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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.939 OF 1996

Cuttack, this the 15th November, 1999

Satya Narayan Mishra ..... 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.

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

Somnath Som.  
(SOMNATH SOM)  
VICE-CHAIRMAN  
13/11/99

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CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 939 OF 1996

Cuttack, this the 15th day of November, 1999

CORAM:

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

...

Satya Narayan Mishra, aged about 32 years,  
son of Baikunthanath Mishra,  
At/PO-Baunshiapara, District-Nayagarh .....Applicant

Advocate for applicant - Mr.S.K.Rath

Vrs.

1. Union of India, represented through the  
Secretary, Department of Post & Telegraph,  
Dak Bhawan, New Delhi.
2. Director, Postal Services (HQ), Bhubaneswar,  
District-Khurda.
3. Senior Superintendent of Post Offices, Puri Division,  
At/PO/District-Puri

.....Respondents

Advocate for respondents - Mr.B.K.Nayak,  
ACGSC.

....

O R D E R

*S. Som.*  
SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of  
Administrative Tribunals Act, 1985, the petitioner has  
prayed for quashing the order of the disciplinary authority

removing the applicant from service and the order of the appellate authority upholding the penalty. He has also prayed for reinstatement to his former post with arrear salary and other service benefits.

2. The case of the applicant is that while he was working as EDBPM, Baunshapara Branch Post Office he was put off duty in order dated 20.8.1991 and charges were framed against him. The applicant denied the charges and inquiring officer and presenting officer were appointed. The applicant was also permitted to nominate an assisting government servant. After enquiry the two charges were held proved by the inquiring officer. The inquiring officer however recommended that a lenient view should be taken while imposing punishment on the applicant. A copy of the report of the inquiring officer was supplied to the applicant who submitted a representation. The disciplinary authority however in his order dated 28.7.1994 (Annexure-5) imposed the punishment of removal from service on the applicant. The appeal filed by the applicant was also rejected by the appellate authority in his order dated 5.9.1996 (Annexure-6). In the context of the above fact, the applicant has come up with the prayers referred to earlier on the grounds which will be discussed hereafter.

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3. The respondents in their counter have stated that because of certain alleged lapses in the work of the applicant he was put off duty and departmental proceeding was initiated against him as per rules. The applicant denied the charges and thereafter inquiring officer and presenting officer were appointed. The applicant was assisted by an assisting government servant. All

opportunity was given to the applicant in course of the enquiry. The inquiring officer held the two charges to have been proved. The respondents have stated that principles of natural justice were fully observed. Considering the report of the inquiring officer and the representation of the applicant, a lenient view was taken and instead of dismissal from service punishment of removal from service was imposed on the applicant and his appeal was also rejected by a speaking order by the appellate authority. The respondents have stated that the evidence given in the enquiry including the statement of the applicant himself fully bear out the charges and on the above grounds the respondents have opposed the prayers of the applicant.

4. The applicant in his rejoinder has stated that the Sub-Divisional Inspector (Postal), East, had assured that if he admits his guilt he would be reinstated. It is stated that the punishment imposed is grossly disproportionate to the charges which have been proved. It is also stated that a document asked for by the applicant was not supplied to him and thereby the enquiry was vitiated. On the above grounds, the applicant in his rejoinder has reiterated his prayers in the OA.

5. Along with the O.A. the petitioner had not filed the charges. Subsequently he has filed an additional affidavit along with which he has enclosed the charges and the articles of imputations and other annexures. These have also been taken note of.

6. We have heard Shri S.K.Rath, the learned counsel for the petitioner and Shri B.K.Nayak, the learned

Additional Standing Counsel for the respondents. The learned counsel for the petitioner was given time till 15.10.1999 to file the list of citations. The learned counsel for the petitioner has filed xerox copy of two decisions which have also been taken note of.

7. The first point urged by the applicant is that in the notice indicating the charge, in paragraph 4 it has been mentioned that if the applicant does not submit his written statement of defence or does not appear in person before the inquiring officer, the enquiry may be held exparte. It is submitted by the learned counsel for the petitioner that from this it appears that the disciplinary authority had decided to appoint the inquiring officer even before receipt of his explanation and this shows that he had prejudged the case and on this ground, the entire proceeding has been vitiated. 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 Balai Chandra Singh Ray v. Union of India, 1984(2) SLR 566. It is not necessary to go into the facts of that case. It is only necessary to note that in that case in the first showcause notice it was indicated that the delinquent should show cause as to why punishment of dismissal or any other lesser punishment should not be imposed. The Hon'ble High Court of Calcutta held in that case that an open mind must be kept by the disciplinary authority not only on the question of guilt but also on the question of punishment imposed. As such the showcause notice in that case was held to be violative of Article 311 of the Constitution. While coming to the above conclusion,

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the Hon'ble High Court of Calcutta had taken note of the decision of the Hon'ble Supreme Court in the case of Khem Chand v. Union of India, AIR 1958 SC 300, which has also been relied upon by the learned counsel for the petitioner. In the case of Khem Chand (supra) the punishment of dismissal was set aside on the ground that the appellant was entitled to have a further opportunity to show cause against the punishment proposed to be imposed on him and he was not given that opportunity. These two cases have no application to the facts of this case because in the charge issued on 28.1.1992, which is at Annexure-1 filed by the applicant himself, he has been asked to submit his explanation within 10 days. Accordingly, the applicant has submitted his explanation on 5.2.1992 at Annexure-2 denying the charges, and after that in order dated 12.2.1992 at Annexure-3 the inquiring officer has been appointed. From this it is clear that the inquiring officer has been appointed after receipt of the applicant's explanation denying the charges and the disciplinary authority has not prejudged the case of the applicant. Paragraph 4 of the charge at Annexure-1 merely states that in case the applicant does not submit his explanation or does not appear before the inquiring officer, the enquiry will be held ex parte. This does not in any way mean that the case has been prejudged moreso when the inquiring officer has been appointed after receipt of the explanation of the applicant denying the charge. This contention is therefore held to be without any merit and is rejected.

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8. The second point urged by the learned counsel for the petitioner is that the petitioner submitted an application on 30.4.1992 to supply him the verification reports dated 3.3.1990 and 24.7.1990, but the inquiring officer only supplied him the verification report dated 25.7.1990 but not the verification report dt.3.3.1990. It is submitted that non-supply of verification report dated 3.3.1990 has caused grave irregularity in the proceeding and thereby reasonable opportunity has been denied to the applicant. The respondents in their counter have stated that the verification report dated 3.3.1990 was irrelevant to the charges and therefore was not supplied to the applicant. They have stated that the applicant has been punished with reference to the charges at Annexure-1/A and these have nothing to do with the verification report dated 3.3.1990 and therefore the applicant cannot be allowed to escape his liability on the ground of non-supply of baseless and irrelevant verification report dated 3.3.1990. It has been further stated by the respondents in their counter that the fact that Overseer, Mails, has given a report favouring the applicant is merely a blind belief of the applicant and non-supply of the document has in no way prejudiced the case of the applicant. The applicant in paragraph 4 of his rejoinder ~~has~~ has stated that the Overseer, Mails, had made a spot enquiry and prepared the report. Due to oversight certain amounts were not taken into SB Journal and considering this aspect the Overseer, Mails, had prepared the report. Non-supply of the report had seriously affected the defence of the applicant.

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We have considered the above submission carefully. The charges against the applicant are specific and these are to be proved or disproved in course of the enquiry by documentary and oral evidence. The report of Overseer, Mails, dated 3.3.1990, even if it is taken that this is in favour of the applicant, does not in any way impeach the findings of the inquiring officer. For that one has to go through the report of the inquiring officer and the evidence to come to a conclusion if the findings of the inquiring officer are based on no evidence or are patently perverse. This we propose to do in the subsequent paragraph. In any case it was always open to the applicant to cite the Overseer, Mails, as a defence witness, which he has not done. Therefore, it cannot be held that non-supply of the verification report dated 3.3.1990 has resulted in denial of reasonable opportunity. This contention is also therefore held to be without any merit and is rejected.

9. The next submission of the learned counsel for the petitioner is that the finding of the inquiring officer is not borne out by the evidence on record because the State witnesses have given depositions which are contrary to each other. For considering this submission one has to refer to the charges. Before doing that, two points are to be noted; firstly that the applicant has not enclosed a copy of the enquiry report which has been admittedly supplied to him by the Department. The second point to be noted is the well settled position of law that in case of departmental proceedings the Tribunal cannot substitute its findings and conclusion in place of the

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findings and conclusions 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. The charges and the stand of the applicant vis-a-vis them are being examined in the context of the above well settled position of law.

10. The first charge against the applicant is that while he was working as EDBPM, Baunsiapada B.O., Smt. Mukta Mohapatra, the depositor of S.B.Account No.682697 deposited Rs.300/-, Rs.200/- and Rs.1200/- on 3.10.1989, 1.1.1990 and 28.7.1990 respectively. The applicant received the above amounts on the respective dates, entered the deposits in the Pass Book and impressed the Date Stamp of the Branch Office along with signature on those three dates, but failed to take these amounts into Government account on the same dates or subsequent dates and did not enter the amounts in the Branch Office record. After detection of this irregular transaction, he voluntarily credited an amount of Rs.1500/- on 17.8.1991. The second article of charge is that the applicant allowed a withdrawal of Rs.500/- to Smt. Mukta Mohapatra, the depositor of S.B.Account No.682697 on 4.6.1991. He entered the transaction in the S.B.Pass Book Account No.682697 on 4.6.1991 and authenticated the entry with his signature and date stamp but did not account for the transaction. In his explanation dated 5.2.1992 which is at Annexure-2 the applicant has simply denied the charges. In the representation submitted by the applicant after receipt of the report of the inquiring officer, which is at Annexure-4, he has taken the stand that the depositor Smt. Mukta Mohapatra

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had herself admitted that she had never paid ready cash to the applicant for the three alleged deposits on the respective dates. She had also admitted that she had actually withdrawn Rs.500/- from her S.B. Account. The respondents have enclosed the statement of the depositor and its English translation at Annexure-R/12. From this it appears that on being cross-examined by the assisting Government servant, the depositor indicated that she had personally deposited the cash on each occasion. In view of this, the statement of the applicant that on the three occasions mentioned in Charge No.1, the cash was not deposited, cannot be accepted. Moreover, the applicant has also taken a contradictory stand in his rejoinder that though Smt. Mohapatra had deposited the three amounts on the respective dates, due to oversight and overburdening of work on the applicant, these amounts were not taken into Branch Office records and in Government Account. From this it is clear that the applicant had taken contradictory stands with regard to these three deposits. Moreover, in his statement during enquiry, he has admitted to have received these amounts. The other aspect of the matter is that even if it is accepted for argument sake that cash was not deposited on the three occasions by the depositor, then the applicant should not have made entries in the S.B. Pass Book showing deposit of the above amounts. In consideration of this, it cannot be said that the first charge, which has been held proved by the inquiring officer, is based on no evidence or the finding is patently perverse.

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11. The second charge is with regard to withdrawal of Rs.500/-. The respondents in their counter have rightly pointed out that this S.B.Account No.682697 was opened on 29/30.8.1989 with initial deposit of Rs.500/-. Thereafter on 3.10.1989, 1.1.1990 and 28.7.1990 Rs.300/-, Rs.200/- and Rs.1200 were entered in the Pass Book, but these amounts were not taken into Branch Office Journal or in Government Account. Thus S.B.Journal showed a deposit of Rs.500/- in the S.B.Account No. 682697 and the applicant allowed withdrawal of Rs.500/- on 4.6.1991. The respondents have pointed out that with the apprehension of detection of fraud in not taking the three deposits in the Branch Office Account the applicant simply obtained a signed withdrawal form for Rs.500/- from the depositor, made entry of withdrawal under his signature and put the Date Stamp and returned the Pass Book along with cash of Rs.500/- to the depositor on 4.6.1991. The entry with regard to this was also not made in the Branch Office journal. In other words, he allowed withdrawal of Rs.500/- out of the total deposit of Rs.500/- as per the Branch Office records. The applicant has stated that the depositor did not complain about not getting Rs.500/- by way of withdrawal from her Account. This stand is totally irrelevant because the charge is that he allowed withdrawal of Rs.500/- without taking the earlier deposits into account and because of this, the transaction with regard to withdrawal of Rs.500/- was not taken into Branch Office Account. This charge has also been rightly held proved against the applicant. In the context of the above facts, it cannot be said that the finding

of the inquiring officer is based on no evidence or is patently perverse.

12. In the context of the above discussion of the charges, the stand of the applicant and the findings, it is clear that non-supply of the verification report dated 3.3.1990 has not prejudiced the applicant's case in any way.

13. The next point urged by the learned counsel for the applicant is that the applicant on his own has deposited the necessary amounts in Itamati Sub-Office on 17.8.1991. It is submitted by the learned counsel for the petitioner that in the case of Narendra Pratap Narain Singh and another v. State of U.P., AIR 1991 SC 1394, it has been held by their Lordships of the Hon'ble Supreme Court that the amounts alleged to have been misappropriated in that case were proved to have been deposited by the accused before investigation and therefore it was held that charge under Section 409 IPC could not be sustained. In the instant case, the applicant is not being proceeded against criminally under Section 409 IPC. He has been proceeded against departmentally for violation of departmental rules and instructions. It is also seen that in this case the amounts have been deposited by the applicant after detection of the lapses though prior to initiation of departmental proceedings. In view of this, it cannot be said that merely by depositing of the relevant amounts along with interest the applicant has escaped liability with regard to the charges brought against him. This decision of the Hon'ble

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Supreme Court does not therefore help the applicant in any way.

14. The last contention of the learned counsel for the petitioner is that the inquiring officer had recommended imposition of lenient punishment, but the disciplinary authority has imposed the punishment of removal from service, which is grossly disproportionate. The respondents have stated in their counter that instead of the ultimate penalty of dismissal from service, less severe penalty of removal from service has been imposed on the applicant. They have also stated that on the basis of lapses held proved against the applicant, it has been proved that the applicant has misconducted himself and he is unfit to be retained in the position of trust which he was holding. On that ground, the respondents have stated that the punishment imposed has been just and proper. In this case, we find that the applicant has received certain amounts from a depositor but has not taken the amounts in Government cash nor recorded the transaction in the Branch Office Accounts. His plea that this was due to oversight and because of overburdening of work on him cannot be accepted because while allowing withdrawal of Rs.500/- he has tried to cover up his earlier action in non-crediting of the deposits into Government Accounts, by not recording the withdrawal in the Government Account. In view of this, his stand that his lapses happened due to oversight cannot be accepted. The second charge which has been held proved against the applicant shows a pattern of behaviour and element of premeditation and therefore it must be held that the punishment imposed is not disproportionate to the charges proved against him.

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15. The learned counsel for the petitioner has also relied on the decision of the Hon'ble Supreme Court in the case of Delhi Development Authority v. H.C.Khurana, AIR 1993 SC 1488. We have looked into this case and we find that this decision has nothing to do with the present controversy.

16. In the result, we hold that the applicant is not entitled to the reliefs claimed by him. The Application is held to be without any merit and is rejected but without any order as to costs.

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
15/11/99