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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 89 OF 2000.
Cuttack, this the 12th day of January, 2001.

SHRI MAHENDRA KUMAR BEHERA.

APPLICANT.

-VERSUS-

UNION OF INDIA AND OTHERS.

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
(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO.09 OF 2000.
Cuttack, this the 12th day of January, 2001.

C O R A M;

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL) .

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SHRI MAHENDRA KUMAR BEHERA,

Aged about 48 years,


S/o. Kulamani Behera,

A permanent resident of village-Badajharilo,
Post;Sundergram, District;Cuttack, At present
serving as Upper Division Clerk, National
Sample Survey Organisation (Field Operation
Division) O/O. the Deputy Director, Bhubaneswar,
DIST:KHURDA.

.... APPLICANT.

By the legal practitioner: M/s. A.K. Mishra,
J. Sengupta,
B.B. Acharya,
D.K. Panda,
P.R.J. Dash,
G. Sinha,
Advocates.

- VERSUS -

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1. Union of India represented through its
Secretary, Ministry of Statistics and
Programme Implementation, National
Sample Survey Organisation, C-Block,
IIIrd Floor, Pushpa Bhavan, New Delhi-62.
2. Deputy Director General,
National Sample Survey Organisation,
(Field Operation Division),
New Delhi.
3. Deputy Director,
National Sample Survey Organisation,
Regional Office, Orissa (East),
Commercial Complex, First Floor,
Acharya Vihar, Bhubaneswar-13.

.... RESPONDENTS.

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

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O _ R _ D _ E _ R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, the applicant who is working as Upper Division Clerk, in the Office of the Deputy Director, National Sample Survey Organisation (NSSO), Regional Office, has prayed for quashing the order dated 23-2-1999 at Annexure-8 of the Disciplinary Authority imposing him the punishment of reduction of pay by five stages from Rs. 5100/- per month to Rs. 4600/- per month in the scale of Rs. 4000-6000/- for a period of five years w.e.f. 1-3-1995 with a further order that during the period of reduction, he will not earn increments of pay and on the expiry of this period, the reduction will have the effect of postponing the future increments of his pay. In the same order, it has also been directed that he will refund an amount of Rs. 40,707/- collected from the members of the Society immediately failing which the same will be recovered at the rate of Rs. 2500/- P.M. from his pay from March, 1999 in 16 equal instalments. He has also prayed for quashing the order dated 27.9.1999 at Annexure-10 in which his appeal has been rejected.

2. By way of interim relief, the applicant has prayed for staying operation of the order of punishment of the Disciplinary Authority and the order of the Appellate Authority rejecting his appeal but the prayer for stay was not pressed and it was ordered that the prayer for interim relief may lie over to be taken up when pressed. Presumably, therefore, the order of punishment has been given effect to and the recovery as ordered is taking place from the salary of the applicant. Respondents

have filed counter opposing the prayers of the applicant and the applicant has filed rejoinder in which he has reiterated his prayer.

3. Learned counsel have abstained from court work for more than a month. Hon'ble Supreme Court in the case of RAMAN SERVICES PVT. LTD. VRS. SUBASH KAPUR AND OTHERS reported in 2000 AIR SCW 4993 have deprecated the action of the courts in adjourning cases on the ground of abstention of work by the counsel. Their Lordships of the Hon'ble Supreme Court in the above case have observed that in granting such adjournments, the defaulting courts will also be contributory to contempt of the Honourable Supreme Court. In view of the position of law as laid down by the Honourable Supreme Court in the above case, it is not possible to adjourn the matter. We have, therefore, perused the records. As counsel have abstained from court work we do not have the benefit of hearing Mr. A.K. Bose, learned Senior Standing Counsel for the Respondents.

4. Before taking up the matter, we have perused the averments made by the parties in support of their respective stands. It is to be noted that the impugned punishment was imposed on the applicant in a disciplinary proceedings initiated against the applicant in Memo dated 15.10.1998. There were four charges against the applicant. Disciplinary Authority in his impugned order dated 23-2-1999 has exonerated the applicant from Articles 1, 2 and 3 of the charges but held him guilty of charge No. 4. In view of this, it is not necessary to refer to the first three charges and the averments made by the parties will be considered only in respect of charge no. 4 which has been held proved against the applicant.



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5. position of law is well settled that in a disciplinary proceedings, the Tribunal can not act as an Appellate Authority and can not re-assess evidence and substitute its findings in place of the findings arrived at by the Inquiring Officer or the Disciplinary Authority. The Tribunal can interfere only if the findings are based on no evidence or are patently perverse or in course of the proceedings, the delinquent officer has not been afforded reasonable opportunity to establish his innocence of the charge and if rules of natural justice have been violated.

6. Averments made by the applicant in support of his prayers have to be considered in the context of the above well settled position of law.

7. The various averments made by the applicant in challenging the impugned orders are discussed below.

8. The first point urged by the applicant is that initially in Memo dated 18.5.98 at Annexure-1, Deputy Director National Sample Survey Organisation (Respondent No. 2 issued chargesheet against him under Rule-14 of CCA(CCS) Rules. Applicant has stated that subsequently Shri R.K. Tiwary, Assistant Director and Shri T. Baral were appointed as Inquiring Officer and presenting Officer on 8.6.1998. In order dated 1.9.1998 (Annexure-2), the appointment of Shri Tiwari as I.O. was cancelled. In another order, on the same day also enclosed as Annexure-2, the memorandum containing the charges were withdrawn on the ground that Assistant Director is the competent authority to decide the case and it was directed that the matter is being referred to the Assistant Director,



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Bhubaneswar, Respondent No.3 to decide the matter. In another order of the same day the appointment of Shri T. Baral, as Presenting Officer was also cancelled. Thereafter, in order dated 15.10.1998 in Annexure-3, the Assistant Director, issued the same charge against the applicant under Rule 14 of CCS(CCA) Rules. Applicant has stated that by withdrawal of the chargesheet issued on 13.5.98, he stood exonerated and the second chargesheet dated 15.10.1998 could not have been legally issued to him. On the same point, the applicant has also taken somewhat contradictory stand that by issuing the same charges in two memos twice he has been penalised/punished towards on the same offence. The applicant has also taken the stand in paragraphs 15 and 16 of his Original Application that the Deputy Director is the Disciplinary Authority and the charges should have been framed against him by the disciplinary Authority alone and the framing of charges by the Assistant Director is without jurisdiction and on these grounds alone, the impugned orders are required to be set aside.

9. Respondents have pointed out that in order dated 1.9.1998, Annexure-2, the matter was referred to the Assistant Director as he was the appropriate authority to initiate the proceedings against him. There was no intention to drop the charges but the letter under Annexure-2 has been issued only to have the charges framed by the Competent authority and it can not be said that the disciplinary proceedings have been dropped or the applicant has been exonerated. We have considered the above pleadings carefully. The Central Civil Services Classification, Control and Appeal Rules only provide that nobody can be imposed with punishment by an authority lower



than the Appointing Authority. Law is well settled that the Controlling Authority is competent to issue chargesheet but the final order of punishment has to be passed by the Disciplinary Authority. In this case the impugned order of punishment has been issued by the Disciplinary Authority i.e. Deputy Director and therefore, it can not be said that issuing of chargesheet by the Assistant Director is illegal. Moreover, after receipt of the chargesheet issued by the Assistant Director, the applicant has submitted his explanation and has participated in the enquiry and now he can not be permitted to raise the point that the Assistant Director was not competent to issue the chargesheet. In any case it is not legal position that only the Disciplinary Authority can issue charge-sheet. This contention, is therefore, held to be without any merit and is rejected.

10. The second ground urged by the applicant is that the Deputy Director had directed the supdt. Shri T.N. Baral to conduct the preliminary enquiry and on the basis of the preliminary enquiry, the disciplinary proceedings were initiated against the applicant initially by the Deputy Director and subsequently by the Assistant Director but the copy of the preliminary enquiry report was not supplied to him. Respondents have pointed out that the preliminary enquiry report was not included in the list of documents which was given to the applicant alongwith the charge. They have also mentioned that the preliminary enquiry report has not been exhibited during the course of disciplinary proceedings and therefore, it was not necessary to supply copy of the same to the applicant. It is further stated that the applicant had also not asked for the



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copy of the preliminary enquiry report. Applicant has not enclosed any document showing that he had asked for a copy of the preliminary enquiry report. In any case as the report of the preliminary enquiry was not taken into consideration in course of the enquiry in the charge, it can not be said that by non-supply of the report of the preliminary enquiry, the applicant has been prejudiced in any way. This contention, is therefore, held to be without any merit and is rejected.

11. The third contention of the applicant is that even though he had asked for certain documents the same were not supplied to him and thereby he was prejudiced in establishing his innocence. From the documents enclosed by the applicant himself we find that memorandum of charges issued by the Asst. Director on 15.10.1998 at Annexure-3 and the applicant submitted his explanation in his letter dated 26.10.1998 at Annexure-4. In this explanation, which is enclosure to Annexure-4 he has not mentioned that he had asked for any document and the same was not supplied to him. This contention must therefore, be taken to be an after thought. We note that it is only on 5.11.1998 after submission of his explanation the applicant is stated to have written a letter which is at Annexure-5 in which he had asked for copies of documents mentioned in the list of documents and also copies of the preliminary enquiry report. Respondents in para-6 of their counter have stated that the applicant had never made any request for supply of any documents. They have also stated that he never submitted the letter at annexure-5 and the same was not received by the Office. Respondents have further stated that on the letter, one Shri P.K. Das, LDC incharge of diary work has signed in token of



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receipt. Shri Das was asked why the said letter, if received was not entered in the diary register. Shri Das, LDC incharge of diary work replied in his letter dated 17.2.2000 which has been enclosed at Annexure-A to the counter of the Respondents stated that he had not received any letter physically from the applicant. According to Shri Das one day while he was working, the applicant came and requested him to acknowledge a receipt of the memo which he has not physically received from the applicant on that day and on any other day. In view of this, Respondents have stated that the applicant has tried to mis-represent ^{the facts before} the Tribunal by filing the letter at Annexure-5 about non-supply of the documents asked for. Applicant in his rejoinder has stated that the plea taken by the Respondents on this point and the reply of Shri Das are instances of after thought and can not be accepted. We have considered the divergent pleadings of the parties on this point carefully. The first point is to be noted in this connection is that if the applicant was in need of the documents even before submission of his explanation he could have written to the Assistant Director asking for supply of copies of documents. As a matter of fact the applicant has only written to inspect the documents on which prosecution intends to rely but no such letter was written by him on or before the date he submitted his explanation. It is also not clear as to why the applicant handed over the so called letter dated 5.11.98 to the clerk incharge of the diary work and did not give the letter to the Assistant Director who is working in the same office. Coupled with the fact that the concerned clerk Shri PK Das has specifically denied receipt of the letter, it must be held that the applicant did not ask for supply of any documents.



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Moreover, as he had already submitted his explanation even before asking any document it can not be held that by non-supply of other documents he has been prejudiced in any way. At this point it is also to be noted that a large number of documents mentioned in the list of documents relate to the charges 1, 2 and 3 in respect of which the applicant has been exonerated. Thus, the present consideration is only in respect of those documents which relate to the charge No. 4.

12. The next contention of the applicant is that Shri T. Baral, supdt. conducted the preliminary enquiry and he was appointed as the I.O. Respondents in their counter have stated that applicant has not made any grievance of the fact of appointment of Shri Baral as I.O. and has participated in the enquiry conducted by Shri Baral and now he has raised this point only for the purpose of escaping from the punishment. Applicant himself has mentioned in his Original application that preliminary enquiry was conducted by Shri Baral. He was therefore, aware of this fact when Shri Baral was appointed as I.O. If he has any grievance he should have submitted a representation; he should have applied for change of I.O. which is permitted under rules but not having done that he can not raise this point at a later stage only for the purpose of impugning the order of punishment. In view of our findings ^{on the} /above, points discussed, we held that in course of the enquiry all due procedure were followed and the applicant was not denied any reasonable opportunity and rules of natural justice were not also violated.

13. The second aspect of the matter is whether the findings of guilt arrived at against the applicant in respect of

charge no.4 is based on no evidence or is patently perverse. Applicant has stated that the charge would not have been held proved on the basis of materials before the I.O. and the Disciplinary Authority. For considering this point it is necessary to refer to the article of charge no.4.

14. In this article it is stated that the applicant while functioning as Cashier in the Regional Office at Bhubaneswar, did not pay the dues of Rs. 50,702 to the NSSO Cooperative Society, Calcutta which was collected from the members of the Society for the month of August, 1996, May, 1997, July, 1997 and October, 1997. It is also alleged that he wilfully kept the dues collected from the staffs for more than 10 to 50 days before the same was sent to the Society. He tampered with the acquittance roll without indicating any reason. He prepared a draft on 28.5.1997 for Rs. 9635/- but sent the same only on 5.8.1997 keeping the draft with him without any reason. He did not bring the deduction list to the notice of the authority and directly took the same on the dak as per his own sweet will. Applicant in his explanation has mentioned that the work of collection of Co-operative Society dues is not connected with his official work. He has further stated that with regard to collection in respect of May, 1997 he has nothing to reply as he has not remembered anything. He has further stated that if collection had been made the same must have been entered in the Acquittance Roll and demand draft would have been sent to the Society. In respect of July, 1997 also he has given the same explanation as in the case of May, 1997. With regard to August, 1997 he has stated that the collections have not been made. In course of the enquiry the I.O. asked him questions with regard to Article



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No. 4 of the charge. Applicant was asked that in this Article he has been charged mainly that some NSSO Co-operative Society dues is outstanding against him. In many occasions the deposits of collected Society dues were made late. Applicant was asked if ^{this} was not misappropriation of Society's money. In reply applicant has stated that he has gone through the records and submitted a reply to the Deputy Director, NSSO, Bhubaneswar on 17.11.1998 where he had agreed to refund the personalwise non-refunded dues by 31.12.1998 positively through Shri P.C. Bahinipati. It further appears from the record that an amount of Rs. 10,000/- has been refunded by the applicant through Shri Bahinipati. The I.O. has rightly held that the applicant has admitted this charge and the I.O. has held him guilty. Applicant was admittedly working as Cashier in that Office. In respect of employees' Cooperative Society, the employer has a liability to collect the Cooperative society dues and remit the same to the Society as the applicant was the cashier he was rightly collecting the dues by deducting from the Acquittance roll. It is also admitted that he has not deposited the amount. In view of this we hold that this charge has been clearly proved against the applicant.

15. The next point is that the punishment is too heavy. We are unable to accept this contention. Disciplinary Authority has rightly pointed out that on the charge of misappropriation, of money, the applicant deserves extreme penalty of dismissal from service but considering the length of service put in by him, his family size, his financial condition and the straight-forward manner of admitting the charge, the disciplinary authority imposed a lesser punishment of

reduction to a lower stage in the time scale of payas has been referred to by us earlier. In view of this, we can not accept this contention that the punishment is disproportionate.

16. Last point made by the applicant is that his appeal has been rejected by the Appellate Authority without fully considering the matter. This contention is also without any merit because the appeal petition filed by the applicant is at Annexure-9. In this letter itself he has only stated that he is prepared to pay the amount and settle the matter amicably. The appellate Authority has passed a reasoned order and found that the applicant has not raised any substantive point. Appellate Authority has also noted the fact that in the meantime out of the misappropriated amount of Rs. 50,707/- a sum of Rs. 32,000/- has been recovered from the applicant by May, 1999 and the rest amount will be deducted. In view of this, the Appellate Authority has mentioned that even though the Disciplinary Authority has taken a lenient view he does not propose to enhance the punishment and the appeal was rejected. So we find no infirmity with the order of the Appellate Authority. This contention is therefore, held to be without any merit and the same is rejected.

17. In the result, therefore, the Original Application is dismissed. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
12.7.2001