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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 360 OF 1999
Cuttack, this the 27th day of August, 2001

Sri Baina Mukhi .... Applicant

Vrs.

Additional Central Provident Fund Commissioner and another...

....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
27.8.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 360 OF 1999
Cuttack, this the 27th day of August, 2001

CORAM:

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

.....

Sri Baina Mukhi, aged about 40 years, son of Sidheswar Mukhi, resident of village Radbazar, Sonogurudi, P.S-Nimapara, Dist.Puri... Applicant

Advocates for applicant - M/s K.C.Kanungo
S.Behera

Vrs.

1. Additional Central Provident Fund Commissioner, Hudco Bishala, 14, Bhikhaji Cama Place, New Delhi-66.

2. Regional Provident Fund Commissioner, Orissa, Bhavishyanidhi Bhavan, Janpath, Unit-9, Bhubaneswar-7, Dist.Khurda.... Respondents

Advocate for respondents - Mr.Ashok Mohanty

ORDER

SOMNATH SOM, VICE-CHAIRMAN

Inthis O.A. the petitioner has prayed for quashing the memorandum dated 18.3.1997 (Annexure-2) communicating the report of the inquiring officer to him, the order dated 21.7.1997 (Annexure-4) imposing the punishment of removal from service, and the order dated 24.7.1998 (Annexure-5) rejecting his appeal, on the grounds mentioned in the O.A. The respondents have filed counter opposing the prayer of the applicant, and the applicant has filed rejoinder. We have heard Shri K.C.Kanungo, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Counsel for the respondents. The learned counsel for the petitioner has filed written note of argument with list of citations

which have also been taken note of.

2. Admittedly, the applicant was employed as Peon in the office of Regional Provident Fund Commissioner, Orissa, Bhubaneswar. In memo dated 7.6.1995 (Annexure-1) chargesheet was issued against him containing five charges. It is not necessary to refer to charge no.3 which was held as not proved by the inquiring officer and the finding was accepted by the disciplinary authority. The other four charges were held proved. The applicant submitted his representation against the report of the inquiring officer in his letter dated 26.5.1997 (Annexure-3) and considering all the documents the impugned order of punishment was passed and his appeal was also rejected. In the context of the above, the applicant has come up in this petition with the prayer referred to earlier.

3. Law is well settled that in disciplinary proceedings the Tribunal does not act as an appellate authority and cannot re-assess the evidence and come to a finding different from the finding arrived at by the inquiring officer and the disciplinary authority. The Tribunal can interfere only if there has been denial of reasonable opportunity or if the principles of natural justice have been violated and if the findings are based on no evidence or are patently perverse. The submissions made by the learned counsel for the petitioner have to be considered in the context of the above well settled position of law.

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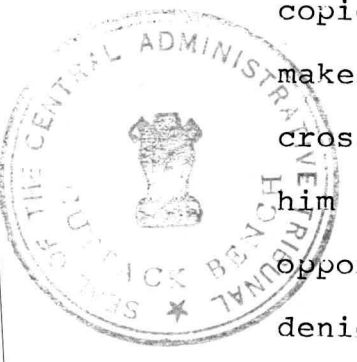
4. Before considering the submissions made by the learned counsel for the petitioner it is necessary to note that after the appeal of the petitioner was rejected in order dated 24.7.1998 at Annexure-5 the applicant had raised an industrial dispute before the Assistant Labour Commissioner (Central) in which there was failure of conciliation and the Ministry of Labour to whom the failure report was submitted, did not refer the matter for adjudication as the applicant had already exercised his right by approaching the Tribunal in an earlier O.A.No.114 of 1998. The earlier OA was disposed of in order dated 22.7.1998 directing respondent no.1 to dispose of the appeal within ninety days. Before considering the submissions of the learned counsel of both sides it is necessaryto note that the four charges out of five which had been held proved against the applicant. The first charge is that he demanded and received illegal gratification from some of the subscribers of M/s NIRTAR, Olatpur, Dist.Cuttack, promising favour in the matter of sanctining advance from their provident funds. The second charge is that while working as Peon in the Legal Cell, he left office at 2.00 P.M. on 12.12.1994 without taking permission of the competent authority and left the headquarters in the same afternoon without headquarters leaving permission. The fourth charge is that during his unauthorised absence with effect from 2.00 P.M. on 12.12.1994 an urgent official communication was sent to him on 14.12.1994 by Registered Post which he refused to receive. The fifth charge is that he was in the habit of wilfully remaining absent from duty. He remained absent from

12.12.1994 till 22.2.1995 and did not report for duty even though he was directed to do so in telegram dated 15.12.1994 after he refused to receive the registered letter issued to him.

5. The only ground urged by the applicant on the point of denial of reasonable opportunity is that vis-a-vis charge no.1 he was not given opportunity to cross-examine the witnesses. Respondents in their counter have pointed out that the disciplinary proceeding was posted to 24.7.1996 and 25.7.1996 for recording depositions of these witnesses and prior notice of the dates fixed was given to the applicant and he had received the notice on 5.7.1996. But he did not turn up on 24.7.1996 nor did he seek for an adjournment in the enquiry. On 24.7.1996 the four witnesses who had complained about the applicant demanding and receiving illegal gratification from them, came and deposed corroborating their complaints. The applicant appeared before the inquiring officer on 25.7.1996 and took a false plea that he met with an accident on 22.7.1996 and as such could not appear on 24.7.1996.The copies of depositions of these witnesses were handed over to him. The applicant did not ask for recalling the witnesses for the purpose of cross-examination. From the above recital of the stand of the respondents, which has not been denied by the applicant in his rejoinder in the matter of not making a prayer for recalling the witnesses for cross-examination, it cannot be held that any reasonable opportunity has been denied to the applicant in the process. The applicant was aware of the date of

examination of the witnesses on 24.7.1996. He had received the notice of the date on 5.7.1996. He met with an accident, according to his version, on 22.7.1996 while boarding the bus. The accident could not have been very serious because even though the applicant did not appear before the inquiring officer on 24.7.1996 he did appear on the next day, i.e., on 25.7.1996. Therefore, notwithstanding the accident which he had allegedly met with on 22.7.1996, he should have sent a telegram or any other communication intimating the inquiring officer about his difficulty in attending the enquiry on 24.7.1996. What is more is that after he appeared on the next day on 25.7.1996, he was handed over several copies of depositions of those witnesses but he did not make any request for recalling the witnesses for cross-examination. In view of this, it is not open for him to take the plea now that by not getting an opportunity to cross-examine the witnesses he has been denied reasonable opportunity. This contention is accordingly rejected.



6. The other point urged by the learned counsel for the petitioner is that the findings arrived at by the inquiring officer and the disciplinary authority are against the weight of evidence. As earlier noted, it is not open for us to re-assess the evidence. But even then as in this case the applicant has been imposed with the punishment of removal from service, we have considered this aspect also.

7. With reference to charge no.1, persons working in National Institute of Rehabitation Training and Research (NIRTAR) who had filed written complaint came and gave evidence that they had separately applied for getting loan provident fund and the applicant met one of the complainants, Smt.Niranjini Nayak and informed her that he had been deputed by one Lenka Babu of his office and intimated that the applied loan would not be sanctioned by the office until and unless certain amount was paid. As the loan was very much necessary, all the persons who had applied for loan collected amongst them Rs.2050/-, which was fixed after negotiation, and handed over the same to the applicant. It is also stated by this witness that the applicant visited NIRTAR on four to five occasions for this purpose. This witness has stated that she came to know the applicant through Shri Bira Nayak, a Sweeper of NIRTAR. The learned counsel for the petitioner has stated that as Shri Bira Naik has not been examined as a witness in the enquiry, the evidence of this witness cannot be relied on. We find no reason whatsoever to accept the above contention. The complainants in their evidence did not say that Shri Bira Nayak was a party to this demand and receipt of illegal gratification. One of the witnesses only stated that she came to know the applicant through Shri Bira Nayak. Thus, when the complainants themselves have come and deposed about the demand and receipt of money by the applicant, by not examining Shri Bira Nayak, the evidence given by them does not in any way become less reliable. This contention is, therefore, held to be without any merit and is rejected.

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8. The next point urged by the learned counsel for the petitioner is with reference to introduction of notesheet no.543 and the unofficial notesheet dated 14.4.1994, on 3.7.1996 . As these have not been mentioned as listed documents, we have carefully gone through the report of the inquiring officer and we do not find that the inquiring officer anywhere has relied on the unofficial note sheet dated 14.4.1994. This contention is, therefore, held to be without any merit and is rejected.

9. The fourth point raised by the learned counsel for the petitioner is that as the inquiring officer held charge no.3 as not proved, charge no.4 automatically fails. These two charges are not interconnected. Rather charge no.4 is connected with charge no.2. Charge no.2 is that the applicant left the office at 2.00 P.M. on 12.12.1994 without taking permission and left the headquarters without station leaving permission. Charge no.4 is that during his unauthorised absence with effect from 12.12.1994 he refused to receive a registered letter sent to him on 14.12.1994. Charge no.3, which has been held as not proved, is that he never stays at the headquarters and attends office by commuting from his native place. This charge, which has been held as not proved, has nothing to do with the other charge that he refused to receive an official communication sent to him through registered post. This contention of the learned counsel for the petitioner is, therefore, held to be without any merit and is rejected.

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10. In support of his contentions the learned counsel for the petitioner has relied on the following decisions:

(i) Union of India v. T.R.Verma, AIR 1957 SC 882; and

(ii) Modula India v. K.Singh Deo, 1988(4) SCC 619.

We have gone through these decisions. In T.R.Verma's case (supra) the Hon'ble Supreme Court had to consider the two contradictory submissions made before their Lordships, one stating that in spite of repeated requests the inquiring officer did not allow the charged official to cross-examine the witness. The inquiring officer in a counter affidavit asserted that he had asked Shri Verma to put questions in cross-examination. Hon'ble Supreme Court held that when there is a dispute as to what happened before a court or tribunal, the statement of the presiding officer with regard to the disputed matter is taken to be correct. In the instant case there is no controversy with regard to cross-examination of the complainants. Admittedly, the applicant did not cross-examine the complainants and we have dealt with this matter earlier.This decision, therefore, provides no support to the case of the applicant. Madula India's case (supra) was under West Bengal Premises Tenancy Act in which it was held that even in a case where the defence against delivery of possession of a tenant is struck off, the defendant-tenant would generally be still entitled to cross-examine the plaintiff's witnesses. Again this decision has no application to the case of the petitioner.

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11. In view of our above discussions, we hold that there is no legal infirmity in the findings of the inquiring officer and the disciplinary authority, and the contentions of the learned counsel for the petitioner assailing their findings are held to be without any merit and are rejected.

12. The last point urged by the learned counsel for the petitioner is that the punishment of removal from service imposed on the applicant is disproportionate to the charges held to have been proved against him. It is submitted that three of the four charges proved relates to unauthorised absence and minor official misdemeanour and penalty of removal fromservice is grossly disproportionate. We are not prepared to accept this contention because the first charge is very serious. The inquirng officer and the disciplinary authority have held that the applicant has demanded and received illegal gratification. There is some evidence on record that the applicant admitted receipt of illegal gratification by returning a portion of the money. In consideration of the above, we do not think that the punishment imposed is disproportionate to the charges proved against the applicant. This contention is accordingly rejected.

13. In the result, therefore, the Original Application is held to be without any merit and the same is rejected. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
27.8.2001

CAT/Cutt.Bench/ 27th August,2001/AN/PS