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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

2 **Original Application No. 262 of 2003.**
Cuttack, this the 10th day of August, 2005.

BALADEV BHOI

APPLICANT.

VERSUS

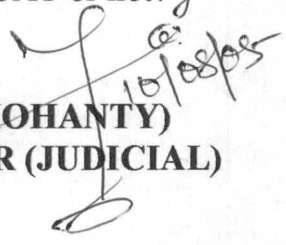
UNIOIN OF INDIA & OTHERS

RESPONDENTS.

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of CAT or not? *yes*


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

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CORAM:-

**THE HON'BLE MR. B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDL.)**

BALADEV BHOI, aged about 56 years,
Son of Satrugna Bhoi of village and post
Petupalli, Via-Ghess, Dist. Bargarh. **APPLICANT.**

By the Applicant: Mr.D.P.Dhalsamant, Advocate.

VERSUS

1. Union of India represented through its
Director General, Department of Posts,
Ministry of Communication, Dak Bhawan,
NEW DELHI-110 001.
2. Chief Post Master General, Orissa Circle,
Bhubaneswar, Dist. Khurda.
3. Director Postal Services, Sambalpur Region,
At/Po/Dist. Sambalpur.
4. Superintendent of Post Offices,
Sambalpur Division, Smbalpur..... **RESPONDENTS.**

For the Respondents :Mr. U.B.Mohapatra, Senior Standing Counsel(Central)



O R D E R

MR. M.R. MOHANTY, MEMBER (JUDICIAL):-

During his incumbency as Sub Post Master of Jharabandh Sub Post Office, the Applicant was issued with charge sheet (under Rule 14 of CCS(CCA) Rules, 1965) and, was ultimately, imposed with the punishment of removal from service under Annexure-4 dated 24.12.2001. He carried the matter in appeal under Annexure- 5 dated 18.2.2002 un-successfully. The Appeal having been rejected under Annexure-6 dated 31.7.2002, this Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 with the prayers for quashing the impugned punishment order dated 24.12.2001 and Appellate order dated 31.7.2002. He has also sought for his reinstatement in service with all consequential service benefits.

2. Respondents having filed a counter have stated that since there was no violation of the principles of natural justice and the entire proceedings having been conducted as per the rules governing the field, there is hardly any scope for this Tribunal to interfere in the matter. They have further stated that since allegations leveled against the applicant were

grave in nature, he has rightly been imposed with the punishment of removal from service.

3. We have heard Shri D.P.Dhalasamant, learned counsel appearing for the Applicant and Shri U.B.Mohapatra, learned Senior Standing Counsel appearing on behalf of the Union of India/Respondents and perused the materials placed before us. Before proceeding to deal with the submissions put-forth by the rival parties, it is pertinent to quote the Article of Charges framed against the applicant, which reads as under :

Article – I That the said Shri Baladeb Bhoi, while functioning as Sub Post Master, Jharbandh S.O. during the period from 23.6.1991 to 17.2.1995, received Rs.38,300/- (Rupees Thirty eight thousand three hundred only) on 5.11.1993 from the B.D.O., Jharbandh Block together with 71 (seventy one) number of N.S.C. purchase applications duly filled in by the School Teachers. But Sri Baldeva Bhoi did not credit the amount of Rs.38,300/- in to the account of Jharbandh S.O. dated 5.11.95 under head “Sale of Certificates” violating Rule 98 A(a) of Postal Manual Volume/VI Part-III.

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By his above acts, the said Sri Bhoi failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant thereby violating Rule 3(1)(i) & 3(1)(iii) of CCS(Conduct) Rules, 1965.

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4. The learned counsel for the Applicant, during his argument, submitted that the disciplinary authority imposed the punishment of removal from service on the basis of his assumption (that the Applicant had defrauded the amount of Rs.38,300/- and spent the same for his own expenses) which was neither a part of the charge nor was there any finding (to that effect) by the I.O.; that the Applicant was taken by surprise through a document (S-7) although the same did not find place in the list given out under Annexure-III of the charge memo; that the original document containing N.S.C. schedule dated 04.11.1993 of Jharbandh Block (Ext. S-7) was neither produced by the prosecution nor was it verified with its original that the material witness, (Shri B.P. Sahu, the Cashier of Jharkhand Block) was not examined by the prosecution that the inquiry report was a product of no evidence (as there was no record that the Applicant had received Rs.38,300/- on 5.11.1993); that under pressure, the Applicant (being a member of Scheduled Tribe community) had deposited Rs.31,000/- during the period from 25.2.1996 to 31.7.1996 ; that there was no charge that the Applicant had misappropriated the balance amount of Rs.7300/-; that though in the imputation of charge, it had been mentioned that the Applicant did not grant receipt in NC 4(a) to the Cashier (nor accounted for the amount Rs.38,300/- in Jharbandh SO) the Account dated

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5.11.1993 was not proved before the I.O. and, yet, the Applicant was visited with the punishment of removal from service. By stating so, the learned counsel for the Applicant has prayed for intervention of this Tribunal in the order of punishment that has stated to have been passed without any iota of evidence, besides, in gross violation of the principles of natural justice.

5. On the other hand, Shri Mohapatra, learned Sr. Standing Counsel submitted that the Applicant had accepted the amount of Rs.38,300/- from the B.D.O., of Jharbandh Block for issue of N.S.Cs in the name of school teachers. But neither he issued the required number of NSCs nor credited the amount into the Post Office account. He further submitted that it is not a fact that Exbt. S-7 was not a listed document. Subsequent to the charge, a corrigendum was issued (vide Sambalpur Division Memo No. F.1/5-1/94-95/Dssc. Dt. 26.8.1998) showing Exbt. S-7 as a prosecution document to be relied on. As regards the plea of non production of original of Exbt. S-7, Shri Mohapatra submitted that as the said original document was kept with the B.D.O. for their audit purpose the attested Xerox copy was exhibited during the inquiry. However, neither the applicant doubted the genuineness of the said document nor prayed before the IO for production of its original. As regards the examination of Shri Sahu, the Cashier of

Jharbandh Block it was submitted by Shri Mohapatra that at that time, Shri Sahu was transferred to the Office of Tahasildar of Solelia and that his services having not been spared by the concerned Tahasildar, he could not be examined. It has been submitted that the signature and the date stamp of receipt of an amount of Rs.38,300/- on 5.11.1993 in Exbt. S-7 was not disputed by the applicant during inquiry; and as regards the non crediting the said amount in SO Account, the same has been proved beyond doubt in view of deposit of the said money by the applicant in a piece meal/instalment manner on different dates (from 25.2.1996 to 31.7.1996) and, therefore, his integrity and devotion to duty being questionable, he was rightly visited with the punishment of removal from service, which has rightly been confirmed by the appellate authority. On the plea of the applicant that the IO failed to prove non granting of the receipt of NC 4(a), it has been submitted by Mr. Mohapatra that the IO failed to prove it on the analogy that NC 4(a) receipt can only be granted in case NSC is not available in the concerned Post. Apart from the above, Shri Mohapatra submitted that there was no violation of the principles of natural justice during the course of the disciplinary proceedings and every opportunity was given to the Applicant to defend his case. On these grounds, the Respondents have stated that the O.A. being devoid of merit is liable to be rejected.



6. We have carefully gone through the materials placed on record and have given our anxious consideration to the various submissions put forth by the respective parties. From the records, it is crystal clear that the applicant had accepted Exhibit S-7 as genuine/ without any objection; which goes to show that he had, in fact, accepted an amount of Rs.31,300/- on 05-11-1993 for issuing NSCs. Moreover, as the Applicant did not question the genuineness of attested Xerox copy of Exbt S-7, nor did he disown the same nor shown anything as to how he has been prejudiced by the non production of the original during inquiry. Therefore, we are bound to infer that that there was no iota of doubt of he having granted that receipt by himself while working as Sub Post Master of the concerned Sub Post Office. Further, it is the admitted case that the Applicant, had deposited the said amount to make good the loss. The stand of the Applicant that he had deposited the money in question, under pressure, had also not been proved in the inquiry, and we also would like to say that this plea of the Applicant is an after thought defence. Thus, by this, it is clear that the Applicant although received an amount of Rs.38,300/- on 5.11.1993, had credited the same only during the year 1996 and, thereby, he had failed to maintain absolute integrity and devotion to duty. When the conduct of the Applicant was unbecoming of a Government Servant, the plea of absence of any charge of misappropriation,

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as raised by the Applicant, is not sustainable. The Respondents have also explained as to under what circumstances the witness Shri Sahu could not be examined during enquiry. By his non examination as to how the Applicant was prejudiced has nowhere been explained by him. The points have also been duly taken care by the I.O. in his report and, as revealed, the D.A. as also Appellate Authority had considered such facts in their orders. Therefore, we find no violation of the principles of natural justice during the course of inquiry. The punishment imposed on the Applicant was also commensurate with the gravity of the offence. As required under the Rules, (which is also one of the cardinal principles of law) an employee is required to exercise higher standards of honesty and integrity, when he deals with the money of the depositors and the customers. Every officer/official is required to take all possible steps to protect the interest of the Department (and also of the citizens of the democracy) and to discharge his duties with utmost sincerity, integrity, honesty, devotion and diligence and to do nothing which is unbecoming on the part of the Government servant. Good conduct and discipline are inseparable from the functioning of every officer/employee. As was observed by the Hon'ble Apex Court in the case of **DISCIPLINARY AUTHORITY cum REGIONAL MANAGER vs. NIKUNJA BIHARI PATNAIK** (reported in 1996 (9) SCC 69), there is no

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defence available to say that there was no loss or profit resulted in case, when the officer/official acted in a prejudicial manner. It is also profitable to note here , as observed by the Hon'ble Apex Court in the case of **REGIONAL MANAGER, UP SRTC, ETAWAH OF ORS vrs. HOTI LAL AND ANR** (2003 (3) SCC 605) that " If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or in a fiduciary capacity, the highest degree of integrity and trustworthiness its must and unexceptionable". We are also of the firm view that any action done , contrary to the norm fixed is by itself a breach of discipline, is a misconduct. The charge in this case against the Applicant was not casual in nature and was certainly serious. Therefore, we hold that this is a case of evidence and by no stretch of imagination, the punishment order or for that matter the appellate order can be called in question.

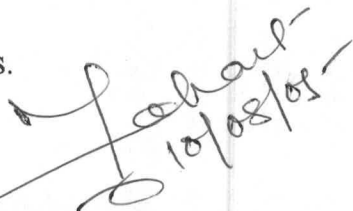
8. In the circumstances, we are of the view that there being no lacunae in the matter of disciplinary proceedings and that the proceedings were conducted as per Rules, giving opportunity to the Applicant, this

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Tribunal being not the appellate authority over the decision taken by the Disciplinary Authority/Appellate Authority, it warrants no interference by this Tribunal.

9. In the result, this O.A. is dismissed. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER(JUDICIAL)