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O.A.No.617/2001

ORDER DATED 21-10-2002.

The brief facts of this are that the Applicant was provisionally selected and appointed as Extra Departmental Branch Post Master of Haripur Jemadeipur Extra Departmental Branch Post Office in account with Sukinda Sub Post Office under Jaipur Head Post Office w.e.f. 02-06-1997 in place of Shri Harekrushna Mallick, the regular incumbent, who was under put off duty since 30-08-1995. During his incumbency, he was involved in SB/RD fraud and committed temporary misappropriation in five numbers of SB pass books and 14 nos. of RD pass books to the tune of Rs. 3,953/- for which he was placed under 'off duty' w.e.f. 5-4-1999 and departmental proceedings under Rule-8 of EDAs (Conduct and Service) Rules, 1964 was initiated against him. Ultimately, after following due procedure of law and Rules, and after giving due opportunity to the Applicant, the Supdt. of Post Offices, Cuttack North Division, Cuttack passed the order of punishment of 'REMOVAL' from service vide order dated 04-08-2000; which was challenged by the Applicant in O.A.No.417/2000 before this Tribunal without filing any appeal as required under the Rules. This Tribunal, after hearing learned counsel for both sides and after perusing the records, in order dated 27-7-2001, disposed of the same with the following directions:

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Contd....Order dated 21-10-2002.

In view of this, we dispose of this O.A. with a direction that the applicant should file an appeal within a period of 30 (thirty) days from today before the Appellate Authority and the Appellate Authority is directed not to reject the appeal on the ground of limitation but consider and dispose of the same on merits. The applicant is directed to file alongwith appeal petition a copy of this order before the Appellate Authority.

The Applicant, accordingly, preferred an appeal on 25-8-2001; which was considered and rejected by the Director of Postal Services (HQ), Bhubaneswar on 5th November, 2001 which is the subject matter of this Original Application, under section 19 of the Administrative Tribunals Act, 1985.

2. Respondents have filed their counter though admitting the facts but stating interalia that since there is no illegality in the matter of conducting the disciplinary proceedings and sufficient opportunity has been given to the applicant, the interference of this Tribunal is not called for. However, the Applicant has filed a rejoinder.

3. Having heard Mr. K. C. Satpathy, learned Counsel for the Applicant and Mr. B. Dash, learned Additional Standing Counsel for the Union of India, appearing for the Respondents, we have perused the materials on record.

4. During the course of argument, nothing has been pointed out by the learned counsel for the Applicant with regard to violation of any of the Rules or instructions in

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the matter of conducting the disciplinary proceedings as against the Applicant. On perusal of the materials, we find (which has also been admitted by the learned counsel for the Applicant) that adequate opportunity has been given to the Applicant for defending his case by the Respondents/Authorities while conducting the proceedings.

5. Law is well settled in a plethora of judicial pronouncements that Courts/Tribunal should not interfere in the matter of disciplinary proceedings unless the same has been done in gross violation of the Rules or principles of natural justice have been violated in course of the disciplinary proceedings. Further it has been held by various courts that interference of the courts/Tribunal is called for if the findings are based on no evidence.

The Hon'ble Supreme Court of India in the case of UNION OF INDIA VRS. PARAMA NANDA reported in AIR 1989 SC 1185 have been pleased to hold as follows:-

*the Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act or Legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an inquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the

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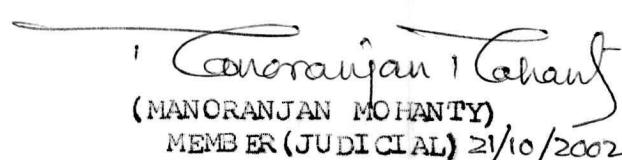
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penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own decision for that of the authority. The adequacy of penalty, unless it is mala fide, is certainly not a matter for the Tribunal to concern with*.

6. In view of the aforesaid settled position of law and in view of the fact that no injustice or violation of rules/instructions have been made by the Respondents in the matter of conducting the disciplinary proceedings, we find no merit in this Original Application which is accordingly rejected.

7. In the result, therefore, this Original Application is rejected but, however, there shall be no order as to costs.


(B.N. SOM) 29th
VICE-CHAIRMAN


Manoranjan Mohanty
MEMBER (JUDICIAL) 21/10/2002

KNM/CM.