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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 630 OF 1996
Cuttack, this the 2nd day of March 2000

Sri Biranchi Narayan Chakra 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.

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

SOMNATH SOM
(SOMNATH SOM)
VICE-CHAIRMAN
2.2.2000

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CUTTACK BENCH, CUTTACK.**

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Cuttack, this the _____ day of _____ 2000

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CORAM:

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

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Sri Biranchi Narayan Chakra, aged 41 years, son of late
Kirtan Bihari Chakra, Vill/PO-Kanpur, Via-Kushaleswar,
District-Keonjhar
Applicant

Advocates for applicant - M/s S.P.Mohanty
P.K.Padhi.

Vrs.

1. Union of India, represented by its Chief Post Master General(Orissa Circle), At/PO-Bhubaneswar, District-Khurda-751 001.
2. Director of Postal Services (Sambalpur), At/PO/Dist.Sambalpur-768 001.
3. Superintendent of Post Offices, Keonjhar Division, At/PO-Keonjhar, District-Keonjhargarh-758 001..
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Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for quashing the order dated 29.12.1995
(Annexure-6) removing the applicant from the post of
EDBPM, Kanpur B.O. and the order dated 21.5.1996
(Annexure-7) of the appellate authority rejecting the
appeal.

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2. Facts of this case, according to the
applicant, are that on allegation of late credit of
certain amounts he was put off duty with effect from
31.3.1994 and proceeded against under Rule 8 of
EDA(Conduct & Service) Rules. The applicant has

mentioned the charges and his explanation in detail in his Application. He has stated that the inquiring officer without properly appreciating the evidence, came to the conclusion that all the charges have been proved. During enquiry through his application dated 14.5.1995 he called for certain additional documents and counterfoils, but these were not supplied on the ground that these are not available. Copy of the relevant ordersheet of the inquiring officer has been enclosed. He has stated that he was denied reasonable opportunity. He has further stated that the disciplinary authority and the appellate authority have failed to apply their mind to the facts of the case. The applicant has stated that the disciplinary authority has imposed the punishment of removal from service on the applicant. Such extreme punishment is arbitrary and violative of Articles 14 and 21 of the Constitution. The applicant has stated that in this case there has been no loss to the Government. He has also stated that the appellate authority has failed to consider the contentions raised by the applicant in his appeal and has also not applied his mind with regard to disproportionate nature of the punishment. On the above grounds, the applicant has come up in this petition with the prayers referred to earlier. The grounds mentioned by the applicant in support of the relief claimed by him will be discussed further in this order and are not being recounted at this stage.

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3. The respondents in their counter have mentioned the charges against the applicant and how these alleged lapses are violative of different departmental rules. They have stated that the charges

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were framed against the applicant and the Assistant Superintendent of Post Offices in-charge was appointed as inquiring officer and a presenting officer was also appointed. The applicant was permitted to have an assisting Government servant, i.e., the defence counsel to assist him during the enquiry. The inquiring officer after holding several sittings submitted his report which was supplied to the applicant and he was asked to submit his representation. Accordingly, the applicant submitted his representation to the disciplinary authority (respondent no.3). In his report the inquiring officer held that all the charges have been proved against the applicant. The disciplinary authority after going through the enquiry report and representation of the applicant and connected documents, observed that there was no procedural lacunae in holding the enquiry and the inquiring officer has correctly evaluated the evidence. The disciplinary authority agreed with the findings of the inquiring officer and held that it would be against the interest of the public and the Department to continue the applicant in service and accordingly in the impugned order at Annexure-6 the applicant was removed from service. His appeal to the appellate authority was also rejected in the order at Annexure-7. The respondents in the rest of their counter have examined the different charges, the evidence of witnesses and the submissions of the applicant. They have further stated that all available documents were supplied to the applicant. Certain documents were due to be granted to the depositors by the applicant, but the applicant did not grant those documents to the depositors at the time of deposits and therefore these

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documents when asked for by the applicant could not be supplied. The respondents have denied that there has been any violation of the principles of natural justice or that reasonable opportunity was not given to the applicant. They have also stated that the punishment awarded is commensurate with the gravity of the offence proved against the applicant. On the above grounds, the respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has submitted that it is not the duty of the Tribunal to sit on appeal in the matter of a disciplinary proceeding. The Tribunal has to see whether the punishment has been imposed after following due process of law, whether principles of natural justice have been followed or not, and if the punishment has been imposed basing on no evidence. It is further stated that the disputed signatures in this case were not sent to the handwriting expert and the inquiring officer came to his own conclusion that the applicant has signed a particular document. He has also questioned the finding of the inquiring officer with regard to the date stamp. It is further stated that the allegations were about temporary misappropriation of very small amount of money and the charges were not fully proved. For the first time such a charge has been brought against the applicant and an opportunity to improve his conduct should have been given to him. On the above grounds, the applicant has reiterated his prayer in the OA.

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5. We have heard Shri S.P.Mohanty, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents

and have also perused the records. The learned counsel for the petitioner has filed written note of submissions along with xerox copy of a decision which has also been taken note of.

6. As has been mentioned by the applicant in his rejoinder in a disciplinary proceeding the Tribunal does not act as an appellate authority and cannot substitute its finding in place of the finding arrived at by the inquiring officer and the disciplinary authority. The Tribunal can interfere only if there is violation of principles of natural justice or denial of reasonable opportunity and if the findings are based on no evidence or are patently perverse. The submissions made by the learned counsel for the petitioner will have to be considered in the context of the above well settled position of law.

7. It has been urged by the applicant that certain documents asked for by him were not supplied to him and thereby principles of natural justice have been violated. In support of his contention the applicant has enclosed the order dated 26.7.1995 of the inquiring officer at Annexure-5. In this order the inquiring officer has mentioned that the counterfoil dated 16.11.1991 of Recurring Deposit Account No. 1176575, counterfoil dated 18.9.1992 of R.D.Account No. 1175031 and counterfoil of SB 10(3) of R.D.Account Nos. 1176636 and 117637 were not available as reported by the Superintendent of Post Offices, Keonjhar, in his letter dated 4.7.1995. The other available documents were perused by the applicant. The applicant's case is that

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because the above four documents were not supplied to him there has been denial of reasonable opportunity to him. The respondents in their counter have stated that it was the duty of the applicant to maintain these documents. But he actually did not write out these counterfoils and other documents and therefore these could not be supplied to him. As the applicant was working as EDBPM at the relevant point of time, for deposits in the RD Accounts it was his duty to issue the counterfoils to the depositors. The applicant in his rejoinder has stated that the counterfoils were taken by the depositors at the time of submitting the money. He has also stated that the records were to be supplied to him whether they were available or not and for that the respondents were answerable. It is not enough for the applicant to say that certain records were called for by him and these were not supplied. If these records were not available and moreso when these records were to have been maintained by him, obviously those documents could not have been supplied. Besides non-supply of these documents which is admitted by the respondents, the applicant has also to prove how non-supply of these documents has prejudiced his case. This aspect of the matter will be considered while considering the various charges and the explanation of the applicant, the evidence of witnesses and the findings. Besides the above point about non-supply of the above documents, the applicant has not mentioned any other ground in support of his plea that there has been denial of reasonable opportunity. The second point urged by the applicant is

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that he had denied the signatures on certain documents to be his and the inquiring officer should not have come to the finding that the signatures are his without sending the records to the handwriting expert. It has to be understood that these are departmental proceedings and not criminal cases. If the deposits of money, etc. are proved by other evidence, it is not obligatory in all such cases to send the documents to handwriting expert merely because the delinquent officer has denied a signature to be his. This aspect is also to be considered while examining the charges.

8. As earlier noted the charges, the explanation of the applicant, and the evidence are to be examined to see if the findings are based on no evidence or are patently perverse. There were four charges against the applicant. The first charge was that while he was working as EDBPM, Kanpur BO, during the period from 24.8.1976 to 21.3.1994, on 16.11.1991 he received an amount of Rs.124.20 from Gokulananda Jena, depositor of R.D.Account No. 1176575. He made entries in the Pass Book of the depositor showing the deposit but did not make entries in the Branch Office Journal, Branch Office Daily Accounts, Branch Office R.D.Journal and Branch Office Accounts Book. He also did not credit the amount into Branch Office Account on 16.11.1991. He credited the amount on 30.11.1991. It is stated that by this delay he has violated the concerned departmental rules. In this application the petitioner has stated with regard to this charge that operator of Account No. 116575, i.e., the father of the account holder serves as

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a teacher in a school 150KM away and remains out of the village. The operator is cited as SW 1 in the enquiry and he deposed that he had presented the Pass Book in the office at 9.00 A.M. on 16.11.1991. It is stated that it was confirmed during enquiry that the duty hour of Kanpur B.O. is 10.30 A.M. to 11.30 A.M. and 15 00 hours to 17 00 hours. The father of the account holder also deposed that he had no proof regarding deposit of the money on 16.11.1991. The applicant's case is that the deposit was made on 30.11.1991 and this complaint has been made due to political rivalry in the village. The depositor Shri Jena also stated that he cannot confirm whether the Pass Book was taken by the applicant on granting the receipt. It is further submitted that the wife of the depositor from whom the Pass Book was seized was not produced during enquiry by the Department. No statement was also taken from her. It is stated that the disciplinary authority and the appellate authority have relied on the concocted statement of the depositor that he deposited the money on 16.11.1991. He has also stated that DW 1 during enquiry has stated that the account-holder's father, the depositor did not come to the village in November 1991. The applicant has enclosed the deposition of SW 1 and the deposition of DW 1 at Annexures 1 and 2. The depositor, i.e., the father of the account-holder has stated on cross-examination that on 16.11.1991 he tendered the deposit of Rs.124.20 at 9 00 hours in the post office. There was none in the post office except the delinquent officer. He also stated that the pay--in-slip in respect of this deposit was filled up by the applicant but no counterfoil was given

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to him. He has stated that on earlier occasions also he had not got the counterfoils with regard to the deposits made by him in this RD Account. The defence witness has merely stated that the post office opens between 10 30 hours and 11 30 hours and from 15 00 hours to 17 00 hours. He has also stated that SW 1 had not come to the village during November 1991. Before examining the findings of the inquiring officer it has to be noted that the counterfoil of the pay-in-slip dated 16.11.1991 for this R.D.Account No.1176575 is one of the three documents which were not supplied to the applicant. But as the depositor has stated that the counterfoil was not supplied to him, naturally the counterfoil could not be produced. In any case even if it is taken for argument sake that the counterfoil was granted by the applicant, it is not expected that the depositor will have the counterfoil, and the applicant can ask for production of documents which are in the custody of the Department. Even if the counterfoil of the pay-in-slip was given to the deposit, the same cannot be produced by the Department. Thus, the applicant's contention that by non-supply of this counterfoil he has been prejudiced is found to be wholly without any merit and is rejected.

J. 9. Coming to the finding of the inquiring officer we find that the inquiring officer has taken note of the evidence of depositor SW 1 that he tendered the amount of Rs.124.20 on 16.11.1991 and it is the applicant who filled up the pay-in-slip for him and made entry of the amount in the Pass Book, signed the same and put the date stamp. He later on found that the date of the deposit has been corrected from 16.11.1991 to 30.11.1991, but no correction in the date stamp has been

made and the date stamp impression is 16.11.1991. The applicant in his defence has taken the absurd plea that such tampering of the date might have been done by the minor child of the depositor. It is the admitted position that this amount was not taken into account in any of the Branch Office Accounts Books nor in the Branch Office Account on 16.11.1991 but was actually taken into account on 30.11.1991. It is absurd to urge that the minor child of the depositor had corrected the date. This plea of the applicant also goes to support the charge that the money was received on 16.11.1991. After going through the findings of the inquiring officer in this regard we are firmly of the view that the finding that this charge has been proved is based on sufficient material and cannot be stated to be based on no evidence or as patently perverse. The contentions of the applicant with regard to the first charge are therefore held to be without any merit and are rejected.

10. The second charge against the applicant is that he received Rs.50/- on each occasion on 2.9.1992, 5.10.1992, 15.12.1992 and 9.2.1993 from Smt. Parbati Jena, the operator of R.D.Account No.1176636 for deposit in the account for the months of September, October and December 1992 and February 1993. The applicant made entries showing the deposits in the Pass Book but did not make corresponding entries in the Branch Office Journal, Branch Office Daily Account, Branch Office R.D.Journal nor in the Branch Office Account Book. He also did not credit the amount in the Branch Office Accounts on the same day or next day. He

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credited these amounts respectively on 29.9.1992, 5.11.1992, 31.12.1992 and 29.2.1993. The third charge against the applicant can also be considered along with the second charge. The third charge against the applicant is that he received Rs.50/- on each occasion on 2.9.1992, 5.10.1992, 15.12.1992 and 9.2.1993 from Gmt. Parbati Jena, operator of R.D.Account No.1176637 for deposit in the above account for the months of September, October and December 1992 and February 1993. The applicant made entries in the Pass Book about these deposits on each of these dates but did not make entries in the Branch office Account Books as mentioned in the previous charge and did not credit the amounts in the Government Account on the dates of receipt. He credited these amounts respectively on 29.9.1992, 5.11.1992, 31.12.1992 and 29.2.1993. About these two charges it appears that Parbati Jena had opened these two R.D.Account Nos.1176636 and 1176637 in the names of her two minor daughters. On these particular days which are the same in case of both the charges she came and deposited Rs.50/- in both these accounts. But these were taken to the Account Books and also the Government account after delay, as mentioned in the charge. In respect of these two accounts the applicant did not ask for the counterfoils. He had asked for S.B.10(B) of these two account numbers and his grievance is that these were not supplied to him and thereby reasonable opportunity has been denied. This contention must be held to be wholly without any merit even without going into the relevance of SB 10(B) of these two accounts to the charge. This is because the applicant in his petition dated 14.5.1995 had asked for SB 10(B) in respect of

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these two Accounts or of the Ledger Cards of these two accounts. The inquiring officer in his order dated 26.7.1995 at Annexure-5 has clearly noted that copies of Ledger Cards of these two accounts were perused by the applicant. Therefore, non-supply of these documents has not prejudiced the applicant in any way because he had asked either of the two documents and one of which was shown to him. Therefore, it must be held that by not supplying SB 10(B) in respect of these two accounts there has been no denial of reasonable opportunity.

11. Coming to the finding of the inquiring officer, he has taken note of the statement made by Parbati Jena, mother of the two minor daughters in whose names these two R.D.Accounts have been opened. In cross-examination she has stated that on these dates she had sent through her son Sukanta Jena Rs.50/- each for these two accounts on each of those dates. She has also stated that she has been depositing money in these two R.D.Accounts for sometime but she had doubts about the action of the applicant, the Branch Post Master, and therefore she later on transferred these accounts to some other Post Office. The respondents along with their counter have enclosed the xerox copies of the relevant pages of the Pass Books of these two accounts for the concerned dates and it is clear that in the Pass Books these amounts on each of these dates have been taken into account. But the admitted position is that actually the amounts were taken into Branch Office Accounts and Branch Office Journals not on the dates of receipt of the deposits but on certain other dates, as mentioned in the charge. After going through the copy of the

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statement of the operator of these two accounts and the copies of the relevant pages of the Pass Books and the report of the inquiring officer, it cannot be held that the finding of the inquiring officer holding these two charges as proved is based on no evidence. The applicant's plea in the petition that the signatures in the Pass Books are not his and because of his denial these Pass Books should have been sent for examination of the handwriting expert cannot be accepted in view of other evidence on record that the amounts were deposited on the dates mentioned in the charges and the applicant entered the amounts in the Pass Books and signed the Pass Books. It is difficult to accept the plea of the applicant that someone else might have signed the Pass Books on these dates and signature is not his. In view of this, the contention of the applicant with regard to these two charges is also held to be without any merit and is rejected.

12. The fourth charge against the applicant is that he received an amount of Rs.187.20 for deposit in R.D.Account No.1176503 in the name of Narayan Panda on 18.9.1992 for deposit for the months of January to September 1992. He made entries in the Pass Book showing the deposits at the rate of Rs.20/- per month and authenticated the entries with his initial and date stamp, but he did not credit the amounts in the Branch Office Account Books on 18.9.1992 or in Branch Office Journal, R.D.Journal, etc. He also did not take this amount to the Branch Office cash. He subsequently credited the amount on 29.9.1992. The respondents have enclosed the xerox copy of the relevant page of the

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R.D.Pass Book of Narayan Panda from which it is seen that on 18.9.1992 the applicant made several entries for each of the months crediting Rs.20/- and Rs.1.40 as default fine for each of the month and he put the date stamp and his signature against those entries. It has been proved that he did not take the amount to the Accounts as also to Cash till 28.9.1992. The applicant has not enclosed a copy of his explanation to the charges and therefore it is not known as to what explanation he gave to this charge. In the present application he has taken the stand that during enquiry one Narayan Panda was examined, but Shri Panda denied that the Pass Book belongs to him. No other Narayan Panda was examined, but the inquiring officer came to the conclusion that the charge is proved. Narayan Panda, who was examined during enquiry, also stated that the preliminary statement allegedly given by him was actually not his. The respondents have stated that the Pass Book belongs to one Narayan Panda and he is the person who was examined during enquiry but he recanted from his original statement. But on the basis of documents this charge has been held proved after elaborate discussion both by the inquiring officer and the disciplinary authority. Both of them have taken note of the fact that Narayan Panda disowned his earlier statement. The disciplinary authority has noted that even though Narayan Panda has disowned his earlier statement, from the entries in the Pass Book itself it is seen that the amount mentioned in article 4 of the charge was received on 18.9.1992. It has also been proved that the amount has been taken into Account only

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on 29.9.1992. In view of the above, it cannot be held that the findings of the inquiring officer and the disciplinary authority in respect of this charge are based on no evidence.

13. In view of our above discussion, we hold that the applicant has not been able to prove that the findings of the inquiring officer and the disciplinary authority are liable to be quashed. We also note that the disciplinary authority and the appellate authority have passed reasoned orders after taking into account the submissions made by the applicant in his representation after getting the enquiry report and his appeal. Thus, the contention that the orders of the disciplinary authority and the appellate authority are non-speaking orders and have been passed without application of mind is held to be without any merit and is rejected.

14. The last contention of the learned counsel for the petitioner is that the punishment imposed in this case is disproportionate to the lapses which have been held proved. It has been submitted that the applicant has been working as Extra-Departmental Branch Post Master from 1976 and this is the first instance when deficiencies have been noticed in his work. The charges which have been held proved do not involve any loss to the Government. These only relate to late credit of amounts which have been received from the depositors of four R.D. Accounts. The amounts involved are also very small and he has credited the amounts on subsequent dates on his own. In view of these

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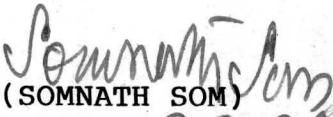
circumstances it has been urged that the ultimate punishment of removal from service is disproportionately harsh. In support of his contention the learned counsel for the petitioner has relied on a decision of the Hon'ble High Court of Calcutta in the case of Arjun Kumar Biswas v. Union of India and others, 1995 (1) CLJ 281. A xerox copy of this decision has been filed along with the written note of arguments and we have gone through the same. In that case the petitioner before the Hon'ble High Court was a Constable in Railway Protection Force. Disciplinary proceedings were initiated against him on the charge of gross negligence of duty. He was detailed for guarding Malkhana but he was found in deep sleep by the superior officer. Because of his inattention four accused persons managed to run away by breaking open the door of Hazat Room. The propriety of the punishment of removal from service was the main consideration in the writ proceedings before the Hon'ble High Court. In that case the Hon'ble High Court noted that the consideration which has mainly weighed with the disciplinary authority is that because of his lack of attention the four accused persons ran away from custody. The Hon'ble Court noted that the petitioner was not detailed for guarding duty and another person was specially and exclusively deputed for guarding of the accused. In consideration of that as also the youth of the petitioner and the fact of his 9 years of blameless service prior to initiation of the disciplinary proceedings, the Hon'ble High Court quashed the order of removal from service and directed his reinstatement. Facts of that case are clearly different from the facts before us. In this case the applicant being Extra-Departmental Branch Post Master

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was authorised to receive deposits from account holders. The four charges held proved show that on a series of occasions dealing with deposits of several account holders he accepted the deposit amounts on behalf of the Department but did not credit them into Government Account and did not also enter the deposits in the Branch Office Books of Accounts. On the other hand, in order to avoid suspicion he entered the fact of deposits in the Pass Books of the concerned depositors. The charges proved show a pattern of behaviour for which the departmental authorities have held that he is not fit to be retained in service in a job where he is required to receive deposits from individuals. In consideration of the nature of his duties and the fact that the lapses proved are not one but several, we do not think that the punishment imposed is shockingly disproportionate. This contention of the learned counsel for the petitioner is also held to be without any merit and is rejected.

15. In the result, therefore, we hold that the Application is without any merit and the same is rejected but without any order as to costs.


(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
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