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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 222 OF 1998.

Cuttack, this the 26th day of June, 2000.

DURYODHAN MOHANTY.

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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? *No.*

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

*Somnath Som
6.6.2000*

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 222 OF 1998.
Cuttack, this the 26th day of June 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDL.).

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DURYODHAN MOHANTY,
Aged about 43 years,
Son of Late Purusottam Mohanty,
At/Po.Damodarpur,
Via-Dungura, Dist:Balasore,
Ex-Extra Departmental Post Master,
Damodarpur Branch, Po:Damodarpur,
PS:Khaira, Dist:Bhadrak.

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APPLICANT.

By legal practitioner: M/s.M.M.Basu, D.Dey, Advocate.

-Versus-

1. Union of India represented by the Post Master General Orissa Circle, Bhubaneswar, Dist:Khurda.
2. Superintendent of Post Offices, Bhadrak Division, Bhadrak, PO/PS/Dist:Bhadrak.

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RESPONDENTS.

By legal practitioner: Mr.B.Dash, Additional Standing Counsel.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

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In this Original Application under section 19 of the Administrative Tribunals Act, 1995, the applicant has prayed for quashing the orders at Annexures- 2,3,5&7 in view of the order at Annexure-1.

2. Respondents have appeared and filed counter opposing the prayer of the applicant.

3. For the purpose of considering this Original Application, it is not necessary to go into too many facts of this case. The admitted position is that the applicant was working as

Extra Departmental Branch Post Master, Damodarpur Branch Post Office and for certain lapses on his part, Crl. case bearing No. SPE-10/90 was instituted against him and was tried by the learned Additional Chief Judicial Magistrate, Bhubaneswar and in order dated 11-4-1997, applicant was convicted u/s. 409 IPC and was sentenced to undergo RI for 2 and $\frac{1}{2}$ years and to pay fine of Rs. 5,000/- in default to undergo RI for another one month. Against that order, applicant filed Crl. Appeal No. 14 of 1997 in the Court of learned Additional Sessions Judge, Bhubaneswar on 23.4.1997 and the learned Sessions Judge, Bhubaneswar in his order dated 23.4.1997, at Annexure-1 of the original Application released him on bail and suspended the sentence passed by the Trial Court. In order at Annexure-2, applicant had been put off duty w. e. f. 28.11.1997. Through Annexure-3, in order dated 10.12.1997, he was asked to show cause why he should not be removed from service. Applicant submitted his show cause in Annexure-4 and thereupon in order dated 24.02.1998, at Annexure-7, applicant was removed from the post of Extra Departmental Branch Post Master, Damodarpur Branch Post Office. The case of the applicant is that as his appeal has been admitted and the sentence has been suspended the Departmental Authorities should not have proceeded on the order of conviction and removed him from service.

SJM
Departmental Respondents in their counter have indicated in detail the various lapses committed by the petitioner and have stated that because of his conviction in a Crl. Court, in accordance with Rule-8(a) of EDAS Rules, he has been removed from service. From the above, it is clear that the reason for order of punishment involving removal from service is conviction of the applicant by the trial court u/s. 409 IPC. No doubt, the

applicant has filed an appeal and the appeal has been admitted but the Appellate Court has merely stayed the sentence but has not suspended the conviction. Hon'ble Supreme Court have laid down in several cases that in such case, the order of conviction is not suspended and the Departmental Authorities are free to proceed against the convicted employee in accordance with the relevant Rules.

4. In view of this, the order of the Disciplinary Authority removing the applicant from service because of his conviction in a Crl. charge, can not be found fault with. we note that in the impugned order dated 24.12.1998, the Disciplinary Authority has wrongly quoted Rule-7 but this will not invalidate the order. In view of the above, we hold that the application is without any merit and the same is rejected but in the circumstances of the case without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

(SOMNATH SOM)
VICE-CHAIRMAN

SJM