

0199/95
(C)

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Serial Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
	8 <u>11</u> 2001	<p>This case is released from Post heard for direct hearing.</p> <p>V. J. N. N. vice-chairman 8/11/2001</p>	<p>Order of 28.2.95-</p> <p>None appears. One when time is granted to as a last chance for to file process fee of Rs. 5/- A one copy of application for issue of order after which order be issued as ordered by the Bench.</p> <p>Su Registrar.</p>
	11.3.2002	<p>The applicant by filing this Original Application has sought for direction to quash and set aside the order of removal passed by Respondent No.4 and also for quashing and setting aside the order passed by the Appellate Authority (Res.3) rejecting the appeal of the applicant. He has also sought for direction to reinstate him with all consequential benefits.</p> <p>Brief facts of this case are that the applicant, who was working as Extra Departmental Branch Post Master, Patangia B.O. was issued with the following charges.</p> <p>"Article-I- Sri Sarangadhar Naik, while working as EDBPM, Patangi EDBPM a/c with Phiringia so has accepted a sum of Rs.200/- from Sri Balakrishna Kanhar, a messenger on 1.12.89 for depositing the same in S.B.A/c. No.3031705 standing open in the name of Smt. Urmila Kanhar. Prior to this, deposit in the pass book had a balance, of Rs.400/- as on 8/9.8.89. He made necessary entry in the pass book noting the balance to Rs.600/- under his initial and impressed date stamp of 1.12.89 of Patangia B.O. in the pass book and returned the pass book. But the B.P.M. did not</p>	<p>process fee of Rs.5/- & one copy of the application has not yet filed by the applicant.</p> <p>For further orders.</p> <p>Patangia 7/3</p> <p>12 each.</p> <p>process fee of Rs.5/- & one copy of the application has not been filed.</p> <p>For further orders.</p> <p>Patangia 13/3</p>

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		<p>take this deposit into account on 1.12.89 and shown depositing of Rs.20/- in the pass book and S.B. journal on 21.12.89 by putting 2 before 1 of the date scoring last zero of Rs.200/- shown as deposit by over writing the balance of Rs.600/- to 420/- and Sri Naik while working as EDBPM, Patangia B.O., Smt.Urmila Kanhar had applied/withdrawal of Rs.400/- from her S.B. A/c. No.3034705 on 15.12.90 by filing wk the withdrawal from (SB-&). But the BPM Sri Sarangdhar Naik paid Rs.100/- on 17.1.91, Rs.50/- on 30.1.91 and Rs.160/- on 25.2.91 which he did not account for. Also Sri Naik did not make entries of such withdrawals in the Pass book a/c. no.3034705 Shri Naik managed to collect one S.B. 7 form duly signed by the depositor Smt.Urmila Kanhar and utilised the said form for withdrawal of Rs.300/- on 14.1.91.</p> <p>Thus by the said action the said Sri Sarangadhar Naik violated the B.O. rules and failed to maintain absolute integrity and devotion to duty as required under Rule 17 of E.D.As (Conduct and Service) Rules, 1964.</p> <p>Article-II. Sri Sarangadhar Naik while working as EDBPM, Patangia B.O. in a/c. with Phiringia S.O. has accepted a desposit of Rs.20/- on 20.12.88 from Shri Biswanath Kanhar to deposit on his S.B.A/c. No.3033861 along with pay in sub. The B.P.M. in his presence has noted, the deposit into pass book, impressed the date stamp of Patangia B.O. under his initial and returned the Pass book to depositor. But the said Sri Sarangadhar Naik did not take this desposit into B.O. account on 22.12.88 or subsequently and misappropriated the amount.</p> <p>By the above action, the said Sarang Naik, violated B.O. rules and failed to maintain absolute integrity and devotion to duty as required under rule 17 of P & T E.D.As (Conduct and Service) Rules, 1964".</p>	<p>or. No.4 dt-14.3.95-</p> <p>A copy of the order dt-14.3.95 may be given to the counsel for both sides.</p> <p><i>Patra</i> 16/3</p> <p><i>Munh</i> 16.3.95 S.O.</p> <p>Received <i>Am</i> on behalf of Supd. Phirbar & order dt 14.3.95 23/3/95</p> <p>MA. 195/95- out FI-A' filed by the petitioner prayed for restoration.</p> <p>Copy of the MA. has not served on the respondent's counsel.</p> <p><i>Patra</i> 28/3</p> <p>Bench</p>



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<div data-bbox="140 84 215 156">7</div>	<div data-bbox="652 24 949 144"> OA 99/95 (A) </div> <p>After framing the aforesaid charges the applicant was put off duty w.e.f. 24.6.1991 on the allegation of misconduct. The Disciplinary Authority appointed the Inquiring Officer to enquire into the charges. The Inquiring Officer concluded the inquiry and held the charges proved. The Disciplinary Authority thereafter forwarded a copy of the findings of the Inquiring Officer, asking the applicant to submit his representation. The applicant submitted his representation and the Disciplinary Authority, after considering his representation and other relevant materials on record imposed the penalty of removal from service of the applicant. The applicant, thereafter, filed an appeal against the order of the Disciplinary Authority to the Appellate Authority, who vide order dated 3.8.1994 under Annexure-6 confirmed the order of punishment passed by the Disciplinary Authority and rejected the appeal filed by the applicant.</p> <p>Aggrieved by this, the applicant has filed this Original Application claiming the aforesaid reliefs.</p> <p>Respondents in their counter reply</p>	<div data-bbox="1261 24 1424 144"> </div> <p>2-P.O. v Rs. 5/- & one copy of the petition has filed on 29.3.98- at 3-P.M.</p> <p>Sub 29/3 Beach</p> <p>MA. 290/95- at F.I.A. filed by Mr. Akhaye Mr. Mishra prayed for time to file counter.</p> <p>copy of MA. has not served on applicant's counsel.</p> <p>Sub 23/4 Beach counter not filed. For further orders.</p> <p>Sub 18/5 Beach</p>

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		<p>have stated that the applicant, while working as EDBPM, Patangia B.O. was put off duty w.e.f. 24.6.1991 and thereafter proceeded against under Rule-8 of E.D.Agents(Conduct & Service) Rules, 1964, because of certain irregularities. The irregularities were enquired by the Inquiring Officer and the charges were proved against the applicant. The Disciplinary Authority imposed the penalty of removal from service of the applicant and the appeal preferred by the applicant against the order of the Disciplinary Authority was also rejected. According to Respondents, the enquiry was held as per procedures laid down in accordance with the Rules and Instructions and the applicant was afforded full opportunity and was given an opportunity of being heard. Thus, the principles of natural justice, according to Respondents, were observed by them. In view of this submission, Respondents have prayed that the O.A. is liable to be dismissed as it does not merit consideration.</p> <p>Heard Sri B.S.Tripathy for the the applicant and Shri S.B.Jena, A.S.G. for the respondents and perused the</p>	<p>Counter not filed. For further orders.</p> <p>21/2 19/1</p> <p>Registrar</p> <p>Order dt. 11.7.95</p> <p>Four weeks time is granted to file counter. </p> <p>Registrar</p> <p>Counter not filed. For further orders.</p> <p>21/8</p> <p>Registrar</p> <p>Order dt. 22-8-95</p> <p>Counter by four weeks.</p> <p> Registrar</p>

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Office note as to
action (if any)
taken on order

records.

We are aware of the settled legal position that the Court/Tribunal cannot reappreciate the evidence and also cannot go into the quantum of punishment unless it shocks the conscience of the Court. In this case we find that the applicant was charged for misappropriating a sum of Rs.220/- for which extreme penalty of removal from service has been imposed on him. We find that the penalty imposed upon the applicant is disproportionate to the charges levelled against him. We are, therefore, of the considered view that the case of the applicant be remitted back to the Appellate Authority for reconsideration of the matter. Accordingly, we quash and set aside the order of the Appellate Authority dated 3.8.1994 under Annexure-6 and remit back the case to the Appellate Authority to consider the appeal/representation of the applicant, which will be filed by him within a period of four weeks from the date of receipt of a copy of this order, and thereafter the Appellate Authority will take a decision on the

Counter not
filed.For further
orders.

Sd/-

25/9

Request
order dt. 29-9-95Counter be
filed by 4
weeks. Filing
which place
before Bench
for further
orders.Sd/-
RequestCounter
has not yet
filed.For further
orders.

orders

Sd/-
30/9

Bench

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Office note as to
action (if any)
taken on order

on the appeal/representation, as
aforesaid, communicate the decision
thereon within a period of three months
from the date of receipt of such appeal/
representation. ~~to~~ We make it clear that
in case it is decided to reinstate the
applicant in service, no backwages shall
be paid to him for the period from the
date he is out of employment.

The O.A. is disposed of ^{with} ~~in~~ the
aforestated observations and directions.
There shall, however, be no order as to
costs.

mslh
MEMBER (ADMINISTRATIVE)

11/09/2002
MEMBER (JUDICIAL)

The 11 May 2002
Res. order to the
counter is dated
11/5/02 to 19.9.92
copy of counter
not sent

For order

1
18.9.92

Bd

For copy
on memo

1
2.2.90

Bd

Free copy
of the order
dt-11-3-02
given to the
both counsel.

14/3'

14/3'
S-D