

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 445 of 2017

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Sri Giridhari Dhamudia, aged about 42 years, S/o Late Mangal Dhamudia, permanent resident of Betagadia, PO – Panpana, P.S. – Khantapara, Dist – Balasore and presently working as Inspector Posts, Karnjia SubDivision, Dist - Mayurbhanj.

.....Applicant.

VERSUS

1. The Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi – 1.
2. Director Postal Services (HQ), Bhubaneswar, Office of the Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist-Khurda – 751001.
3. Sr. Supt. Of Post Offices, Mayurbhanj Division, At/PO- Baripada, Dist - Mayurbhanj.

.....Respondents.

For the applicant : Mr. S. K. Ojha & Mr. S. K. Nayak, Advocate

For the respondents: Mr. B. P. Nayak, Advocate

Heard & reserved on : 17.01.2020

Order on :04.06.2020

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

Applicant, while working as Inspector of Posts, Karnjia Sub Division, was issued with a Memorandum dated (Annexure A/1) in contemplation of disciplinary proceedings against him under Rule – 16 of CCS (CCA) Rules, 1965, in respect of misconduct committed by him during the period from 31.05.2006 to 01.10.2008, when he was working as Postal Assistant Turgaria S.O. The Article of Charge reads as follows:

“Sri Giridhari Dhamudia, Inspector Posts, Karanjia Sub-Division while working as Postal Assistant Turigaria SO during the period from 31.05.2006 to 02.10.2006 failed to verify the specimen signature of the depositor in SB-7 forms (SB withdrawal form) against the following SB accounts of Turigaria SO in which the fraudulent withdrawals have taken place by the SPM, Turigaria S.O.

.....

As such Sri Dhamudia has violated the provisions of Rule-33(2) (i) & (ii) of PO SB Manual Volume-1 (Sixth Edition corrected up to July, 2012). During the period neither did he post the interest in the SB Pass Book as well as SL Ledger although the interest statement was received by Turigaria SO from Balasore HO earlier nor intimated any case of balance difference to his higher authority violating the provisions of Rule – 75 (1), (iii) & rule-76(b) of PO SB Manual Volume I (Sixth edition corrected upto July, 2012). Sri Dhamudia has neither prepared nor signed the LOT for the above mentioned dates as required of him violating the provisions of Rule 46(B) (1) of PO SB Manual Volume-I (Sixth edition corrected upto July 2012) for which the ex-SPM Sri P.C. Jena got chance to commit fraud. Due to the non verification of specimen signature in the BS-7 forms in respect of the accounts mentioned above, non posting of interest in the pass books and ledgers with verification of balance, non preparation of LOTs and signing on it by Sri Dhamudia, the fraudulent withdrawals made by the SPM could not be detected earlier and the Department sustained such a huge loss. His gross negligence as narrated above contributed to the loss of Rs. 1,50,000/- in this case.

It is therefore alleged that by the above facts, the said Sri Giridhari Dhamudia, Ex-PA, Turigaria SO under Balasore

Division failed to maintain due devotion to duty as enjoined in Rule-3 [1 (ii) of CCS (Conduct)] Rules, 1964”.

2. The applicants having been called upon to make representation against the above charges, he so submitted vide Annexure A/4 dated 4.2.2016. In consideration of the same and other related materials, the Disciplinary Authority, i.e., Superintendent of Post Offices, Mayurbhanj Division, Baripada, vide order dated 03.04.2017 (Annexure A/7) imposed punishment of recovery of Rs. 36,000/- @ Rs. 6000/- per month from the salary of the applicant. Against this order, the applicant submitted an appeal dated 11.04.2017 (Annexure A/8) and simultaneously, approached this Tribunal in OA No. 260/259/2017. This Tribunal, vide order dated 24.04.2017 disposed of the said OA with direction to Respondent No. 2 to consider the appeal petition, if it is pending at his level and take a decision on the same and communicate the same in a speaking order to the applicant within a stipulated time. As an interim direction, this Tribunal directed that recovery as directed in the order dated 2.04.2017 (Annexure A/6) shall not be effected from the salary of the applicant until the appellate authority decided appeal petition and communicates his decision to the applicant with a well reasoned order. In the above backdrop, the appeal preferred by the applicant having been considered by the Appellate Authority passed an order dated 22.06.2017 (Annexure A/10) by upholding the punishment as imposed by the Disciplinary Authority, thus, rejecting the appeal. Aggrieved with this, the applicant has invoked the jurisdiction of this Tribunal in this OA, seeking for the following reliefs:

- (i) *To admit the O.A.*
- (ii) *To quash the Charge Memo No. F/Misc. G. Dhamudia./Disc., dated Baripada the 17th November, 2015 (Annexure A/1).*
- (iii) *To quash the order No. F/Misc.G. Dhamudia/Disc. Dated 03.04.2017 (Annexure A/7) passed by the Respondent No.*

3 and order dated 22.06.2017 (Annexure A/10) passed by the Respondent No. 3.

- (iv) To direct the Respondents to extend the consequential benefits and refund the recovered amount with interest.*
- (v) To pass any other order/orders as deemed fit and proper for the ends of justice.*

3. The grounds urged by the applicant in support of his claims are as follows:

- (i) Since the applicant was not at all in the picture by the time any fraud or misappropriation was detected, the punishment imposed by the Disciplinary Authority enlarging the scope of contributory negligence is illegal and arbitrary.
- (ii) Non-supply of documents, apart from the punishment imposed, without conducting an inquiry amounts to denial of natural justice.
- (iii) The decision of recovery on the ground of supervisory lapses is against the statutory provision so also contrary to the settled principles of law.
- (iv) The charge sheet does not contain any charge except imputation of misconduct. In the absence of any specific charge, the charge sheet is vague and unspecific.
- (v) The loss sustained having been recovered from the principal accused, it is quite unreasonable for the respondents to resort to disciplinary action against the applicant after 8 years.
- (vi) Both the Disciplinary Authority & the Appellate Authority have completely overlooked the instructions contained in the DG Posts Letter No. 114/176/-789-Disc.II dated 13.02.1981 and No. 15-9/74-INV dated 10.02.1975 as well as the Government of India letter dated 19.03.2015 while imposing penalty of recovery.

(vii) This Tribunal in O.A. No. 103/2015 disposed of on 28.06.2017 has decided a similar matter by quashing the order of punishment of recovery with an observation that supervisory staff should not be saddled with the punishment of recovery unless they are directly involved with any such misappropriation or fraud.

4. Opposing the prayer of the applicant, respondents have filed a detailed counter. According to respondents, the charge levelled against the applicant is neither vague nor unspecific. The charge levelled against the applicant is that during the period from 31.05.2006 to 01.10.2008 while working as Postal Assistant, Turigaria SO, he failed to verify the specimen signature of the depositor in SB-7 (SB Withdrawal form) as a result of which fraudulent withdrawals could be taken place by the SPM, Turigaria, S.O. They have pointed out that the applicant has been afforded all opportunities. The applicant's plea that he was not in picture has been refuted by the respondents by stating that the applicant had performed all sorts of duty on the date of fraudulent withdrawals. He had prepared the SB list of transaction incorporating the vouchers of fraudulent withdrawal. And also signed on the SO account book in token of checking the transactions. Therefore, the respondents have submitted that the allegation levelled against the applicant having been established, he has rightly been imposed punishment of recovery of the pecuniary loss sustained by the Department.

5. Applicant has filed rejoinder to the counter the applicant has urged that on the allegation of misconduct which had taken place in the year 2006, charge memo has been issued in the year 2015, i.e., after more than nine years and in view of the basic principle that proceedings in that behalf should have been initiated within four years of the commission of misconduct. In this respect, the applicant has placed reliance on the decision of this Tribunal in O.A. No. 367/2017 disposed of on 28.03.2018 in which the

Tribunal quashed the disciplinary proceedings on the ground that the same had been initiated with an ulterior motive and after lapse of eight years. According to the applicant, he was not the supervising staff nor has he contributed anything for the alleged misappropriation committed by the SPM. The applicant has pointed out that at the relevant point of time, he was working as subordinate staff under the supervision of SPM. The applicant has pointed out that the respondents having relied upon the investigation report for the purpose of penalizing the applicant, a duty was cast on them to supply a copy thereof to the applicant requiring him to have his say as to the lapses on his part on the alleged fraud. Therefore, the action of the respondents on this core is violative of the principles of natural justice.

6. Heard the learned counsels for the parties and perused the records. I have also gone through the decisions of this Tribunal in O.A. No. 260/00103/2015 (disposed of on 28.6.2017), OA No. 260/364/2016 (disposed of on 23.02.2019) and the decision of the learned Special Judge, CBI, Court No. II, Bhubaneswar in T.R. Case No. 5 of 2009 read with R.C. Case No. 491 of 2008.

7. It is to be noted that before submitting representation to the charge memo, the applicant had sought for certain documents, some of which were supplied. However, the applicant, while submitting his representation to the charge memo vide Annexure A/4, had brought to the notice to the Disciplinary Authority regarding non supply of documents number about four, to make his representation and in this connection, he had pointed out as under:

“The above original documents were relevant to the charge as the said were referred in the imputation. Thus, reasonable opportunity was not given to me by not allowing for perusal of above documents, which were directly, connected to the above Rule-16 case”.

8. In his representation to the Disciplinary Authority, the applicant had point out as follows:

"That the imputation no-01, it was imputed that I did not verify the specimen signature with those of as appearing in fraudulent SB-7 vouchers of SB accounts number-378355 dated 28.12.2006 for Rs. 25000/- SB accounts number-379494 dated 30.12.2006 for Rs. 25000/-, SB accounts number-379646 dated 2.1.2007 for Rs. 20000/-, SB accounts number-379524 dated 2.1.2007 for Rs 5000/-, SB accounts number-379494 dated 5.1.2007 for Rs. 30000/-, SB accounts number-379138 dated 15.1.2007 for Rs. 20000/-, SB accounts number379184 dated 15.1.2007 for Rs. 20000/-, SB accounts number-379204 dated 15.1.2007 for Rs. 150000/-, Total Rs 150000/- and thereby it was alleged to have violated the provisions of Rule 33(2)(i) and (iii) of post office SB Manual volume-1 (sixth edition corrected up to July-2012).

The said Rule 33(2) (i) and (iii) of post office SB Manual volume - 1 (sixth edition corrected up to July-2012) clearly says that on presentation of the passbook and the withdrawal form (SB-7) by the depositor to the Counter Assistance. The Rule is operated upon the functioning of Counter Assistance. The said rule is out of question when the withdrawal forms along with pass books were not presented to the counter assistant. From the perusal of documents that the C.L. (Casual leave) applications of Sri GiridhariDhamudia, Ex Postal assistant Turigaria SO for the period 1.12.2006 to 31.01.2007 and copy of Turigaria SO attendance register for the period 01.12.2006 to 31.01.2007, it is clear that I was on leave (Casual leave) on the 28.12.2006, 30.12.2006, 2.1.2007, 5.1.2007 and 15.1.2007.

Therefore the charge that on presentation of SB-7 for withdrawal, I did not verify the specimen signature of the depositor in SB-7s appearing on the withdrawals form as per the said rule is impossible and misconception when the SB-7 vouchers were not presented to me at all due to my absence at counter of Turigaria SO on 28.12.2006, 30.12.2006, 2.1.2007, 5.1.2007 and 15.1.2007 for above reason (leave). Therefore it is a clear case of harassment to me.

The second aspect of imputation on no-1 is that,

I did not post the interest in the ledger as per the interest statement received from the HO and that I did not intimate any difference of balance to the authority and thereby it was imputed Rule-75(1) (iii) & Rule 76(b) of POSB Manual volume-1 were violated.

That it is imputed that I have neither prepared nor signed the LOTs for the date 28.12.2006, 30.12.2006, 2.1.2007, 5.1.2007, 15.01.2007.

In respect of aspect (a) as mentioned above, I did not receive any interest statement while working as Postal Assistance Turigaria SO. The documents dispatched by H.O. in the accounts bags and usually received by S.P.M. No proof has been cited in the imputation that the interest statement was given to me as all received by the S.P.M. Turigaria SO from the Balasore H.O. The dates on which it was dispatched to Turigaria SO and when it was received by the SPM Turigaria SO were not cited in the imputation as myself was join as Postal Assistance Turigaria SO on 29.05.2006. On perusal of interest statement shown to me on 18.01.2016 at division office Balasore it was found that **that the said interest statement not bear any mark, initial, date stamp of the Turigaria S.O. And the SPM Turigaria SO has not given me the interest statement for posting of interest in ledger. Also he has passed no such order to me for the posting of interest in ledger.** As the Turigaria SO was a double handed SO (SPM-1 & P.A.-1) he was self entrusted in the interest posting works of Turigaria SO.

So it is evident the interest statement was not made over to me for incorporating the interest in SO ledgers. I did not also see the interest statement during my incumbency as Counter Assistant Turigaria SO in the period of Sri Purnach Jena SPM Turigaria SO. Thus it is not a fact that the interest statement was received by me and I failed to further deal with the interest statement as provision of the said rule. While I may be excused to repeat that while perusing the concerned records related the charges in the divisional office for preparation of my defense, the interest statement shown to me is seen to have no proof that was received by the Sub Post Master Turigaria SO and myself at any stage during my tenure as Counter Assistant at Turigaria SO. As regards verification of specimen signature I have already stated in my defense in the fore going paragraphs.

In respect of aspect (b) as mentioned above that I have neither prepared nor signed the LOTs for the date 28.12.2006, 30.12.2006, 2.1.2007, 5.1.2007, 15.01.2007. From the perusal of documents that the C.L. (Casual leave) applications of Sri Giridhari Dhamudia Ex Postal assistant Turigaria SO for the period 1.12.2006 to 31.01.2007 and copy of Turigaria SO attendance register for the period

01.12.2006 to 31.01.2007 and Copy of SB List of transactions of Turigaria SO for dated 28.12.2006, 30.12.2006, 2.1.2007, 5.1.2007, 15.1.2007, it is clear that the LOTs for above dates are neither prepared nor signed by me, I was on leave (Casual leave) on the 28.12.2006, 30.12.2006, 2.1.2007, 5.1.2007 and 15.01.2007. During the perusal of records, the Hand to hand books/records of Sub Post Master Turigaria SO and Postal assistant Turigaria SO from 1.12.2006 to 31.01.2007 was not shown to me showing the cause not available and the undersigned remained in dark. So I think the LOT for the above date maybe prepared by the SPM Turigaria SO due to my absence or the LOTs of above dates were destroyed for generation and replace of a fresh fraudulent one by the SPM. SO there is not question of violation of Rule 46(B) (1) of PO SB Manual Volume-1 (sixth edition corrected up to July-2012). Under such circumstance, the poor undersigned beg with deep concern to let me off from such harsh charge for my absent period.

It is for your kind information that all the fraudulent withdrawals have been allowed in **my absence at Turigaria SO** as followings.

Sl. No.	Date	Amount of withdrawal	My position	Cause of absence
1	27.5.2006	100000/-	Absent at Turigaria SO	Not join as P.A. in dept of Posts. (Join as PA Turigaria SO on 29.5.2006)
2	4.1.2006	82000/-	Absent at Turigaria SO	Work as SPM Soro College (on deputation)
3	28.12.2006	25000/-	Absent at Turigaria SO	On Casual leave
4	30.12.2006	25000/-	Absent at Turigaria SO	On Casual leave
5	2.1.2007	25000/-	Absent at Turigaria SO	On Casual leave
6	5.1.2007	30000/-	Absent at Turigaria SO	On Casual Leave
7	15.1.2007	45000/-	Absent at Turigaria SO	On Casual Leave

I therefore plead myself innocent in respect of the charges. It is surprising that when an official did not involve in any stage concerned to the fraudulent withdrawals and when also in any subsequent stage his involvement is not established and how he has been charged with misconduct in the imputation. The charges against me in this respect are completely hypothetical and baseless. It is a clear case of harassment to me.

From the above narration it can be clearly seen that I did not contribute an iota of negligence in performance of my duties as PA Turigaria and never contribute any negligence and therefore contribution to the loss caused to the department and devoid of devotion duty are not based on facts misconduct and baseless.

It is therefore proved that the charges are imaginary, factually incorrect, baseless and irrelevant and indefinite in all respects.

Therefore I fervently pray to be considered enough, and judicious to realize the correct position and truth and exonerate me from the irrelevant charges levelled against me to meet ends of natural justice, so that an innocent official under you will not be allowed to suffer from intolerance and be a scapegoat for the commission of others for which act of your kindness, i shall remain thankful to you”.

9. The Disciplinary Authority while imposing punishment vide order dated 03.04.2017 (Annexure A/7), passed the orders as follows:

“I have gone through the relevant records of the case, defence representation of the C.O. vividly and came to the conclusion that the charged official has tried very cunningly to deviate from his original submissions given before the Inspector of Posts, Soro Sub Division in shape of written statement dated 30.11.2010. He has admitted to have availed $\frac{1}{2}$ day CL on 28.12.2006, 30.12.2006, 01.01.2007, 05.01.2007 and 15.01.2007 and the said fact is clearly proved from the copies of his CL application of those dates and the endorsement of the SPM in token of having granting the first $\frac{1}{2}$ CL on those dates. This clearly proves that he had worked as PA of the Office during the second half on those dates. As such the plea taken by the

said Sri Dhamudia that he was on CL on those dates is baseless and to avoid responsibility. **In his written statement dated 30.11.2010, he has admitted to have prepared the SB LOT on those dates and put his initial below all the entry of the SB LOTs, signed below the signature of the depositors in the application portion of the SB-7s in token of verifying the specimen signature and fill up the warrant of payment in SB-7s.** But in later submission he stated that the LOTs shown to him during perusal of documents were not the same he had prepared at that time. The SPM might have changed the original LOTs and prepared fresh LOTs by himself. But such type of deviating views offered by the charged official by narrating imaginary stories is not at all acceptable. **From clear introspection of related documents it is evident that the charges framed against the charged official commensurate the gravity of offence committed by him.** All the charges are based on record rather not hypothesis and written confession of the charged official during the course of inquiry. All the charges are grave in nature and deserve exemplary punishment.

However, taking a lenient view in the matter, I Sk. Md. Noman, Superintendent of Post Offices, Mayurbhanj Division, Baripada let off the said Shri Giridhari Dharmudia, Inspector of Posts, Karnjia Sub – Division with the punishment of recovery of Rs. 36,000/- (Rupees thirty six thousand) only @ Rs. 6000/- (Rupees six thousand only) per month from the salary of the official with immediate effect. This will meet the end of justice”.

10. In the appeal preferred, the applicant had pointed out to the Appellate Authority as follows:

“But the Supdt. Of Post Offices, Mayurbhanj Division, Baripada kept the defence representation dtd. 04.02.2016 of the humble appellant up to 03.04.2017 and passed an

order of recovery of Rs. 36000/- whimsically without going through the representation in connection with the relevant records which was received by the humble appellant on 06.04.2017. In the consideration part of his order, the SPOs has argued that the humble appellant has tried very cunningly to deviate the original submission, given before the IP, Soro Sub Division in the shape of written statement.

In this connection the written statement of the appellant is annexure as annexure-4. In such representation the applicant has never stated anywhere that he was on the CL on the full day on 28.12.2006, 30.12.2006, 2.1.2007, 5.1.2007 and 15.1.2007. also in no case the appellant has stated to have signed below the signature of the depositor in SB-7 in token of verifying the specimen signature and filling of the warrant of payment in the SB-7s. In his written statement dated 30.11.10 categorically the appellant has deposited that the LOTs is shown to him were not prepared by him or the LOTs were not bear his signature in token of preparing the same. In the written statement dated 30.11.2010, the appellant had presumed that the SPM might have changed the original LOTs and replaced by preparing the fresh LOTs by the SPM himself. These arguments have been made in the defence representation dated 04.02.2016, but the disciplinary authorities has not taken this aspects into consideration, rather narrated in to be an imaginary story.

In the defence representation dated 04.02.2016, it was mentioned by appellant that the copies of written statement of account holders of Turigaria SO SB account numbers 378355, 379494, 379646, 379524, 379494, 379138, 379184, 379204 were not allowed to the appellant for perusal, were relevant to the charge as they said were referred in the imputation. Thus reasonable opportunity was not given to me by not allowing for perusal of above

documents, which were directly connected to the above Rule-16 case.

In the written statement of account holders of Turigaria SO SB account numbers 378355, 379494, 379646, 379524, 379494, 379138, 379184, 379204 were states that they were neither present nor send any messenger with SB-7 to Turigaria SO on 28.12.2006, 30.12.2006, 2.1.2007, 5.1.2007 and 15.1.2007 but my disciplinary authorities not allowed to the appellant for perusal written statement of account holders and narrated as it an imaginary story.

Further it is to be brought to the notice of my honourable DPS (hqr) that all the guilt have been admitted in toto by the charge official (SPM Turigaria SO) before the honourable CBI Court, to committed all such misappropriations alone himself for which he have been punished with penalty of imprisonment, but the disciplinary authorities has closed his eyes and penalize the appellant blindly”.

11. From the above, it is to be noted that the Article of Charge against the applicant is that while working as Postal Assistant Turigaria SO during the period from 31.05.2006 to 02.10.2008, he failed to verify the specimen signature of the depositor in SB-7 forms (SB withdrawal form) against the eight numbers of SB accounts of Turigaria SO in which the fraudulent withdrawals have taken place by the SPM, Turigaria SO. A perusal of the order of the Disciplinary Authority, as quoted above, shows that the Disciplinary Authority recorded a finding that the applicant had signed below the signature of the depositors in the application portion of the SB-7s in token of verifying the specimen signature and fill up the warrant of payment in SB-7s.

12. The Disciplinary Authority, without considering the points raised by the applicant proceeded on his own and without due application of mind, imposed punishment of recovery on the

applicant. In this connection, Rule-106 and Rule-107 of Postal Manual read as follows:

Imposition of penalty of recovery:

“106. In the case of proceedings relating to recovery of pecuniary losses caused to the Government by negligence or breach of orders by a Government servant, the penalty of recovery can be imposed only when it is established that the Government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach caused the loss”.

107. In a case of loss caused to the Government, the competent disciplinary authority should correctly assess in a realistic manner the contributory negligence on the part of an officer and while determining any omission or lapses on the part of an officer, the bearing of such lapses on the loss considered and the extenuating circumstances in which the duties were performed by the officer shall be given due weight’.

12. In the imputation of charge it has been mentioned that applicant’s gross negligence contributed to loss of Rs.1,50,000/-. If that be so, the Disciplinary Authority while passing the impugned order of recovery should have assessed in a realistic manner the contributory negligence on the part of the applicant. No such consideration is forthcoming from the orders of the Disciplinary Authority, except a mention that by taking a lenient view, the applicant is let off with imposition of punishment of recovery of Rs. 36000/- @ Rs. 6000/- per month from his salary. Therefore, what is the reasonableness in imposing punishment of recovery in the absence of any such proceedings in that behalf has not been answered by the respondents.

13. Although the applicant had sought for supply of copy of four documents the same were neither supplied to him nor any reasons were assigned by the authorities for non supply of same to the

applicants. In the absence of any such reasons assigned, this Tribunal is not in a position to come to a conclusion as to whether the non-supply of said documents to the applicant has caused serious prejudice to him and thereby he was prevented from effectively defending himself in the proceeding in question. Besides that no reasons have been assigned for passing the order of recovery in accordance with law and the circulars of the department of the respondents, which have already been discussed. In the above circumstances the impugned order vide Annexure A/7 and the order passed by the appellate authority vide Annexure A/10 become vulnerable and requires to be set aside.

14. Accordingly the impugned order vide Annexure A/7 dated 03.04.2017 and the order passed by the Appellate Authority vide Annexure A/10 dated 22.06.2017 are set aside. The matter is remanded back so that the Disciplinary Authority shall consider the matter regarding supply of documents in question as sought for by the applicant and thereafter to consider if any appropriate order for recovery is to be passed in the proceeding in question against the applicant in accordance with law, within a period of three months from the date of receipt of copy of this order.

15. Reasonable opportunity be given to the applicant by the Disciplinary Authority at the time of considering the same in accordance with law. In the result the OA is disposed of accordingly with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)