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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 601 OF 1999
CUTTACK, this the 10th DAY OF Sept. 2001

Jura Pradhan.....Applicant

-Vrs-

Union of India & others.....Opp. Parties

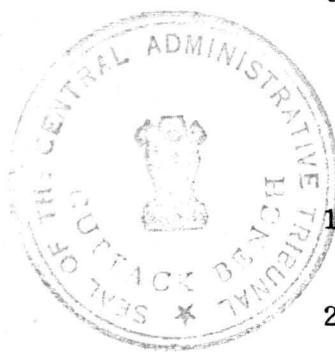
(For Instructions)

1. Whether it be referred to the Reporters or not ? Yes

2. Whether it be circulated to all the Benches of Central Administrative Tribunal or not ? No

(G.NARASIMHAM)
(JUDICIAL) MEMBER

Somnath Som
(SOMNATH SOM
VICE-CHAIRMAN
10.9.2001



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CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO. 601 OF 1999
CUTTACK, this the 10th DAY OF Sep 2001

CORAM:

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

1. Jura Pradhan, aged about 46 years,
s/o- Trinath Pradhan, Ex-BDPM,
Kharanipada B.O. Via-Surang,
Dist-Ganjam.Applicant

By the Advocates

M/s S.K. Mohanty
S.P. Mohanty
P.K. Lenka
S.K. Das
M.K. Das

-Vrs-

1. Union of India, represented by its
Secretary, Department of Posts,
Dak Bhawan, New Delhi.

2. Senior Superintendent of Post Offices,
Berhampur(GM) Division, Berhampur,
Dist. Ganjam.

3. The Director, Postal Services,
Berhampur-1, Dist. Ganjam.

.....Respondents

2. J.J.M. By the Advocate(s)

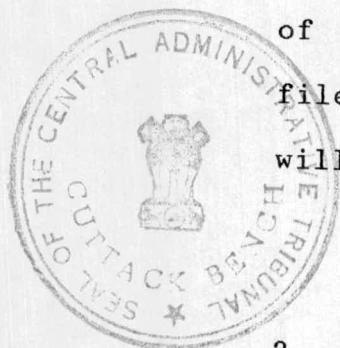
.....Mr. A.K. Bose
SSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN: In this original application the petitioner has prayed for quashing the order dated 23.7.98 (Annexure-4) removing him from service and the order dated 16.6.99 (Annexure-6) rejecting his appeal. He has also prayed for reinstatement with all consequential benefits. Respondents have filed counter opposing the prayer of the applicant. No rejoinder has been filed. We have heard Shri S.K. Mohanty, Learned Counsel for the Petitioner and Shri A.K. Bose, Learned Senior Standing Counsel for the respondents and have perused the records. On our direction Senior Superintendent of Post Offices, Berhampur (respondent No.2) has filed an affidavit which has been taken note of and will have referred to later in this order.

S. S. M.

2. The admitted position is that while the applicant was working as EDBPM, Kharanipada, disciplinary proceedings were initiated against him in memo dated 22.7.96 (Annexure-1) with only one charge. The charge against the applicant was that while working as EDBPM he had accepted deposits of different amounts on 11 different dates totalling of Rs.2060/- from holder of Savings Bank Account No.3231607 but these amounts were not taken into Government account on the respective date or on subsequent date till detection of the case. It is stated that he has taken Rs.100/- each to Government account on 25.7.95



and 26.7.95 as deposits but these were not entered in the pass book. In view of the above he was charged with failure to maintain absolute integrity and devotion to duty and violation of departmental Rules. The Enquiry Officer in his report held that the prosecution has failed to bring home the charge and the solitary charge against the applicant is "conclusively disproved". Disciplinary Authority (respondent No.2) disagreed with the findings of the Enquiry Officer and in his letter dated 25.5.98 he intimated the reasons for disagreement to the applicant requiring him to file a representation.

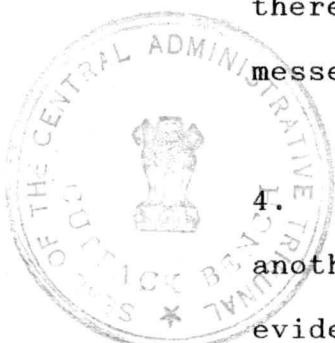
After considering his representation the impugned order at Annexure-4 was passed removing the applicant from service and his appeal was also rejected in order at Annexure-6.

3. Before considering the submissions made by Learned Counsels of both sides it has to be noted that in a disciplinary proceedings the Tribunal does not act an Appellate Authority and cannot substitute its finding in place of ~~and~~ the finding arrived at by the Enquiry Officer or the Disciplinary Authority. The Tribunal can interfere if reasonable opportunity has not been given or if principles of natural justice have not been followed or if the findings are based on no evidence or are patently perverse. The submissions made by the Learned Counsel for the petitioner has to be considered in the context of the above well settled position of law. The applicant has stated that the depositor Khalli Pradhan was

examined by the Enquiry Officer and he denied to have made deposit of each of the dates mentioned in the charge-sheet amounting to Rs.2060. He has also stated that depositor used to deposit money through a messenger. The applicant's grievance is that this messenger has not been examined and non examination of the messenger coupled with the denial of the depositor about the alleged deposit has prejudiced him. We find considerable force in this submission. It is for the prosecution to bring home the charge. As the depositor himself stated that he did not deposit the amount of Rs.1860/- which was allegedly not taken by the applicant to the Government account, it was necessary on the part of the prosecution to examine the messenger but this has not been done. We therefore held that by non-examination of the messenger the applicant has been prejudiced.

4. The above conclusion is much strengthened by another fact. The Enquiry Officer has believed the evidence of the depositor Khalli Pradhan. But the Disciplinary Authority has held that the deposits were actually made and the applicant did not take into account an amount of Rs.1860/- and misappropriated the same. As the depositor himself denied to have make the deposit of Rs.1860/-, at the time of hearing we wanted to know if the Respondents after holding that the deposits were actually made followed this up in their obligation with regard to permitting withdrawal of the above amount of

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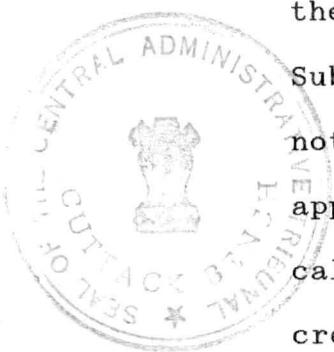
Rs.1860/- from the Savings Bank Account by the depositor. In the affidavit filed at our direction the Senior Superintendent of Post Offices, Berhampur (Respondent No.2) has averred that a duplicate pass book was issued to Khalli Pradhan and this amount of Rs.1860/- was not taken into account while issuing the duplicate pass book as the depositor denied to have deposited that amount and as he had no claim on such amount. Thus we find that the department has finally accepted that Khalli Pradhan did not deposit the amount of Rs.1860/-. And the Department has no obligation to pay him this amount. The Enquiry Officer has also held that this amount was not deposited by Khalli Pradhan. But the Disciplinary Authority has held that the amount has been deposited by Khalli Pradhan and on that account held that the charge of not taking the deposited amount in Government account has been proved. This finding is based on no evidence more so because of the subsequent conduct of the department in accepting the version of Khalli Pradhan as also the applicant during the enquiry.



5. Learned Senior Standing Counsel has mentioned that during the preliminary enquiry the applicant had admitted that he had received the amount of Rs.1860/- and had voluntarily credited the amount of Rs.2000/- to government account. The Enquiry Officer has considered this aspect and taken note of the

submission of the applicant in his written brief that the crediting was done at the behest of R. K. Mishra, SDI(P), Paralakhemundi East Sub-Division (S.W.-4) Enquiry Officer has noted that "the fact remains that in case like this, generally the investigating inspector will be anxious to ensure that the department should not sustain any loss, therefore the investigating inspector always tries to recover the defaulcated amounts from the delinquent officials. As such Sri R.K. Mishra, SDI(P), Paralakhemundi East Sub-Division and S.W.-4 is not an exception to this psychological phenomena. As stated by the C.O. (applicant) that he had confessed in Ext.S-24 and crediting of Rs.2000/- was done under the instruction of the SDI(P), Paralakhemundi, East Sub-Division can not be disbelieved." He has also noted as the alleged defaulted was Rs.1860/- and the applicant deposited Rs.2000/- and he had no means to calculate the interest. the submission that the crediting was done under compulsion under instruction of SW-4 cannot be believed as untrue altogether. The Disciplinary Authority has considered this aspect merely by noting that the applicant was not in a position to show any threat of compulsion by SW-4. From this it is clear that the Disciplinary Authority has not considered this aspect as mentioned by the Enquiry Officer, in his order. In view of the above we hold that the finding that the applicant received Rs.1860/- from Khalli Pradhan and did not deposit the amount is based on no evidence.

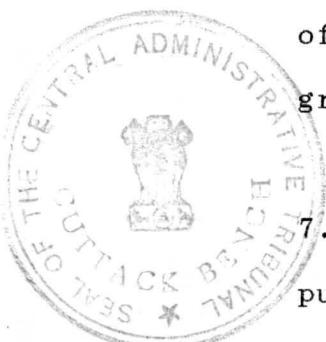
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6. The other aspect of the charge still remains that even accepting the version of the applicant, he had made entries in the pass book of Khalli Pradhan on different dates showing the deposit of Rs.1860/- without receiving the above amount. The report of the enquiry officer does not indicate any finding on this aspect because he merely states that the reasons why the applicant entered these amounts in the pass book without receiving the amounts is shrouded in mystery. Whatever it may be for the lapses of making entry in the Savings Bank Account of Khalli Pradhan without receiving the amount the applicant has been rightly held guilty but the punishment of dismissal of service for the above lapses is prima facie grossly disproportionate.

7. Hon'ble Supreme Court has held that quantum of punishment is a matter which should not ordinarily be interfered with by the Courts and Tribunals. But where the punishment is so severe as to shock the judicial conscience the matter can be referred back to the departmental authority to impose lesser punishment. In rare and exceptional cases and in order to shorter litigation the Tribunal can impose a lesser punishment for reasons to be specifically recorded. In the instant case we feel that it would be proper to remand the matter to the Disciplinary Authority to reconsider the quantum of punishment.

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8. In view of the above we quash the punishment of removal of service imposed in the order at Annexure-4 and the order of the Appellate Authority at Annexure-6 and remand the matter to Respondent No-2 for imposing any punishment other than removal of service and dismissal which is a more severe punishment than what we have quashed. The applicant has asked for reinstatement and service benefits. After imposition of lesser punishment the applicant should be reinstated but in the circumstances of the case he will not be entitled to back wages. This should be done within a period of 90 days from the date of receipt of a copy of this order.



9. In the result, therefore, the Original Application is partly allowed in terms of our observations and directions made above. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM
VICE-CHAIRMAN
10.7.2011)

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