

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 620 OF 1996.  
Cuttack, this the 10th day of August, 2000.

Bishnu Charan Biswal. ... Applicant.

- VRS. #

Union of India & 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.  
(SOMNATH SOM)  
VICE-CHAIRMAN  
10/8/2000

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 620 OF 1996.

Cuttack, this the 10th of August, 2000

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G.NARASIMHAM, MEMBER (JUDICIAL).

..

Bishnu Charan Biswal, postal Assistant,  
Salipur, Sub Post Office, At/PO/PS; Salipur,  
Dist; Cuttack.

... Applicant.

By legal practitioner: M/s. P. K. Padhi, S. N. Kanungo, Advocates.

- VRS. -

1. Union of India represented through  
Chief postmaster General, Orissa,  
Bhubaneswar.
2. Director,  
Postal Services,  
Headquarters Region,  
Bhubaneswar.
3. Superintendent of post Offices,  
Northern Division,  
Cuttack.

... Respondents.

By legal practitioner : Mr. S. B. Jena, Additional Standing Counsel.

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ORDERMR. SOMNATH SOM, VICE-CHAIRMAN:

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In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the punishment order dated 31.7.1995 of the Disciplinary Authority imposing punishment of recovery of Rs. 3000/- from the pay of the applicant in 30 monthly instalments beginning from August, 1995. He has also prayed for quashing the order dated 2.8.1996, at Annexure-4 of the Reviewing Authority enhancing the punishment to that of recovery of Rs. 14,630/- from the pay of the applicant in 30 monthly instalments. Respondents have filed counter opposing the prayers of the applicant. At the time of admission of this Original Application on 27.8.1996, the order of the Reviewing Authority was stayed and the stay order is continuing till date.

2. For the purpose of considering this Original Application, it is not necessary to go into too many facts of this case. The submissions made by the parties will be referred to at the time of discussing the submissions made by learned counsel for both sides.

3. We have heard Mr. P.K. Padhi, learned Counsel for the Applicant and Mr. S.B. Jena, learned Additional Standing Counsel (Central) appearing for the Respondents and have also perused the records.

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4. Before going to the facts of the case it is to be noted that against the order dated 31.7.1995 of the Disciplinary Authority imposing the punishment of recovery of Rs. 3000/-, the petitioner has not filed any appeal. Learned counsel for the applicant also did not press the prayer for quashing the order of the Disciplinary Authority. In view of this, this prayer is disposed

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of as not being pressed. Before taking the other prayers of the applicant, the admitted fact of the case can be stated.

5. On 17.9.1994, the applicant was working as Postal Assistant, Nichinta Koili Sub Post Office. On that day, another postal Assistant, attached to the said post office was on leave and therefore, the applicant had to manage the work of that seat also. On that day, 31 high value money orders were received representing the amount of Rs. 14, 630/- but these money orders were not sent to the Branch offices for immediate payment to the payees and at the end of that day, the cash of the post office was kept in a small chest which was embedded in the ground and which was under a single locking arrangement although another iron chest having double locking arrangement for keeping cash and valuables was available in the office according to the Respondents. On the night of 17.9.1994 there was a theft of the post office which resulted in loss of Rs. 20,046/- kept in a small iron chest. For this Departmental proceedings were initiated against the Sub Postmaster as also the applicant who was the joint custodian of the cash and in the said proceedings, the Disciplinary authority imposed a punishment of recovery of Rs. 3,466/- on the sub postmaster, Nischintakoili one Bhabagrahi Pati and ordered for recovery of Rs. 3000/- from the present applicant. The Reviewing Authority felt that the punishment imposed on the applicant is too lenient and he issued notice on 11.1.1996 to the applicant as to why the punishment should not be enhanced to recovery of Rs. 14,630/-. Applicant submitted a representation in which among other things, he also prayed for a personal hearing. Appellate Authority considered his representation and came to a finding that Rule 29 of CCS (CCA) Rules does not provide for giving

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a personal hearing and imposed impugned order of punishment enhancing the amount to be recovered from the applicant i.e. Rs.14,630/- The first point submitted by learned counsel for the applicant is that the applicant was the joint custodian of the cash along with the postmaster and it was the responsibility of the Sub-postmaster to send the money orders and cash to the BOs. It was also his responsibility to send the cash to the higher offices without retaining the cash in the Post Office and therefore, responsibility should have been fixed on him. Second ground urged by learned counsel for the applicant is that even though he had asked for a personal hearing personal hearing was not given to him by the Reviewing Authority. He has also submitted that as the Subpostmaster, who was responsible for the loss had in the meantime retired, the Reviewing authority enhanced the punishment with a view to recover the excess portion of the loss from the applicant instead of appropriating the loss to the Sub postmaster. It is submitted by Mr. Jena learned ASC that on the quantum of punishment, the scope of interference by this Tribunal is very limited. The Reviewing Authority has the authority to enhance the punishment and the procedure as required under rules has been followed and adequate opportunity has also been given to the applicant before enhancing the punishment and therefore, the application is without any merit.

6. First point is to be noted in this connection is that the Sub postmaster and the applicant were joint custodian of the cash. Second admitted position is that according to the Disciplinary Authority, for the loss the postmaster was more liable than the applicant which is borne out from the fact that the Disciplinary Authority ordered recovery of higher amount from

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the postmaster as compared to this applicant. From the charge-sheet issued to the postmaster, which is at Annexure-R/2 it has been mentioned that for the loss, the postmaster is solely responsible and this charge has been held proved against the postmaster by the Disciplinary Authority. But in any case, by the order of the Appellate Authority, major portion of the liability has been fixed on the applicant. It has been explained by the learned counsel for the applicant that this has happened because by the time the postmaster had retired and in order to recover the loss to the Department, the applicant has been saddled with a higher amount of recovery. Departmental instructions provide that where recovery of any loss due to any action or inaction on the part of the Departmental employee is ordered, the quantum of loss has to be quantified and ordered to be recovered. In cases of contributory negligence in several other cases decided by us we have held that the loss can not be precisely determined in mathematical terms. In the instant case according to the Disciplinary Authority the Postmaster who is more liable than the applicant because higher amount has been ordered to be recovered from him but this position has been changed in view of the impugned order of the Reviewing Authority. It is also seen that the enhanced amount which has been ordered to be recovered from the applicant are precisely the amount covered by 31 high value money orders. From the pleadings of the parties it appears that the applicant had taken the stand before the Departmental Authorities that even if all the 31 money orders would have been despatched on the very same day i.e. on 17.9.1994, there would not have been cash remittance of Rs.14,630/- to the BOS keeping in view the line limits and the cash in hand with the SPMS. The point regarding line limit is not valid because it appears from the order of the Disciplinary

Authority with regard to sub postmaster that the line limit is Rs.15000/- whereas only Rs.10,000/- was sent on that day. The other point is with regard to sending the cash alongwith money order. The money need not have been sent to the Branch Offices because the Branch offices would have paid the money orders from the own cash balance and would have requisitioned the money from the higher offices if required. In view of this, we do not want to go into this aspect of this case. On consideration of the above facts, we feel that the Reviewing Authority should have accorded a personal hearing to the applicant sought for by him. It has been submitted by the learned ASC that rules do not provide for any personal hearing. We do not want to accept this proposition because the first proviso to rule 21 provides that no order imposing any penalty or enhancing any penalty shall not be made by a Reviewing Authority unless the Govt. servant is given a reasonable opportunity of making a representation. Rule provides for making a representation. Representation can be made orally as also in writing. In this case, the applicant has made a representation but he also asked for an oral submission. Under the circumstances we feel that denial of opportunity by making oral submission has prejudiced the applicant. We must not be understood to be laying down a proposition that in all such cases, besides the written representation opportunity for oral submission must be provided but in the present circumstances where the employee has asked for an oral submission the order of Reviewing Authority holding that the relevant rule does not provide for making any oral submission does not appear to be based on a correct interpretation of rules.

7. In view of this, we quash the order of the  
Reviewing Authority and remit back the matter to the  
Reviewing Authority to reconsider the matter if he so  
chooses by giving an opportunity to the applicant for  
personal hearing and then decide the matter in accordance  
with law and rules.

8. With the above observations and directions,  
the Original Application is disposed of. No costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Vary  
(SOMNATH VARY)  
VICE-CHAIRMAN 2000

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