

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 73 OF 1998.
Cuttack, this the 28th day of August, 2001.

KASTA SETHI.

....

APPLICANT.

: VERSUS :

UNION OF INDIA & ORS.

....

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)

S. SOMNATH SOM
VICE-CHAIRMAN

28.8.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 73 OF 1998.
Cuttack, this the 28th day of August, 2001.

CORAM:

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

Sri Kasta Sethi, Aged about 32 years,
S/o. Sri Deka Sethi, Ex-Branch Postmaster,
Vill. Mirdhapalli, Via. Chandanbhati,
Dist: Bolangir. Applicant.

By legal practitioner : M/s. P. V. Ramdas, P. V. B. Rao, Advocates.

- VRS. -

1. Union of India represented by the Chief Postmaster General, Orissa Circle, Bhubaneswar-751 001.
2. Director, Postal Services, Sambalpur Region, Sambalpur-763 001.
3. Superintendent of Post Offices, Bolangir Division, Bolangir-767 001.

... Respondents.

By legal practitioner: Mr. A. K. BOSE,
Senior Standing Counsel (Central).

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ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN:-

In his amended Original Application, the applicant has prayed for quashing the order dated 30.6.97 (Annexure-5) removing him from the post of EDBPM, Mirdhapalli BO. He has also prayed for quashing the order of the Appellate Authority dated 7-8-98 at Annexure-7. His third prayer is for a direction to the Respondents to reinstate the applicant in the post with all service benefits.

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2. The case of the applicant is that while he was working as Extra Departmental Branch Postmaster, Mirdhapali Branch Post Office, disciplinary proceedings were initiated against him in Memo dated 17-5-1993 listing three charges. Applicant has stated that the enquiry officer in his report held that the applicant is not guilty of the charge no.1. With regard to charge no.2, the I.O. held that this has not been proved beyond doubt and charge no.3 was held proved. Applicant filed a representation against the report of the enquiry Officer after getting a copy of the same. The Disciplinary Authority in his order dated 30.6.1997 held that all the three charges have been proved against the applicant and passed the impugned order removing him from service. Applicant has stated that he has filed an appeal against the punishment order to the Appellate Authority which was sent by him through Regd. Post on 6.1.98 but even though nearly a month has passed no order has been passed on his appeal memo and that is why he has approached the Tribunal on 4th of February, 1998 with the prayers referred to earlier. In his amended application, the applicant has stated that the Appellate Authority by order dated 7.8.98, while refusing to condone the delay in filing the appeal directed de novo proceedings against the applicant. The applicant has also challenged the order of the Appellate Authority which has been marked at Annexure-7.

3. Respondents have filed counter opposing the prayers of the applicant. No rejoinder has been filed. It is not necessary to record all the averments made by the Respondents in their counter because these will be referred to while

considering the submissions made by learned counsel for both sides.

4. We have heard Mr. P. V. Ramdas, learned counsel for the Applicant and Mr. A. K. Bose, learned Senior Standing Counsel appearing for the Respondents. Learned counsel for the Applicant has filed a Memo of citation and we have perused the decisions citated by him. After the close of the hearing learned Senior Standing Counsel wanted time to file Departmental Rules referred to in paragraph -5 of the order of the Appellate Authority at Annexure-7. Later on it was submitted by learned SSC that there is no such rule but communication of reasons of disagreement from the findings of the I.O. by the Disciplinary Authority is obligatory. This aspect will be considered further in course of this order. Before considering the submissions of learned counsel for both sides, it has to be stated that in a Disciplinary Proceedings, the Tribunal can not act as an Appellate Authority and can not substitute its finding in place of the findings arrived at by the Inquiring Officer and Disciplinary Authority. Tribunal can interfere only if reasonable opportunity has not been given to the applicant and/or if principle of natural justice has been violated. The Tribunal can also interfere if the findings are based on no evidence or are patently perverse. The submissions made by the counsel for both sides have to be considered in the context of the above well settled position of law.

5. In the Original Application, the applicant has stated that before the Inquiring Officer, the applicant sought for material documents in support of his case but these were denied

to him and thereby he was prejudiced. Besides the above averment, in the Original Application the applicant has not intimated which documents he asked for perusal and which was denied. The Inquiring Officer in fact, in his report has noted that the applicant perused all the listed documents and the documents and witnesses allowed in support of the charged official were noted in the report of the enquiry officer. We hold that in his representation after receipt of the report of the I.O. applicant has stated that in course of the proceedings he was not supplied with so many vital documents which he had narrated in detail in his brief but unfortunately neither side, in the O.A. have enclosed the copy of the same. In view of this on the basis of the bald averment of the applicant that the documents asked for by him were not supplied to him can not be accepted and it can not also be accepted that the applicant did ask for certain documents and the same were not supplied to him. Applicant has also not enclosed any letter asking for perusal of certain documents. This contention is, therefore, held to be without any merit and the same is rejected. This being the only ground urged about the failure to give reasonable opportunity to the applicant by the I.O., we hold that all reasonable opportunity was given to the applicant in course of the enquiry. Before considering the other submissions of the learned counsel for the applicant, three charges against the applicant have to be noted. The first charge is that at the time of verification of the cash of the Branch office on 23.2.93, there was shortage of cash and stamp balance to the tune of Rs. 35.55p. The second charge consists of two parts; in the first part it is stated that he accepted

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Rs.180/- for deposit in Savings Bank Account No. 7000549 on 15-2-1993/22-2-1993 and did not take that into the post office account and misappropriated the money fraudulently. It is submitted that in this manner he has also misappropriated Rs.1050/- from Mirdhapali S.B. Account No. 7000439 on 30.11.1992. The third charge is that he accepted a sum of Rs.1300.25p for deposit in Savings Bank account No. 5644122 on 25.10.1992 but did not take the amount into post office account. With regard to first charge, the I.O. held that the applicant was not found guilty of the charge. It is necessary to refer to the findings of the fact recorded by the I.O. The I.O. has noted that at the time of cash verification there was shortage of the above amount of Rs. 35.55 but this amount was made good within 10/15 minutes of its detection by the applicant by bringing the cash from his house. As regards charge no.2 as earlier noted this charge consists of two aspects as alleged i.e. lapses relating to savings Bank account No. 7000549 and with regard to savings Bank account No. 7000439. With regard to deposit of Rs.180/- the I.O. held on the basis of the evidence of the depositor that the amount was deposited either on 22.2.97 or 23.2.1997 i.e. the date of inspection by the ASPO and held that there was delay in crediting the amount by half a day. With regard to the second part of the charge it has been held that acceptance of the deposit of Rs.1050/- could not be proved. On the basis of the above, the I.O. held that both parts of Article 2 of the charge has not been proved. With regard to charge No.3, the I.O. held that

Article 3 of the charge is proved based on preponderance of fact and evidences adduced. Disciplinary Authority in his report accepted the findings of the I.O. with regard to Article 1 and three of the charge holding the applicant not guilty of the first charge and guilty of the third charge. The Disciplinary Authority in his order disagreed with the findings of the I.O. with regard to Article 2 of the charge. He has held that in course of the enquiry the defence could not prove anywhere that the deposited the amount of Rs.180/- was taken into account before the detection of the case. Similarly he held that the defence has failed to prove that the amount of Rs.1050/- was deposited on 30.11.1992 before the detection of the case.

6. From the above, it is clear that the Disciplinary Authority disagreed with the findings of the I.O. with regard to charge No.2. But before coming to a finding different from the finding of the I.O. with regard to charge No.2 he had not communicated the reasons for his disagreement to the applicant which was required to do. The next question which arises for consideration is whether by noncommunication of the reasons of disagreement the applicant has been prejudiced. We have already noted the reasons for disagreement mentioned by the Disciplinary Authority in his impugned order. From this it is clear that he has found that the defence has not proved that the two amounts were deposited by the applicant on 22.1.1993 the date of inspection and on 30.11.1992. Had the reasons of the disagreement been communicated to the applicant, the applicant could have in his reply given proof of such deposits and therefore, we hold that by non-communicating the reasons for disagreement, the applicant has

been prejudiced. Learned counsel for the applicant has relied on the decision of G.UDAYAMALA (SMT.) VRS. CHIEF COMMISSIONER OF INCOME TAX, MADRAS AND OTHERS decided by the Madras Bench of the Tribunal and reported in January, 1997 Swamy's News, page 65, at Sl.No.32 and the decision of the Ernakulam Bench in ANAGUR BHASKAR VRS. GENERAL MANAGER, SOUTHERN RAILWAY, MADRAS AND OTHERS reported in (1991) 16 ATC 582 where it has been held that reasons for dis-agreement by the Disciplinary Authority from the findings of the I.O. has to be communicated. In view of this, we hold that the order of the Disciplinary Authority is not legally sustainable and is hereby quashed.

7. The Respondents have taken a point that the applicant has filed appeal on 5-1-1998 and has approached the Tribunal within one month of that and therefore, as he has not exhausted the statutory remedy, the application is not maintainable. Learned counsel for the applicant has relied on the decision of the Chandigarh Bench in the case of SITAL SINGH VRS. UNION OF INDIA AND OTHERS reported in (1989) 9 ATC 719 where it has been laid down that the advisability to wait for six months after making a representation is not the same thing as saying that his not waiting for six months would render his application under section 19 as premature. On that ground this objection taken by the Respondents in the above case was over ruled. In the instant case, we find that the Appellate Authority had in his order dated 7.8.1998 disposed of the appeal and he has also held that before differing from the findings arrived at by the I.O., the Disciplinary Authority should have communicated the reasons for dis-agreement to the applicant.

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In view of this, we hold that the O.A. is maintainable before us.

8. As regards the submission of learned counsel for the applicant for quashing the order of the Appellate Authority it has been submitted by learned counsel for the applicant that in this case the Appellate Authority has ordered *denevo* proceedings. On a careful reading of the order of the Appellate Authority it is clear that he has stated that the proceedings should be started from the stage of issuing show cause notice. It is not clear from this order whether by issuing show cause notice he refers to the issuing of chargesheet or communicating the report of the I.O. As in this case, the third charge has been held proved by the I.O. against the applicant, while quashing the order of the Disciplinary Authority we direct that the Disciplinary Authority should communicate the reasons of his disagreement from the findings of the Inquiring Officer with regard to charge No. 2 to the applicant and after giving him reasonable opportunity to make representation pass final orders in the matter. In the meantime, the applicant should be taken back in service. The period during which he has been kept out of employment, will depend upon the final outcome of the proceedings.

9. In the result, therefore, the Original Application is allowed in terms of the observations and directions made above.

No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

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(SOMNATH SOM)
VICE-CHAIRMAN
28/8/2001