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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

original Application No. 75 of 1999.
Cuttack, this the 31st day of July, 2000.

ABHAYA KUMAR MAGAR.

...

APPLICANT.

VRS.

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)

Somnath Som.
(SOMNAIH SOM)
VICE-CHAIRMAN
31.7.2000

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Cuttack, this the 31st day of July, 2000.

CORAM:

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

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Abhaya Kumar Magar,
S/o. Narayan Magar,
R/o. Vill. Kiakachhar,
Po: Kiakachhar,
Ps: Sakara, Dist. Sundergarh.

Applicant.

By legal practitioner: M/s. H. M. Dhal, P. K. Patnaik, L. Pani, Advocate.

- Versus -

1. Union of India and others
represented through :-

1. Secretary to Government of India,
Posts and Telegraph Department,
New Delhi.

2. The Director of Postal Services,
Office of the Postmaster General,
Sambalpur Region, Sambalpur-1.

3. Chief Postmaster General,
Orissa, Bhubaneswar-1, Dist: Khurda.

4. Senior Superintendent of Post Offices,
Sundergarh Division, Sundergarh-1.

5. Sub-Divisional Inspector (Postal),
Sundergarh East Sub Division,
Sundergarh-1.

... Respondents.

J J M. By legal practitioner: Mr. J. K. Nayak, Additional Standing Counsel.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 17.6.1996, Annexure-6 removing him from service and the order dated 11.10.1996, at Annexure-8 of the Appellate Authority rejecting his appeal.

2. Applicant's case is that he joined as Extra Departmental Branch Postmaster on 27th June, 1992. While he was working as EDBPM, Kiakachhar Branch Post Office, Disciplinary proceedings were initiated against him and after enquiry in which the charge was held proved, the disciplinary Authority imposed the impugned order of punishment on him after taking into consideration his representation filed after receipt of the enquiry report. His appeal has also been rejected by the Appellate Authority. In the context of the above facts, the Applicant has come up in this original Application with the prayers referred to above.

3. Respondents, in their counter have opposed the prayers of the applicant and the applicant has also filed rejoinder in which he has reiterated the prayers made by him in the original Application. It is not necessary to go into too many facts of the case as also the averments made by the learned counsel for both sides because the relevant averments made by them will be referred to at the time of considering the submissions made by learned counsel for both sides.

4. We have heard Mr. H. M. Dhal, learned counsel for the Applicant and Mr. J. K. Nayak, learned Additional Standing Counsel appearing for the Respondents and have also perused

the records, we had directed the learned Additional Standing Standing Counsel to produce the proceedings file and this has also been produced and we have gone through the same. Learned counsel for the petitioner has also relied on the decision of the Apex Court in the case of Khemchand vrs, Union of India and others reported in AIR 1958 SC 3000 and AIR 1986 SC 1040 in the case of RPBhata vrs. UOI and others and these have also been gone through. Law is well settled that in a disciplinary proceedings, the Tribunal does not act as Appellate Authority and can not re-assess the place of evidence and substitute its finding in the findings arrived at by the Inquiring Officer and the Disciplinary Authority. The Tribunal can only interfere, if there has been denial of reasonable opportunity or there has been violation of principles of natural justice and if the findings are based on no evidence or are patently perverse. The submissions made by learned counsel for the petitioner are being considered in the context of the above well settled principle of law.

5. Before considering the submission made by learned counsel for the petitioner it would be necessary to refer to the charges. There was only one charge against the applicant. It was alleged that while he was functioning as EDPM, Kikachhar Branch Post office during the period from 27.6.1992 to 31.3.1994, he accepted a sum of Rs. 375/- on three dates from the depositor of recurring account No. 388120 and a sum of Rs. 100/- from the deposit holder in RD A/c. No. 388107. He entered the transactions in the Pass Books duly authenticating the transactions with his signature. He also put the Post office date stamp but did not take the amount

in the Government Cash.

6. The first submission of the applicant is that he applied for xerox copy of R.D. Pass Book Nos. 388120 and 388107 but these were not supplied to him. The I.O. in para-7 of his report has pointed out that though xerox copy of the pass books of these two accounts were not supplied to him, he was allowed to have the access and take extract there of as provided under the rules. As the applicant had the opportunity to examine the concerned Pass Books and have been given opportunity to take extract thereof, it can not be said that the documents were withheld from him. Alongwith the proceedings file these two pass Books have been enclosed and we find that on both the Pass books, applicant has recorded that he has seen the pass books and signed on 22.8.1995. It is also to be noted that the charge relates to only four entries in these two Pass Books and therefore, it was possible for him to take extract of the relevant entries. This contention is therefore, held to be without any merit and is rejected.

7. The second contention of the applicant is that the submission of SW1 and SW2 were not supplied to him for effective cross examination. From the enquiry report it appears that these two witnesses were examined in presence of the applicant and his assisting Govt. servant and he had cross-examined him. There is no provision that copies of the examination in chief must be supplied to the charged official before he cross examines the witnesses. This contention, is therefore, held to be without any merit and is rejected.

8. Applicant has further stated that the entries made in

the Pass Books were not in his handwriting and the Pass Books were not sent for examination of handwriting experts.

We find from the report of the Inquiring Officer that the applicant has admitted in his statement signed by him which has been exhibited as Exbt. No. 5 that he accepted the above amounts on different dates and had filled up the Pass Books and signed the same. In view of his admission that he had signed the Pass Books, it is not necessary to refer this matter to the Hand-writing experts. It is also to be noted that the disciplinary proceedings are not Criminal trials and strict rule of evidence as applicable in the case of Crl. trials are not applicable in case of departmental proceedings. In view of this, this contention is also held to be without any merit and is rejected.

9. The next contention of the petitioner is that one Lalu Harijan (Magar) who was cited as witness was not examined and the applicant did not have any chance to cross examine him. This contention is also without any merit because the I.O. has noted that inspite of notice Lalu Harijan did not appear before the I.O. and the P.C. submitted to drop him as a witness. If the applicant so likes, he could have summoned Lalu Harijan and got him examined as his witness. It can not, therefore be said that by non-examination of Lalu Harijan, the applicant has been prejudiced in any way.

S. J. J. M.

10. The next contention of the petitioner is that the allegation is that he accepted the above amounts in two RD accounts on four dates and entered the amounts in the Pass Books and stamped the Pass Book with date stamp of the post office but this date stamp had not been produced during the enquiry. From the proceedings file it appears that

this post office was provided with a changeable date stamp. This means a date stamp where by moving the relevant portion of the date stamp, the date can be changed. The I.O. has noted that the applicant had put the date stamp of 20.7.1984 on these dates. It has been pointed out that the Branch Post Office was started functioning from 27.6.1992 and the Applicant joined as EDBPM on 27.6.1992. Therefore, putting the date stamp of 20.7.1984 was a deliberate action for confusing the matter and this is in violation of the Departmental Rules. As the date stamp of RD account No. 388120 is very clear as we have seen and the date is 20.7.1984, no prejudice has been caused to the Applicant by not producing the date stamp. This contention, is also held to be without any merit.

11. In consideration of the above, we hold that the applicant has been given all reasonable opportunity in this case and there has been no violation of principles of natural justice.

12. The next contention of the Applicant is that the I.O. has not analysed the evidence in detail. We have gone through the I.O.'s report and we find that this is not correct. ^{Jdm.} The I.O. has analysed the evidence in detail. He has noted that the Account holder of R.D. Account No. 388120 in his examination has stated that he handed over money to the applicant which the applicant received. The I.O. has noted that during cross examination of this account holder, the applicant has not been able to disprove the statement of witness. All other evidence has been carefully examined and it can not be said that the I.O. has come to his finding without application of mind. This contention is also

Jdm.

without any merit and the same is rejected.

13. Applicant has stated that the disciplinary authority and the Appellate Authority have not applied their mind while passing the impugned order. This contention is also without any merit because these two orders have been enclosed to the OA and on going through the orders, we find that both these authorities have applied their mind and have passed detailed speaking order and had considered the submission made by the petitioner in his representation and also during enquiry. This contention is also held to be without any merit and is rejected.

14. In conclusion, therefore, we hold that the findings of the IO and the Disciplinary Authority with regard to the charge has been rightly arrived at and on the basis of adequate evidence and such findings can not be held to be based on no evidence and is patently perverse.

15. The last submission of the counsel for the applicant is that the punishment of removal of service imposed on the applicant is excessive and disproportionate to the charge held proved against him. We are unable to accept this submission because the applicant was an EDBPM whose duty is to receive cash from the public. The fact that he had entered the amounts received in the concerned Pass Books and had not taken the amounts to the Govt. accounts shows that he had misappropriated the amounts. Considering this, it can not be said that the punishment is so excessive so as to shock the judicial conscience.

16. In the result, therefore, the application is held

to be without any merit and is rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
31.7.2002

KNM/CM.