

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 703 of 1996

Cuttack, this the 26th day of September, 2003.

Nidhi Das.

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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? " "


(B.N. SENGUPTA)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 703 OF 1996
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C O R A M

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M. R. MOHANTY, MEMBER(JUDICIAL)

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SRI NIDHI DAS, Aged about 51 years,
S/o. Late Kalandi Das,
Vill./P.O :Kuanrpur,
Via: Rambag,
DIST:JAJPUR.

APPLICANT.

By legal practitioner: M/s. Sarat Kumar Mohanty,
S.P. Mohanty,
P.K. Lenka,
Advocates.

- VERSUS -

1. Union of India, represented by the Secretary(Post), Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Director, Postal Services, Head Quarter Region, Office of the Chief Postmaster General, Orissa Circle, Bhubaneswar.
3. Superintendent of Post Offices, Cuttack Northern Division, Cuttack-753001.

RESPONDENTS.

By legal practitioner: Mr. A.K. Bose,
Senior Standing Counsel (Central).

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER(JUDICIAL) :-

A proceedings under Rule-8 of P&T EDAs (Conduct and Service) Rules, 1964 was initiated against the Applicant Nidhi Das (while he was working as EDBPM of Kuanpur Branch Post Office in the District of Jajpur of Orissa on the allegation that he committed certain irregularities/misconduct and accordingly, a charge-sheet (under two heads) was issued to him under Annexure-1 dated 17.8.1992. The first allegation was that the Applicant while working as EDBPM, Kuanpur Branch Post Office, did not account for Rs. 200/- entrusted to him for deposit (on 20.10.1989) in the SB A/c No. 163111 standing in the name of one Padmanav Panda (till 28.10.1989 and the second allegation was that he did not account for RD deposit of Rs. 475/- (entrusted to him between 14.04.1988 to 29.05.1990 for deposit in RD A/c No. 19164 standing in the name of Smt. Sisir Mallik) and thereby, he committed grave misconduct. On receipt of the written statement of defence/reply to the charges, the matter was enquired into and the Inquiring Officer, vide his report under Annexure-2 submitted on 17.8.1993 held that charge No. I was not proved and charge No. II was not fully proved. Thereafter, on receipt of the report of the enquiry officer, the Disciplinary Authority (under Annexure-3

dated 20.06.1995) differed from the findings of the Inquiring Officer and held that the Applicant was guilty of both the charges and imposed the punishment of removal from service. The Applicant preferred appeal (under Annexure-11 dated 13.09.1995) which was rejected under Annexure-12 dated 28.02.1996. In the said premises, this original Application has been filed by the Applicant under section 19 of the Administrative Tribunals Act, 1985 with prayers for quashing of the penal order (under Annexure-3 dated 20.06.1995) and the Appellate order under Annexure-12 dated 28.02.1996 with all service and consequential benefits.

2. Respondents have filed their counter admitting the factual aspects enumerated by the Applicant but have submitted that the Disciplinary Authority, having gone through the relevant records disagreed with the findings of the Inquiring Officer with a reasoned and speaking order (which has also been confirmed by the Appellate Authority) and, as such, there were no wrong warranting this Tribunal to interfere in the matter.

3. We have heard Mr. S. P. Mohanty, Learned Counsel for the Applicant and Mr. A. K. Bose, Learned Senior Standing Counsel appearing for the Respondents and perused the materials placed on record.

4. Learned Counsel for the Applicant, apart from other infirmities in the matter of conducting the disciplinary proceedings, has emphatically submitted that no notice was given to the Applicant pertaining to disagreement of the disciplinary Authority with the findings of the Enquiry. This fact has also been admitted by the Respondents in their counter; but it has been stated by the learned Senior Standing Counsel for the Respondents that the disciplinary authority having passed a reasoned order (while disagreeing with the report of the Enquiry Officer, there is no scope for the Tribunal to interfere in the matter. This aspect of the matter is no more res-integra in view of the well sounded principle of law of the land that the disciplinary authority is required to give opportunity of representation to the delinquent before differing with the findings of the enquiry. This is also based on the principles of natural justice as enunciated by the Honourable Apex Court of India in the case of MANAGING DIRECTOR, ECIL, HYDERABAD ETC. VRS. B. KARUNAKAR (reported in AIR 1994 SC 1074); wherein it was observed that if the principles of natural are not observed in a disciplinary case, the proceedings are bound to be vitiated. The Hon'ble Apex Court has dealt with this question in the case of INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA VRS. I. K. RATNA AND OTHERS (reported in AIR 1987

SC 71) wherein it was observed that the disciplinary authority is obliged to give reasons for its findings that the member is guilty of misconduct as to enable the member to effectively exercise his right. In the case of YOGINATH D. BAGDE VRS. STATE OF MAHARASHTRA AND ANOTHER (reported in AIR 1999 SC 3734) the Hon'ble Apex Court have held that the disciplinary authority has to indicate to the delinquent officer the tentative reasons of disagreeing with the findings of the Inquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary Authority proposes to disagree with the findings recorded by the Inquiring officer are not germane and the findings of the Inquiring officer are not liable to be interfered with. Their Lordships also held that denial of such an opportunity will violate the principles of natural justice.

5. Since it has been admitted by the Respondents that no notice was put to the Applicant to have his say (in the matter of disagreeing with the findings of the Inquiring officer) and in view of the settled principles of law, we find considerable force in the submission of the Applicant and, accordingly, the order of punishment under Annexure-3 dated 20.06.1995 (and the order of rejection of his appeal under Annexure-12 dated 28.02.1996)

are hereby quashed. In the result this original Application is allowed by leaving the parties to bear their own costs.


(B.N. SGM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

KNM/CM.