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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 856 OF 1996

Cuttack, this the 28th day of August, 2000

Baikuntha Nath Patra

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
28.8.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 856 OF 1996
Cuttack, this the 28th day of August, 2000

CORAM:

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

.....
Sri Baikuntha Nath patra, aged about 46 years, son of
Hrusikesh Patra, At-Haripur, P.O-Nuagon, P.S-Ramachandrapur,
District-Keonjhar ...
Applicant

Advocate for applicant - Mr.B.K.Patnaik

Vrs.

1. Union of India, represented by the Secretary to Government, Ministry of Communication, Sanchar Bhawan, New Delhi.
2. Director, Postal Services, Sambalpur Region, At/PO/Dist.Sambalpur, Pin-768 001
3. Chief Post Master General,Orissa, At/PO-Bhubaneswar, District-Khurda.
4. Superintendent of Post Offices, Keonjhar Division, Keonjhargarh, At/PO/Dist.Keonjhar, Pin-758 001.
.....
Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.CGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application the petitioner has prayed for quashing the orders dated 8.9.1995 and 26.3.1996 at Annexures 1(a) and 1(b) of the disciplinary authority removing him from service and of appellate authority rejecting his appeal. He has also prayed for his reinstatement with all service benefits. The last prayer is for payment of subsistence allowance from 12.10.1992 till the date of his reinstatement.

2. The case of the applicant is that while he was working as EDSPM, Ramachandrapur Sub-Post Office, he was

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put off duty on 12.10.1992. Proceeding under ED Agents (Conduct & Service) Rules, 1964 was initiated against him. Articles of charge were communicated to him on 22.10.1992. Sub-Divisional Inspector (Postal), Keonjhar was nominated as the presenting officer and Assistant Superintendent of Post Offices (Headquarters) was appointed as inquiring officer. The applicant denied the charges and wanted to be heard in person. He also appointed an assisting Government servant. The enquiry was started on 17.3.1993 and ended on 23.2.1995. The applicant has stated that as per the enquiry report charge nos. 1, 3 and 4 were proved and charge no. 2 was not proved. On getting a copy of the enquiry report the applicant made a representation challenging the findings of the inquiring officer holding him guilty of certain charges. But the Superintendent of Post Offices, the disciplinary authority issued order dated 8.9.1995 at Annexure-1(a) removing him from service. His appeal was also rejected in order dated 26.3.1996 at Annexure-1(b). He filed a further representation to Chief Post Master General, Orissa Circle on 24.9.1996 under Rule 16 of ED Agents (Conduct & Service) Rules, 1964 which is pending disposal. The applicant has mentioned about the various charges in his OA and has stated that these charges have not been actually proved. In the context of the above facts the applicant has come up with the prayers referred to earlier.

3. The respondents have filed counter opposing the prayers of the applicant. They have stated that while the applicant was working as EDSPM, Ramachandrapur Sub-Post Office he was put off duty with effect from 12.10.1992. Prior to this the applicant had been earlier put off duty in Memo dated 6.7.1988, but a lenient view was taken and he was

reinstated in service in memo dated 18.1.1989 with the instruction that he should be careful in his duty in future and should not repeat such irregularity in future. But the applicant committed graver offence and irregularities as mentioned in articles of charge issued in memo dated 17.12.1992 at Annexure-5. They have mentioned about the enquiry into the charges and have stated that all reasonable opportunity was given to him and there is no allegation against the inquiring officer as also the mode of enquiry at any stage. The respondents have stated that the inquiring officer after evaluating the evidence, came to the conclusion that all the charges are proved. They have mentioned about the orders of the disciplinary authority and the appellate authority, and have stated that under Rule 16 of ED Agents (Conduct & Service) Rules, 1964 there is no provision for making a further appeal or review to Chief Post Master General. They have stated that during enquiry all documents were supplied to him and because of the fact that all the four charges were proved, the applicant was removed from service.

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4. The applicant in his rejoinder has stated that on an earlier occasion he was put off duty for retaining excess cash but ultimately he was reinstated on 18.1.1989. He has stated that in course of enquiry no personal hearing was given to him even though he asked for the same. He has also stated that the punishment imposed is grossly disproportionate and the charges have not been actually proved. He has also stated that the disciplinary authority and the appellate authority have acted without proper application of mind, and on that basis he has reiterated his prayers in the OA.

5. We have heard Shri B.K.Patnaik, 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 been permitted to file written note of arguments with xerox copy of decisions after serving copy thereof on the other side and these have also been taken note of.

6. It has been submitted by the learned counsel for the petitioner that the disciplinary authority has passed the impugned order of removal from service without application of mind. In support of his contention the learned counsel for the petitioner has referred in detail to the charges, the explanation, the findings of the inquiring officer and the disciplinary authority. Before considering these aspects, it is necessary to note that in a disciplinary proceeding the Tribunal does not act as an appellate authority and cannot re-assess the evidence and come to a finding different from what has been arrived at by the inquiring officer and the disciplinary authority. The Tribunal can interfere only if the findings are based on no evidence or are patently perverse. These submissions of the learned counsel for the petitioner are being examined only from this limited aspect.

7. The first charge against the applicant is that while he was working as EDSPM, Ramachandrapur S.O. he retained excess cash from 8.8.1992 to 28.8.1992 showing false SB and MO liabilities and thereby committed grave misconduct. From the statement of imputations it appears that the minimum and maximum cash balances of the Sub-Post Office were fixed at Rs.500/- and Rs.1000/- respectively. In the statement of

imputations details of retention of cash and liabilities have been shown. The inquiring officer has gone into the matter in detail and concluded in page 11 of the enquiry report that retention of excess cash from 11.8.1992 to 28.8.1992 showing false SB and MO liabilities is not proved in the absence of substantial evidence. He has held that the charge is proved in respect of other days, i.e., on 8.8.1992 and 10.8.1992; presumably 9.8.1992 being a holiday. On 8.8.1992 he has retained cash of Rs.813.37, and on 10.8.1992 he has retained Rs.796.37. The inquiring officer has held that there was no MO and SB liability for these two dates and on this ground this charge is proved only in respect of these two days, i.e., 8.8.1992 and 10.8.1992. The learned counsel for the petitioner has pointed out that the portion of the charge that on 8.8.1992 and 10.8.1992 the applicant held excess cash cannot be held to have been proved because the amount was well within the maximum cash balance of the Sub-Post Office.

8. The second charge is that on 16.6.1992 the applicant charged RD final withdrawal of total Rs.839.95 in the SO account of Ramachandrapur EDSO without paying the amount to the messenger of RD Account Nos. 1600065 and 1600066. He also did not send the vouchers to the Head Office in support of the RD withdrawals and thereby committed grave misconduct. From the statement of imputations it appears that this charge relates to final withdrawal of two accounts, Minor RD Account No.1600066 standing in the name of Saroj Kumar Naik, minor son of Pato Naik and R.D.Account No.1600065 in the name of Pato Naik. The charge of final withdrawal and non-payment of the final withdrawal of Rs.839.95 relates to these two accounts. In respect of R.D.Account No. 1600065 the amount was Rs.133.55 and in respect of R.D.account No. 160066 the amount was Rs.706.30. The inquiring officer in page 15 of

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his report has held that the charge could not be proved so far as the amount of Rs.706.30 relating to RD Account No.1600066 is concerned. So far as the other amount of Rs.133.55 in respect of RD Account No.1600065 the inquiring officer held that the applicant had shown that the amount was withdrawn on 16.6.1992, but this amount was not paid to the messenger on the same day. It was paid at a later date. He also held that the charge that the vouchers relating to withdrawals were not submitted to Keonjhargarh H.O. from 16.6.1992 to 31.7.1992 is also proved.

9. The third charge is that while the applicant was working as EDSPM, Ramachandrapur EDSO, during the period from April 1992 to June 1992, he failed to credit the VP amount realised on the date of its realisation and did not show the disposal of VP articles received in the register of VP Articles and did not preserve the VP receipts with original money receipts and thereby committed grave misconduct. This charge consists of two parts. The first part is regarding delayed credit of VP amount realised, and the second part relates to non-exhibiting of the disposal of VP articles in the Register of VP Articles received and non-preservation of VP receipts with original money receipts. So far as non-credit of VP amount realised, this relates to one insured parcel No.734 for Rs.550/- addressed to Niranjan Nahak of Ramachandrapur. The inquiring officer has held that the charge that the applicant delayed credit of the VP amount for Rs.550/- is not proved. As regards non-mentioning of the VPMO particulars in the VPP Register, this relates to two VPP items, V.P.P.No.981 for Rs.190/- and V.P.P.No. 1808 for Rs.95/-. There is no allegation that these articles were not delivered in time or the amounts realised were not credited in time. The charge is that the receipt of the articles was

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not exhibited in the VPP Register and this charge has been held proved.

10. The last and the fourth charge is that the applicant accepted one Money Order No.286 dated 21.7.1992 and granted MO receipt as Rs.23/- as the Money Order amount and Rs.2/- as commission. But in the journal he showed Rs.23/- as the value of the Money Order and commission of Re.1/- and thereby he short-credited Re.1/- in the Ramachandrapur EDSO Account dated 21.7.1992. The inquiring officer has held that the applicant actually short-credited Re.1/- and he has held this charge as proved.

11. As we have earlier stated the Tribunal cannot reappraise evidence and substitute its findings with regard to the charges in place of the findings arrived at by the inquiring officer and the disciplinary authority. We have mentioned in detail the findings of the inquiring officer in respect of the four charges. The respondents in para 2 of their counter have made the following averment:

".....The Inquiry Officer after evaluating the evidence in the inquiry came to the conclusion that the charge under article No.I, II, III and IV are proved...."

They have also mentioned that in respect of Article II, the charge relating to Account No.1600065 is proved and other portion of the charge relating to Account No.1600066 is not proved. After perusal of the enquiry report and noting the findings of the inquiring officer, as has been done by us, it cannot be held that all the charges have been held proved. To sum up the findings of the inquiring officer, he has held that the major part of the first charge has not been proved and retention of excess cash balance without MO and SB liabilities, has been proved only for 8.8.1992 and 10.8.1992.

With regard to the second charge, the alleged misconduct with regard to the major amount of Rs.706.30 has not been proved. Only the lapse with regard to a smaller amount of Rs.133.55 has been proved. Even here the charge is not that the amount has not been paid to the deposit-holder's messenger. The charge is that it has not been paid on the same day. As regards the third charge one portion has not been proved. The only portion which has been proved is that the applicant did not make proper record in the Register about the VPP articles received. There is no allegation that he had misappropriated the VPP amounts or had not delivered the VPP articles to the addressees. The last charge is about short-crediting of Re.1/- and the inquiring officer has pointed out in his report that because of mistake in totalling, Re.1/- was short-credited. Considering the nature of the charges which have been proved against the applicant we strongly feel that the punishment of removal from service is severely disproportionate to the portions of the charges which have been proved against the applicant. So far as the first charge is concerned, the amount retained on the two days of 8th and 10th August 1992 is well within the maximum limit fixed for the EDSO and is only slightly over the minimum limit. In the second charge as earlier noted the amount only is Rs.133.55 and here also there is no allegation that the amount has not been paid to the deposit-holder or his messenger. The third charge relates to improper maintenance of the Register, and the fourth charge proved is short-credit of Re.1/- which, according to the inquiring officer, is because of a mistake in totalling. In consideration of the above, we hold that the punishment of removal from service is shockingly disproportionate to the portions of the charges which have

been proved, and in view of this, we quash the orders of the disciplinary authority and the appellate authority, and remand the matter back to the disciplinary authority requiring him to impose on the applicant any punishment other than dismissal and removal from service. The applicant has asked for reinstatement and payment of subsistence allowance. The question regarding his reinstatement will depend on the final order to be passed by the disciplinary authority who may also pass the orders with regard to ex gratia payment by way of compensation to the applicant. It is to be noted in connection with this that at the time the applicant was put off duty and by the time he was removed from service the rules did not provide for ex gratia payment by way of compensation. The Rules have been amended subsequently and there has also been order as to how the rule has to be applied. We have no doubt that the respondents would strictly follow the departmental instructions with regard to this prayer of the applicant. The action as indicated by us should be taken by the respondents within a period of 60 (sixty) days from the date of receipt of copy of this order.

12. In the result, therefore, the Original Application is allowed but without any order as to costs.

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(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
28.8.2000
VICE-CHAIRMAN