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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 368 OF 1998
Cuttack this the 14th day of December, 1998

Smt. Malinibala Sahu

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes*.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *No*.

Somnath
(SOMNATH SOM)
VICE-CHAIRMAN

24.12.98
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL,
UTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.368 OF 1998
Cuttack this the 14th day of December, 1999

CORAM:

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

...

Smt. Nalinibala Sahu,
aged about 63 years,
Ex-Branch Post Master
Vill/PO: Atanati,
Via: Khurda
Dist: Mayurbhanj

...

Applicant

By the Advocates : M/s.P.V.Ramdas
P.V.B.Rao

-Versus-

1. Union of India represented by the
Chief Post Master General,
Orissa Circle, Bhubaneswar-751001
2. Director
Postal Services (H.Q.)
Office of the Chief Post Master
General, Orissa Circle,
Bhubaneswar-751001
3. Superintendent of Post Offices,
Mayurbhanj Division
At/Po: Baripada
Dist: Mayurbhanj, PIN: 757001

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Respondents

By the Advocates : Mr.J.K.Nayak
Addl. Standing Counsel
(Central)

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ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, an Extra Departmental Branch Post Master, Atanati in account with Khuta S.O. was served with charges under five heads under Memo dated 24.5.1995. She having denied the charges, enquiry was held. The Inquiring Officer in his report held that charge Nos. 1, 2 and 4 not proved. He, however, held charge No.3 to have been proved and Charge No.5, as partially proved. A copy of the enquiry report was supplied to the applicant for her representation, if any. She, accordingly submitted her representation. Thereafter the Superintendent of Post Offices directed for de novo proceeding. After the applicant challenged this before the Director of Postal Services, the Superintendent of Post Offices, subsequently dropped this order directing de novo proceeding and considered the enquiry report along with the representation of the applicant. The Superintendent of Post Offices, viz., the disciplinary authority, held all the charges proved and imposed penalty of removal from service (Annexure-3). Appeal preferred against this order was rejected under Annexure-4. Hence this Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the orders of the disciplinary authority and the appellate authority removing her from service and for reinstatement with consequential service benefits.

2. Facts are not in controversy.

It has been urged by the applicant in her application that when the disciplinary authority disagrees with the finding of the enquiring officer, it is imperative on the part of the disciplinary authority

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not only to give reasons of his disagreement, but also give opportunity to the delinquent to represent against such reasons for disagreement. This, according to applicant, had not been complied by the disciplinary authority. As to the finding on Charge No.3, it has been urged that without examining the hand-writing expert, his report should not have been relied on inasmuch as the applicant was denied her right to crossexamine the hand-writing expert. As to Charge No.5, there could not have been any finding as partially proved. Further, after ordering *de novo* proceeding the disciplinary authority could not have again dropped that order and proceeded to consider the enquiry report.

3. In the counter there has been nodenial of the fact that the disciplinary authority, before disagreeing with the findings of the enquiring officer on Charge Nos.1, 2, and 4 and before holding these charges proved, in not communicating his tentative views on these three charges to the applicant to have her say in the matter. Recently, the Apex Court in **Yoginath D.Bagade vs. State of Maharashtra**, reported in **Judgment Today 1999(6) SC 62**, following their earlier decisions in ESIL case reported in **Jugement Today 1993(6) SC 1** and **K.B.Mishra case** reported in **Jugement Today 1998(5) SC 548** held that disciplinary authority when disagrees with the view of the enquiring authority has to communicate the 'tentative' reasons for his disagreement to the delinquent, so that the delinquent mayfurther indicate these reasons are not germane and finding of the enquiring officer is not liable to be interfered with. The Apex Court further observed that even in the absence of specific provisions,

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rules of natural justice are to be read into the rules. In view of this legal position, findings of the disciplinary authority and the appellate authority in respect of charge Nos.1, 2 and 4 are liable to be set aside. Hence we need not discuss the relevant facts relating to these charges.

We do not find any force in the contentions advanced on behalf of the applicant that once the disciplinary authority passed an order directing de novo proceeding, he has no more jurisdiction to drop the proceeding itself. The fact remains the applicant herself was aggrieved with such order and she appealed to the higher authority and hence dropping of that earlier order was to the benefit of the applicant. Moreover, ~~any~~ no authority direct on this point has been cited.

Charge No.3 is that the applicant fraudulently withdrew Rs.111/- on 3.8.1991 from the S.B.Account No.29743 standing in the name of one Guluram Tuddu in contravention of Rules 133 and 134 of the Rules of Branch Office. Charge No.5 is that she had effected fraudulent withdrawal of Rs.80/- on 11.8.1982 from S.B.Account No.2967060 standing in the name of Tudy Majhi in contravention of the same rules.

During preliminary enquiry, depositor Shri Guluram Tuddu pertaining to charge No.3 stated that he had not withdrawn any such amount on 3.8.1991 and also disowned the alleged signature. He had also given the same statement during enquiry. The handwriting expert opined that the alleged signature appearing in the relevant document is not the signature of the depositor. Similarly, we came across that there was full discussion

of evidence in respect of Charge No.5 and that evidence was relied upon by the authorities concerned.

Law is clear that a Court or Tribunal cannot sit as an appellate authority over the departmental authorities in reappraisal of evidence. The primary duty of the Court or Tribunal is to see whether there was any procedural lapse violating principles of natural justice to the prejudice of the applicant. Simply because handwriting expert was not examined during proceeding, it cannot be said these two charges have not been established. We are aware, reliance has been placed by the applicant in G.S.Gopal Reddy vs. State of Andhra Pradesh **reported in 1996 AIR SCW 2803**. While interpreting Section 42 of the Evidence Act, the Apex Court held that the ~~expert~~ evidence is a weak type of evidence and Courts should not consider it as conclusive and therefore, not safe to rely upon it without seeking independent and reliable corroboration. This observation of the Supreme Court was made with reference to Section 42 of the Evidence Act in a criminal case under Dowry Prohibition Act. Law is well settled that neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein apply to disciplinary proceeding vide **B.C.Chaturvedi** case, reported in **ATR 1996 484** to the effect that in a case arising out of disciplinary proceeding, if the findings are based on some evidence, the same should not be interfered with. Here, we do not find any illegality or irregularity of the departmental authorities in placing reliance on the report of the handwriting expert. Besides, there is also evidence of the Account Holder that he had not withdrawn that amount.

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We are, therefore, not inclined to disturb the finding of the disciplinary authority in respect of Charge Nos. 3 and 5, involving fraudulent withdrawal of amounts, which would speak against the integrity of the applicant. Hence, punishment of penalty of removal from service is in no way disproportionate to these two charges.

4. For the reasons discussed above, we do not see any merit in this application, which is accordingly dismissed, but without any order as to costs.

Somnath Soni
(SOMNATH SONI)
VICE-CHAIRMAN
12.99

B.K. SAHOO

14.12.55
(G. NARASIMHAM)
MEMBER (JUDICIAL)