

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 779 OF 1995
Cuttack this the 14th day of December, 1995

Shyam Sundar Nayak

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)
Vice-Chairman
12.12.95

24.12.95
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 779 OF 1995
Cuttack this the 14/12 day of December, 1999

CORAM:

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

...
Sri Shyam Sunder Nayak,
S/o. Balakrishna Nayak,
aged about 50 years, Vill: Chardia,
PO: Chardia, Dist: Bhadrak

... Applicant

By the Advocates : Mr. Satrughan Das

-Versus-

1. Union of India represented through the Secretary, Ministry of Communications, New Delhi
2. Director of Postal Services, Office of the P.M.G., Sambalpur Zone, At/Po/Dist: Sambalpur
3. Superintendent of Post Offices Bhadrak Division, At/Po/Dist: Bhadrak
4. C.P.M.G., Orissa Circle, At/Po/ Bhubaneswar, Dist: Khurda

... Respondents

By the Advocates : Mr. A.K.Bose
Sr. Standing Counsel
(Central)

...

ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): In this application, applicant Shyam Sundar Nayak states that while he was discharging the duties of Extra Departmental Branch Post Master, Chardia Post Office was placed under put off duty on 8.10.1990(Annexure-1) in view of pendency of enquiry into allegations of misconduct against him. On 15.10.1990 he represented under Annexure-2 protesting the order putting him under off duty. Be that as it may, no enquiry has yet been started against him even by the date he filed this Original Application on 11.12.1995 and he has been illegally and arbitrarily kept under put off duty. Hence he prays for quashing the put off duty order and for consequent reinstatement with all service benefits.

2. The Department in their counter aver that while serving as E.D.B.P.M. of the concerned Branch Office, on 10.5.1986, the applicant made a fraudulent withdrawal of Rs.300/- from Savings Bank A/c. No.852526 of one Bauli Panda and misappropriated that amount, though the said Bauli Panda expired during April, 1986, i.e. prior to withdrawal. The applicant had also misappropriated a sum of Rs.200/- received from Shri Mayadhar Sahoo for deposit in his S.B.Account during 1986. These facts could be unearthed during April, 1988. After due investigation, he was proceeded departmentally under Rule-8 of E.D.Agents(Conduct & Service) Rules, 1964 through Memo dated 19.9.1988 (Annexure-R/1) without placing him under put off duty. While this proceeding was in progress, R.D.Account Nos. 15235, 15239, 15240 and 15241 were received at Head Post Office for sanction of premature withdrawals. On verification of the R.D.Accounts it was

noticed that the entries made with regard to those four accounts were not actually credited. The matter was enquired into and it was noticed that the applicant had misappropriated those amounts. Then again one Banchhanidhi Sahu, a depositor of Chardia B.O. holding S.B.Account No.853001 lodged a complaint at Bhadrak Head Office on 17.6.1990 alleging suspicious entries in his passbook. On enquiry, it could be seen that an amount of Rs.50/- shown deposited in his passbook on 17.1.1989 was not actually credited to Postal Account and some pages of the Account were tampered. On these allegations he was put off duty on 9.10.1990. As against this put off duty order he preferred appeal to the Director of Postal Services(Res.2) which was rejected in order dated 1.2.1991 (Annexure-R/3). The rejection order was duly communicated to the applicant after obtaining his acknowledgement on 13.2.1991 and the same was forwarded to P.M.G. Sambalpur in Memo dated 28.2.1991 (Annexure-R/4).

In meanwhile the enquiring officer, in the disciplinary proceeding submitted his report on 22.3.1991. Copy of this enquiry report was supplied to the applicant on 12.4.1991. The applicant prayed for one month time as per his application dated 1.5.1991. He was allowed 10 days more time and it was communicated to him in letter dated 6.5.1991. He then submitted his representation on 13.5.1991. After consideration of his representation and the enquiry report, the disciplinary authority imposed penalty of removal from service in order dated 27.5.1991. This was communicated to the applicant by Regd.Post on

30.5.1991 and this was received by him, as per his signature in the A.D. form.

The applicant, according to Department, suppressed all these facts and filed this application five years after he was put under off duty and this application is no more maintainable.

No rejoinder has been filed by the applicant.

3. We have heard Shri S.Das, learned counsel for the applicant and Shri A.K.Bose, learned Sr.Standing Counsel appearing for the respondents. Also perused the records.

As earlier stated the applicant has not filed any rejoinder refuting the averments made in the counter. Hence we presume the averments made therein are true. The applicant having been removed from service in the year 1991 in the disciplinary proceeding could not have approached this Tribunal in 1995 challenging the order putting him under off duty in the year 1990. The applicant has not come up with clean hands.

Application is not maintainable and the same is dismissed, but without anyorder as to costs.

SOMNATH SOM
VICE-CHAIRMAN

14.12.95
(G.NARASIMHAM)
MEMBER(JUDICIAL)

B.K.SAHOO