Office, the call amount has to be paid then and there, but apparently he has not paid the amounts on the day of the calls. The respondents have stated that in the preliminary enquiry the applicant admitted to have received Rs.95/- from the Special Officer, TDA, Tumbaguda, on 6.2.1990 but had taken it into account on 12.12.1990. The applicant has stated that he was forced to deposit the amount of Rs.95/- on pressure from Sub-Divisional Inspector (Postal) and was forced to give a statement admitting to have received the above amount on 6.2.1990. In the face of denial of the applicant for receipt of the amount and in the face of the fact that the so called receipt is not a receipt at all, it is difficult to hold merely on the basis of the so called admission of the applicant that this aspect of the first charge has been

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proved. On the contrary, as the document at Annexure-R/1 cannot be held to be a receipt at all, it must be held that the finding that the applicant had granted a hand receipt is based on no evidence at all. In that event, the second aspect of this charge that he had granted hand receipt even though a Telephone Receipt Book in form ENG-8 was supplied to him must also fail. From the second charge it is clear that the applicant was granting receipts for telephone charges in Receipt Book supplied to him. The respondents have indicated in the charge itself that the Receipt Book was brought into use by the applicant from 1.1.1990. In view of this, we hold that the finding that the Article I of the charge has been proved is based on no evidence at all.

8. As regards Article II of the charge, there are several aspects of it. ~~He~~ am afraid most of these are somewhat trivial in nature. The first aspect is that according to the charge he should have deposited Rs.51/- but he deposited Rs.49/- and the balance Rs.2/-was deposited by the applicant seven months later. In this charge 18 receipts granted by the applicant for telephone charges have been mentioned. The highest amount is Rs.6/- and most of the amounts are Rs.3/- which is the normal charge for a call. For receipt nos. 82 and 83 the charge is that he granted receipts on 25.9.1990 and 15.10.1990 but did not take that amount of Rs.6/- each to the accounts on the very same day or next day. He took these amounts into account the day after, i.e., 27.9.1990 and 17.10.1990. Many times calls are booked from Public Call Offices after the office hours and therefore it cannot be a culpable negligence that the applicant while granting receipts on 25.9.1990 and 15.10.1990 have not brought this amount into account on the very same day. Delay of one day in crediting the amount and that too, for an amount of Rs.6/- cannot be a serious charge meriting the punishment of removal from service. The other amounts are mostly Rs.3/- each per call and there are three amounts of Rs.5/- and one for

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Rs.6/-. It is stated that these amounts were collected on the date of receipt but were credited only on 6.2.1990. The applicant has stated that he did not have proper idea how to credit the amounts. He was under the impression that the amounts are to be directly paid to the Telecom Department. In any case the amounts are so small and the applicant has also received the amounts by granting receipts in every case. No mala fide on the part of the applicant with regard to late credit of the amounts can be said to have been established.

9. To sum up, therefore, we hold that with regard to the first charge there has been denial of reasonable opportunity to the applicant and the finding on the first charge is based on no evidence. As regards the second charge even accepting the contention of the respondents that this charge has been proved, we find that there is no mala fide intention and the lapse is merely trivial in nature. In consideration of the above, the penalty of removal from service is to our mind shockingly disproportionate to the second charge which has been held proved against him. We have therefore no hesitation in quashing the impugned order of punishment at Annexure-3 and the order of the appellate authority at Annexure-5. The matter is remanded to the disciplinary authority to consider imposing some other punishment on the applicant which should be done within a period of 60 (sixty) days from the date of receipt of copy of this order.

10. In the result, therefore, the Original Application is allowed but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

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VICE-CHAIRMAN