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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION NO.474 OF 1996**

**Cuttack, this the 26<sup>th</sup> day of Sept., 2003**

Kulamani Patel ..... Applicant(s)

Vrs.

Union of India & Others ..... Respondents.

**FOR INSTRUCTIONS**

- 1. Whether it be referred to the Reporters or not ? ye
- 2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? ye

*M.R. Mohanty*  
26/09/03  
**( M. R. MOHANTY )**  
**MEMBER ( JUDICIAL )**

*B.N. Som*  
**(B.N.SOM)**  
**VICE-CHAIRMAN**

(8)

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**ORIGINAL APPLICATION NO.474 OF 1996**

**Cuttack, this the 26th day of Sept., 2003**

**CORAM:**

**HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN**

**&**

**HON'BLE SHRI M.R. MOINTY, MEMBER (J)**

**Shri Kulamani Patel, S/o Shyama Sunder Patel, R/o Vill-  
Katangapani, Po-Katangapani, P.S- Jamankira, Dist-Sambalpur.**

.....Applicant(s)

**By the Advocate(s)**

..... M/s. P.K. Mishra-II

**P.K. Padhi**

Vrs.

1. Union of India represented through its Secretary to the Govt. of India, Posts & Telegraph Department, New Delhi-1.
  2. The Director of Postal Services, Office of the Post Master General, Sambalpur Region, Sambalpur-768001.
  3. Chief Post Master General Orissa, Bhubaneswar, Dist Khurda-
  4. Senior Superintendent of Post Offices, Sambalpur Division, At/Po/Dist-Sambalpur.
  5. Sub-Divisional Inspector (Postal), Sambalpur Easts Sub-Division, Sambalpur-1.
- ..... Respondent(s)

**By the Advocate(s) -**

....

**Mr.A.K. Bose, (SSC)**

**O R D E R**

**SHRI B.N. SOM, VICE-CHAIRMAN:**

This O.A. has been filed by Shri Kulamani Patel, assailing the order dt.30.06.94 passed by Respondent No.2 rejecting his appeal against the order of Respondent No.4 removing him from service with effect from 30.09.1993.

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2. Shorn of details, the facts of the cases are that the applicant was appointed as Extra Departmental Branch Post Master ( in short EDBPM) of Katangapani Branch Office with effect from 01.06.1974. While he was working as such he was proceeded against under Rule 8 of EDA's Service & Conduct Rules by serving a Memo dt.02.09.1991 on him. Three charges were framed against the applicant. The first one that he fraudulently withdrew an amount of Rs.2,600/- on 19.09.1989 from S.B. Account No.1135798 after the passbook was received from the Head Office after interest posting and thus misappropriated this amount violating the provision of Rule 134 (IV) of the Branch Office Rules. It was also disclosed in the charge memo that the depositor had died in the mean time. The second charge was that he did not enter the withdrawal of Rs.100/- on 21.06.1990 in S.B. Pass Book No.1134264 violating the provisions of Rule 134 (II) of Branch Office Rules. And also he did not account for Rs.5/- on 17.10.1990 against the said account violating the provision of Rule 131 (3) of Branch Office Rules. Lastly, that he did not open the Post Office from 11.00 hours to 13.00 hours on 16.10.1990 violating the provision of Rule 5 of Branch Office Rules. The applicant submitted his written statement of defense on 14.09.1991 denying all the charges framed against him and preferred to face an inquiry. The inquiry officer submitted his report on 26.02.1993 stating that Article I of the charge was not proved, charged framed under Article II was partly proved and charged framed under Article III fully proved. The Respondent No. 4 partially disagreed

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with the finding of the inquiry officer and found Articles I & II also fully proved and held him guilty of the charges and removed him from service with effect from 30.09.1993.

3. Aggrieved by this order he filed representation to the appellate authority on 14.01.1994 bringing out deficiencies/ shortcomings in the order passed by the disciplinary authority. The thrust of his representation was that the punishment awarded to him was not commensurate with the gravity of his offence. He also submitted that the disciplinary authority could not have taken such an extreme step on the ground of "preponderance of probability". The Appellate Authority was not convinced by his representation and rejected the same by his order dated 30.06.1994.

4. The Respondents by filing counter have contested this application. They have at the outset raised the question of limitation under Section 21 that the final order on the appeal having been passed on 30.09.1993, and this application O.A. being filed only on 04.02.1996, it is liable to be dismissed in limine.

5. On the merit of the application they have stated that there was no iota of doubt that the applicant had forged signature of the depositor on the payment side of the withdrawal form, in the case referred to in the Article I of the charges and did not properly account for the SB transactions carried out on 21.07.1990 and 17.10.1990 in the books. These are serious charges of misconduct impinging on integrity of the applicant. The applicant was,

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therefore, removed from service after the due process of law. They further submitted that the applicant had made a representation to Respondent No.4 after his acquittal in the criminal case filed against him on the same charges in the Court of JMFC, Kuchinda in G.R. case No. 17.4.99 seeking relief in this case on the basis of the judgment in that case. His representation was duly considered but was rejected on 30.01.1996 on the ground that he had already been removed from service after a duly conducted departmental proceedings in which he was found guilty of the charges. On the other hand, he was acquitted in the criminal case not on merit but on the basis of benefit of doubt. In a criminal proceeding the guilt has to be established beyond reasonable doubt but in a departmental proceeding infraction of a rule or departmental instruction or an instance of misconduct attracts imposition of any of the statutory penalties prescribed. In these circumstances acquittal in a criminal proceeding did not entitle the applicant to be reinstated in service.

6. We have heard Shri P.K. Padhi, Ld. Counsel for the applicant and Shri A.K. Bose, Ld. Senior Standing Counsel for the Respondents. We have also perused the records placed before us.

7. The Ld. Counsel for the applicant has relied on the following citations in support of his submission:-

1. AIR 1999 S.C.3734 to 3750 (copy enclosed) Y.D. Bagde Vs. State of Maharashtra.
2. O.A. No.641 of 1996 (Disposed of on 16.4.03) of CAT, Cuttack Bench. Smut. Purnima Ghir Vs. U.O.I & Others

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3. NSLR 1969 Page 657 to 659 Narayan Mishra Vs. State of Orissa.
4. AIR 1994 SC page 1074 Managing Director, ECIL Vs. B. Karunakar.
5. SBR 2003 (5-6) Page 21 to 28 (SC)  
Kailash Nat Gupta Vs. Enquiry Officer (R.K. Rai), Allahabad Bank.
6. SCC 1996 (L&S) Page 301 to 302 Mandeep Kumar and others Vs. State of Haryana & others.
7. Copy of Letter No.15/48/87-Vig.III dtd. 17.12.87
8. DLR 2002 (I) Page 667-669) Balajinath Padhi Vs. C.A.T. & Others.
9. A.I.R. 1987 SC 1353 -1354 Collector L.A. Nantnag & another, Appellants Vs. Smt. Katiji & Others.

8. The main thrust of the argument of the Ld. Counsel for the applicant is that the applicant was denied the benefit of principles of natural justice in the said departmental proceedings. In this regard he submitted that Respondent No.4 while differing with the findings of the Inquiry Officer ( in short I.O) did not give any opportunity to the applicant being heard before imposing the punishment of removal from service. Relying on the judgment in the cases referred to above serial 1-4, he submitted that on this ground alone the impugned order should be set aside.

9. The Ld. Counsel further submitted that the punishment meted out to the applicant was extremely harsh and disproportionate to the gravity of the offence which should shock the judicial conscience. He further submitted that the disciplinary authority did not keep in mind the facts that neither the allegation of misappropriation of Govt. money nor the

allegation of moral aptitude has not been proved. In the circumstances the applicant was entitled to the benefit of the doctrine of proportionality on the ratio of the judgment of the Apex Court in the case of Shri V.C. Chaturvedi Vs. U.O.I 1995 (6-SCC 749). He further submitted that in view of the law pronounced by the Apex Court this is a fit case for the Tribunal to intervene and modify the order of punishment instead of remitting it back to the disciplinary authority because the allegations which have been proved involved non entry of Rs.100/- in the books of the Post Office on the day of carrying out the transaction and keeping the office closed for a part of the working hours. Relying on the decisions in the cases of Narayan Mishra and Y.D.Bagde, he submitted that the Respondents having passed the order of punishment without giving due opportunity to the applicant to represent against the tentative conclusion of the disciplinary authority the impugned order is liable to be quashed. Relying on the Apex Court decision in the case of Mandip Kumar Vs. State of Haryana and others, he has submitted that the Respondents could not have imposed the extreme penalty of removal from service for mere absence of the applicant in office for a couple of hours. He was entitled to be given fresh opportunity to improve his work and conduct. There was thus mis-carriage of justice.

10. We have considered the rival view points carefully. During oral argument the Ld. Counsel for the applicant repeatedly submitted that the applicant having been found not guilty in the criminal case by JMFC,

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the disciplinary authority should not have raised the issue of limitation in this case. By filing rejoinder the applicant has also sought to explain the delay of over two and a half years from the date of passing of the final order by the appellate authority on the ground that the delay was not for a very long period and that he was suffering from tuberculosis from 09.02.1994 to 08.12.1995 during this period. He has also submitted that for this cause of delay the Respondents are not prejudiced in any manner.

11. We have given our anxious thoughts to the circumstances narrated by the applicant explaining delay on his part in approaching this Tribunal. He has in his rejoinder clearly stated that he was suffering from Pulmonary Tuberculosis and was under treatment from 02.09.1994 to 08.12.1995. This averment is not controverted by the Respondent. In the circumstances, we are satisfied that the delay caused in filing of this O.A. was for reasons beyond his control and therefore, we agree to condone the delay.

12. The Ld. Counsel for the petitioner has submitted that the disciplinary authority denied him the benefit of natural justice by not hearing him before imposing the punishment against him and not confronting him with his finding that he deserved to be removed from service before passing his order. This plea of denial of natural justice was not raised by the applicant either in his submission before the disciplinary authority or in his submission before the appellate authority. In the circumstances he is precluded from raising this issue at this stage.

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However, in his representation before the appellate authority he had submitted that the punishment imposed on him was grossly disproportionate to the gravity of his misconduct. Although he has not elaborated as to how it was so, during oral argument the I.d. Counsel for the applicant has submitted that under ED Conduct Rules other types of penalties are also available and the disciplinary authority could have considered imposing a less deterrent punishment on him because during his 16 years of service as EDBPM he had never invited complain against him either from the department or from the public and that the charge of not opening the post office for two hours was not grave enough to merit such extreme punishment. The appellate authority before whom the applicant has taken this plea of the punishment being disproportionate to the gravity of the offence has not, however, taken these points into account as it would appear from the content of the appellate order.

13. From the discussions made above we find that the applicant had raised the issue that the punishment that has been imposed on him was shockingly disproportionate to the gravity of the offence committed by him. But whether the errors and omissions that he committed while working as Branch Post Master Katangpai, Branch Office were grave enough or not to invite the extreme punishment of removal from service according to the standard set by the Respondents-Department for its employees is better answered by them and as the appellate authority in his order has not gone into this aspect of the matter we therefore hold that in

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the interest of justice and fair-play the case be remanded to the appellate authority for reconsidering the representation dt. 04.01.1994 submitted by the applicant and dispose of the same with a speaking order touching upon each of the issues raised by him in that representation including the quantum of punishment imposed on him. Accordingly, this O.A. is disposed of with a direction as stated above and to this extent this application succeeds.

*Lawyer  
22/09/03*  
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**( M..R. MOHANTY )**  
**MEMBER(JUDICIAL)**

*[Signature]*  
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**(B.N. SOM)**  
**VICE-CHAIRMAN**

CAT/CTC  
 Kalpeswar