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(b)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 714 OF 1996

Cuttack, this the 15<sup>th</sup> day of August, 2003.

PRAFULLA KUMAR NAIK.

.....

APPLICANT.

VRS.

UNION OF INDIA & ORS.

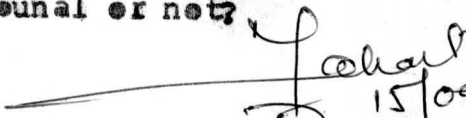
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RESPONDENTS.

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? Yes

  
(B.N. SOM)  
VICE-CHAIRMAN

  
15/09/2003  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

7

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 714 of 1996  
Cuttack, this the 15th day of August, 2003

C O R A M:-

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

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PRAFULLA KUMAR NAIK, Aged about 32 years,  
S/o. Ramesh Chandra Naik, At: Nafree, Po: Nafree,  
Dist: Mayurbhanj, Ex- E. D. B. P. M., Nafree BO,  
under Bangiriposi Sub Post office, Baripada,  
Mayurbhanj.

APPLICANT.

By legal practitioner: Mr. T. Rath, Advocate.

-Versus-

1. Union of India represented through its Secretary,  
Department of Posts Cum-Director General (P),  
Dak Bhawan, Sansad Marg, New Delhi-1.
2. Director of Postal Services (Hqrs.),  
Office of the Chief Postmaster General,  
Orissa Circle, Bhubaneswar-1.
3. Superintendent of Post offices, Mayurbhanj Division,  
Baripada, .
4. S.D.I (P) Bangiriposi Sub Division, Bangiriposi,  
Mayurbhanj.

.... RESPONDENTS.

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

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

Applicant having been visited with the order of punishment of removal from service (under Annexure-5 dated 20.09.1995) and having been unsuccessful in his appeal (under Annexure-10 dated 05.09.1996) has filed this original Application under Section 19 of the Administrative Tribunals Act, 1985; wherein he has prayed for quashing of the orders under Annexure-1 dated 03.11.1992; under Annexure-3 dated 01.12.1992 under Annexure-5 dated 20.09.1995 and under Annexure-10 dated 05.09.1996. He has also prayed for a direction to the Respondents to pay the back-wages for the period during which he was illegally placed out of employment.

2. Fact of the case is that the Applicant (Prafulla Kumar Naik) while working as Extra Departmental Branch Post Master of Nafree Branch Post office (under Bangiriposi Sub Post office of Mayurohanj District of Orissa) had committed fraud in several Savings Bank accounts and, the same having been detected, he was placed under "put off duty" vide order dated 03.11.1992/26.11.1992. Thereafter, as per the ED Agents (Conduct and Service) Rules, 1964, the matter was proceeded with (by enquiring into the matter) and, ultimately, the Applicant was removed from service by the Superintendent of Post offices of Mayurohanj Postal Division; he being the disciplinary authority of the Applicant. Applicant preferred

an appeal which was also rejected by the director of Postal Services.

3. Respondents have filed their counter to the original Application; wherein they have pointed out that since there was no violation of the principles of natural justice in the matter of conducting the day to day enquiry into the matter, the Applicant is not entitled to any of the reliefs claimed by him in this original Application.

4. We have heard Mr. T. Rath, Learned Counsel appearing for the Applicant and Mr. A. K. Bose, Learned Senior Standing Counsel appearing for the Respondents. We have also taken note of the submissions made by the additional counter filed by the Respondent No. 3 and by the Applicant in his rejoinder/additional rejoinder.

5. It was argued on behalf of the Applicant that the Inquiring officer drew his report dated 12.3.1995 improperly with a vindictive attitude, without going through the relevant documents and depositions of the witnesses and the disciplinary Authority imposed the punishment improperly and the appeal (as preferred by the Applicant) remained undisposed. It was his case that the S. D. I. P. was incompetent to place the Applicant under "off duty" and the ratification of the said "put off duty" order (as made by the Superintendent of Post offices) being beyond the period prescribed in that regard, the said action should be treated as null and void. It was his case that the mistake was committed by the Applicant due to his ignorance. It was

pointed out at the hearing of this case that the I.O. reached a conclusion contrary to the statements recorded during the examination of the witnesses. Further, it was argued by the learned counsel for the Applicant that only for ulterior motive (and to show favour to some one else) such a conclusion was wrongly arrived at in the enquiry. It was also pointed out that the punishment being highly disproportionate, this Tribunal should interfere in the matter.

6. Mr. Bose, Learned Senior Standing Counsel appearing for the Respondents, while opposing the arguments made on behalf of the Applicant, has submitted that the first submission of the Applicant that the order of putting the Applicant under off duty to be a nonest one due to lack of jurisdiction, is not available to be urged; since the order of putting him off duty has merged with the order of punishment of removal and because the Applicant had not challenged the same at any earlier point of time before the Respondents and that under Rule 9(2) of EDAs (Conduct and Service) Rules, 1964 the Inspector of Post Offices has been empowered to place the EDAs (alike the Applicant) under suspension/put off duty. It was further argued that during the preliminary enquiry, on the basis of the statements of the depositor/applicant and perusal of pass books and other relevant documents it was found that there was a prima facie case and, therefore, action was taken against the Applicant. The witnesses during examination in chief having confirmed their statements and in course of cross

7

examination, the SAs 1, 2 and 4 having deposed contrary to all documentary evidence and the I.O. having evaluated these things in his report and the disciplinary authority after going through the enquiry report and all oral and documentary evidences adduced during the enquiry, minutely, came to the conclusion that the Applicant had mis-appropriated public money by betraying the trust reposed on him and, finally, awarded the punishment commensurate with the gravity of offence. It was pointed out by Mr. Bose, basing on the counter, that during the examination by the Presenting Officer the witnesses have confirmed their previous statements and it was only during cross-examination they had deposed certain statements (which appears to be pre-varicating the facts on record) but there was no materials in support of such depositions; like withdrawal voucher or entry of such withdrawal in the relevant records when there was receipt book of the money by the SAs 1 and 2 and that, on the fact of clear entries of the deposit amounts in the relevant pass books of the depositors and absence of their credit in the Branch Post office account, it was evident that the amounts presented by the depositors were misappropriated by the Applicant while working as Branch Postmaster and the disciplinary authority, after going through the report and its accompanying documents, decided the case on its merit and that the Applicant was also given adequate reasonable opportunity during the enquiry and that, as such, it was prayed by him that this Tribunal should



not interfere in the order of punishment.


7. Having heard the counsel for both the parties and on perusal of the materials placed on record, it is seen that the Applicant had not come forward with a stand that he was denied any reasonable opportunity during the course of enquiry or that he was suppressed/kept away of any of the documents during the enquiry. All that the Applicant wants that this Tribunal should reassess the report of the enquiry officer and redraw another report basing on the materials available on record. It is well settled position of law that the courts/Tribunals should not interfere in the order of punishment/in a disciplinary proceedings; unless otherwise it is conclusively shown and established that (a) the delinquent official was denied reasonable opportunity to prove his innocence; (b) the findings based on no evidence; or (c) the conclusions arrived at by the I.O., D.A. and Appellate Authority are based on no record and are perverse. The Applicant in the present case has miserably failed to substantiate any of the grounds mentioned above, enabling this Tribunal to interfere in the matter and grant relief.

8. It is to be noted here that the pioneer aims and objectives of the Postal Department for extending postal operation facilities in the remote areas of the country are to fillup the communication gap and in the process to generate in the minds of the general public an awareness of savings of their money. Besides, it also extends the facilities of drawing pension amount etc from Branch post offices. If the money of the poor people is

13

mishandled/misappropriated by a person, on whom the Deptt. has the credence and trust, the entire attempt of the Department would be blamed. Therefore, in the present case there is no option for this Tribunal to interfere in the matter. As such the plea of the Applicant that the punishment is disproportionate to the gravity of the charges is misconceived. Moreover, it is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is disproportionate or proportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trustworthiness is must and unexceptionable.

9. In this view of the matter, we find no merit in this matter and, therefore, this original Application is dismissed being devoid of any merit. No costs.

  
(B.N. SOM)  
VICE-CHAIRMAN

  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

15/09/2003