

CENTRAL ADMINISTRATIVE TRIBUNAL**CUTTACK BENCH****OA No. 771 of 2019****Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)****Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

1. Shri Banamali Sabar, aged about 47 years, (Gr. C),
son of Shri Sunakar Suara, Banamali Senapati
presently working as Postal Asst., Narla Road SO,
At./P.O. Narla Road, Dist. Kalahandi-766001.

.....Applicant.

VERSUS

1. Union of India, represented through its Director
General, Department of Posts, Dak Bhawan, New
Delhi – 1.
2. Director of Postal Services, Office of the Post Master
General, Berhampur Region, Berhampur-760001.
3. Sr. Supt. of Post Offices, Kalahandi Division,
Bhawanipatna-766001.

.....Respondents.

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

For the respondents: Mr. R. K. Kanungo, Advocate.

Heard & reserved on : 28.09.2020

Order on : 09.11.2020

O R D E R**Per Mr. Swarup Kumar Mishra, Member (J)**

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *To admit the OA;*
- (ii) *To quash the Charge Memo No. F7-1/2017-18 Ch.II, dated 04.10.2018 (Annex. A/1).*
- (iii) *To quash the order issued under Memo No. F7-1/2017-18 Ch.II, dated 26.11.2018 (Annex A/7) holding the same is clear violation of statutory mandates;*
- (iv) *To quash the order of punishment issued vide Memo No. F7-1/2017-18 Ch.II, dtd. 22.07.2019 (Annex. A/9) & order of Appellate Authority issued vide Memo No. ST/06-22/2010 dtd. 20.11.2019 (Annex. A/11)*
- (v) *To direct the respondents to extend the consequential benefits and refund the recovered amount with interest;*
- (vi) *To pass any other order/orders as deem fit and proper for the ends of justice.*

2. The case of the applicants as averred in brief is to the effect that the applicant during the period from 21.09.2013 to 20.09.2015 had been allotted the additional charge of Treasurer of the HO in addition to his duty and the Postmaster, who is the custodian of the cheque book and only authorized person to issue the cheque, had issued cheques fraudulently but he had maintained the counter foil so also the issue register so that nobody in the office can know about the

issuance of fraudulent cheques. When the fraud was detected the Post Master had admitted the fact. The applicant was issued a charge memo dated 04.10.2018 (Annexure A/1) alleging contributory negligence during his incumbency period 2013-15. The applicant after receiving the memo submitted a representation dated 15.10.2018 (Annexure A/2) seeking perusal of some documents. Out of 59 demanded documents only 05 documents were allowed to be inspected/perused by the applicant vide office letter dated 26.10.2018 (Annexure A/3). The applicant again submitted representation dated 08.11.2018 (Annexure A/4) requesting the Disciplinary Authority to supply documents so as to enable him to file his reply to charge memo. Respondent No. 3 rejected applicant's representation vide letter dated 12.11.2018 (Annexure A/5) refusing to supply those documents. Applicant then submitted another representation dated 22.11.2018 (Annexure A/6) demanding regular proceeding under Rule-16(1-A) of the D&A Rules but the Disciplinary Authority rejected the demand vide letter dated 26.11.2018 (Annexure A/7) indicating that no justification prevails to follow the procedures laid down in Rule-16(1-A) of the D&A Rules, 1965. The applicant then filed his defence representation/reply dated 04.12.2018 (Annexure A/8) specifically indicating

that difference in amount in the counter foil and main cheque cannot be reconciled by the applicant as the Postmaster is the custodian of cheque book and main folio of the cheque book has been signed by the Postmaster and handed over to the party concerned in sale counter. Respondent No.3/Disciplinary Authority then passed the order of punishment dated 22.07.2019 (Annexure A/9) of "Censure" with recovery of Rs. 2,00,000/- from the applicant. The applicant then filed an appeal to the Appellate Authority/Respondent No. 2 vide letter dated 07.09.2019 (Annexure A/10 series) and during the pendency of the appeal, the applicant had filed OA No. 631/2019 before this Tribunal. The Tribunal while disposing of the said OA vide order dated 24.09.2019 (Annexure A/10 series) at the stage of admission had directed the Appellate Authority to take a decision on appeal within period of one month and not to effect further recovery from the applicant till the order of the Appellate Authority is communicated to the applicant. The Appellate Authority vide order dated 20.11.2019 (Annexure A/11) had confirmed the order of disciplinary authority. Hence this OA.

3. The respondents in their short reply inter alia averred that during the period of incumbency of the applicant as Treasurer Sri Kabiraj Harijan, Deputy Postmaster, Bhawanipatna HO was officiating as Postmaster and

was authorized to draw and issue of Postmaster's cheque and Sri Harijan committed a fraud to the tune of Rs. 1.32 crore by issuing several cheques fraudulently and details of such cases which were issued by Sri Harijan were entered in the Head Office Treasurer's Cash Book (HO TCB) by Sri Sabar, the applicant. The total loss sustained by the Department in the instant fraud case is Rs. 1.32 crore out of which Rs. 58,00,482/- was due to the contributory lapses committed by the applicant since he failed to check the counter foil of cheques, cheque issue register and main payable portion of cheque concurrently while making entries of the particulars of the cheques issued in the Treasurer's Cash Book (TCB) for the aforementioned dated. And due to the aforementioned irregularities committed by the applicant non-detection of massive fraud took place and if the applicant had acted with due diligence the case of fraud could have been nipped in the bud and further loss could have been avoided thus for his contributory lapses and negligence the applicant was identified as subsidiary offender along with other officials by the Circle Level Inquiring Authority and the application was proceeded against under Rule-16 of CCS(CC&A) Rules, 1965 by the Respondent No. 3 vide Annexure 1 of the OA. The applicant was awarded with punishment of recovery

after following due procedure as prescribed under CCS(CC&A) Rules, 1965 by the Respondent No. 3 vide Annexure 3 of the OA. The respondents further averred that as per the order of Tribunal dated 24.09.2019 the appeal of the applicant to the appellate authority/respondent no. 2 was considered and on its merit and rejected vide Annexure A/11 and no recovery was effected till disposal of the appeal. The recovery resumed in the month of November, 2019 but however in due obedience to the orders of the Hon'ble Tribunal dated 06.12.2019 no further recovery from pay of the applicant has been effected. The respondents further averred that though the applicant was not directly responsible for the loss but for his contributory lapses for not verifying the cheque details with reference to relevant records he has been awarded with punishment and that the Ops have followed due procedures as established under relevant Service Rules in the Disciplinary Case instituted against the applicant.

4. The applicant in his rejoinder to the short reply averred that the respondents were directed by this Hon'ble Tribunal vide order dated 06.12.2019 to file short reply indicating as to in what way the applicant was directly responsible for the loss and it should be clarified as to whether he was joint signatoree or he had any scope for verifying the cheque before issuing to the payee after

due signature by the Postmaster but the respondents have not clarified it. The applicant submitted the official process in which payments are to be made which is:

- i) Cheque book will be issued by the Audit Office, Cuttack
- ii) Cheque book will be received by the Postmaster
- iii) Cheque book will be handed over to cashier to make the necessary entry of cheque numbers in the Accounts Computer.
- iv) Cheque book will be handed over to the issuing authority i.e. to the Postmaster.
- v) Recipients will approach either in counter or to the Postmaster for payment.
- vi) Post Master will prepare sanction order for payment indicating the amount so also cheque number by which the payment will be made to the party.
- vii) Cheque will be handed over to the party taking his signature in the reverse of counter foil of Original Cheque as well as in the sanction order in presence of independent witness. Postmaster also will make necessary entry in the issue register recording details of the payment cheque number and amount.
- viii) All the three documents such as counter foil, issue register and sanction order will be forwarded to the Cashier for verification and necessary entry in the computer for official records.
- ix) In the end of the month, cashier will prepare the payment particulars made during that month

and after due approval of the Postmaster will forward the same to the Audit Bench at Cuttack.

The applicant submitted that with the above process it is clear that there is no scope for cashier to know whether the amount entered into the cheque is tallying for the counter foil sanction order or in the issue register and there was no scope for the applicant to verify the money payable portion, in support of other documents there is no mismatching. The applicant further averred that the respondents failed to point out the reason as to why the demand of the applicant for regular inquiry was not acceded to when the Rule-16(1)(A) give such liberty to a person concerned.

5. It is seen that while replying to the charge memo dated 04.10.2018, the applicant had sought for supply of the following document to put up his defence. The same is as under:

“That charge relates to the period of more than five year back. To revive my memory I need some documents. I may kindly be allowed to peruse the following vital documents:-

Item No. 1: Order of the Superintendent of Post Offices, Kalahandi Division, Bhawanipatna to act me as Treasurer.

Item No.2: Order book of the Postmaster, Bhawanipatna HO for the period from 19.04.2013 (A/N) to 20.09.2015

Item No. 3: Nominal Roll of the Bhawanipatna HO for the period from 19.04.2013 (A/N) to 20.09.2015.

Item No. 4: Memo of distribution of work of Bhawanipatna HO containing especially the duties

of Postmaster, Assistant Postmaster (mail), Treasurer, Sub-Account Assistant, Assistant Postmaster (Accounts), Accountant and Postal Assistant of Accounts Branch.

Item No. 5-13: Cheque books containing the counter foils of cheque No;

- i. 579638 dtd. 20.04.2013
- ii. 580889 dated 22.10.2013
- iii. 839023 dtd 28.04.2014
- iv. 839083 dated 05.05.2014
- v. 839371 dated 11.06.2014
- vi. 840741 dated 05.12.2014
- vii. 840764 dated 09.12.2014
- viii. 840763 dated 09.12.2014
- ix. 921794 dated 05.06.2015

Item No. 14-22: Original Paid cheques:

- i. 579638 dtd. 20.04.2013
- ii. 580889 dated 22.10.2013
- iii. 839023 dtd 28.04.2014
- iv. 839083 dated 05.05.2014
- v. 839371 dated 11.06.2014
- vi. 840741 dated 05.12.2014
- vii. 840764 dated 09.12.2014
- viii. 840763 dated 09.12.2014
- ix. 921794 dated 05.06.2015

Item No. 23-31: Credit/debit scroll, Bank statement i/r/o the above cited 9 (nine) cheques submitted to Bhawanipatna HO.

Item No. 32-40: Bank statements i/r/o the above cited 8 (NINE) cheques submitted to the DA(P) Cutack.

Item No. 40: Reports of the APM(A/Cs) Bhawanipatna HO on the above cited 9 (nine) cheques.

Item No. 42: Report(s) of the DA(P) Cuttack on the above cited 9 (nine) cheques.

Item No. 43: Visiting reports of the SPOs Kalahandi Division on Bhawanipatna HO during 2013 to 2015.

Item No. 44-46: Annual Inspection report of the SPOs Kalahandi Division on HO for the year 2013, 2014 & 2015.

Item No. 47: Divisional Inquiry Report on the alleged misappropriation by the Postmaster.

Item No. 48: Regional Level Inquiry Report on the issue.

Item No. 49: Circle Level Inquiry Report on the issue.

Item No. 50: Error Book maintained in Treasury Branch for the period from 21.09.2013 (a/n) to 20.09.2015.

Item No. 51: Error Book maintained by the APM (A/Cs), Bhawanipatna HO during the period from 22.09.2011 to 04.10.2018.

Item No. 52: Report(s), if any made against me by the Postmaster, Bhawanipatna HO.

Item No. 53: Explanation/statement if any called for from me prior to issue of the charge sheet.

Item No. 54: Explanation/statement obtained from Sri Kabiraj Harijan, Postmaster.

Item No. 55: Statement if any obtained from the actual payee in respect of the above nine (9) cheques mentioned in item no. 14-22.

Item No. 56: Statement(s) obtained from Sri Rohit Durga.

Item No. 57: Particulars of amount recovered from Sri Kabiraj harijan.

Item No. 58: Particulars of amount recovered from Sri Rohit Durga.

Item No. 59: Hand to Hand Book of Postmaster, Bhawanipatna HO for the period from 21.09.2013 (a/n_ to 20.09.2015.

I pray kindly to supply one Xerox copies of the above cited documents. Expenditure, if any to be incurred may kindly be intimated, so that I will credit the amount under UCR.”

6. The respondents vide letter dated 26th October, 2018 (Annexure A/3) allowed for perusal of the documents mentioned below but stating that “no photocopy of the aforesaid documents shall be supplied to you.”

1. Nominal Rolls of Bhawanipatna HO for use during the period from 01.03.2010 to 31.12.2014 & from 01.01.2015 to 20.05.2017.
2. Attested photocopies of payable portion of cheque leaves mentioned in the memo of charge.
3. Attested photocopies of counter foils of cheques mentioned in the memo of charge.
4. Copy of DA(P) Cuttack Inspection Report of Bhawanipatna HO dated 11.12.2013.
5. Attested photocopies of Bank Scrolls pertaining to the cheques mentioned in the memo of charge.

7. The applicant in his reply vide Annexure A/4 to the respondents letter vide Annexure A/3 requested for supply of photo copies, reason for non furnishing of other documents applied for requesting for the case to be re-examined and 10 days more time.

8. The respondents vide Annexure A/5 stated that:

“Please refer to your representation cited above on the captioned subject. In this connection your attention is invited to the provisions contained in Rule-77 of P&T Manual Vol-III does not make it incumbent upon the Disciplinary Authority to give a charged official an opportunity to inspect the documents. However on receipt of request from the charged officials permission may be granted to inspect the documents to submit the defence.

Accordingly In the instant case necessary permission was accorded for perusal of the documents which are relevant to the article of charge to enable you to submit defence representation. Therefore no further permission will be granted for inspection of documents additional documents.

Your representation is thus disposed off. You are therefore directed to submit your defence, if you wish, within ten days of issue of this order.”

9. The applicant then submitted his representation vide Annexure A/6 requesting for conversion of the inquiry to Rule- 16 A of CCS (CCA) Rules 1965 instead but that was rejected by respondents vide letter at Annexure A/7 stating that “there is no justification for holding the inquiry under Rule – 16 (1/A) instead of Rule-16 of CCS (CC&A) Rules 1965 as sought by you”.

10. Findings of the disciplinary authority vide Annexure A/9:

“I have gone through the defence representation of the official, relevant records pertaining to the case

very carefully and minutely. I find the plea taken by Sri Sabar is not acceptable. The Cheques in question have been shown paid in the TCB as such it is clear that they have not be transferred to Point of Sale Counter for effecting payment but payments have been made by the Treasurer. The said Sri Sabar might have entered the Cheque particulars in the TCH after checking the Cheque Counter foil in view of exceptional circumstances like his activities related to Banks, but he cannot refuse to take the responsibility when payments are reflected in the TCB. Thus Sri Sabar has erred in discharging his duties properly and hence the article of charge levelled against Sri Sabar stands proved. Due to such grave lapses, Sri Kabiraj Harijan, the then officiating Postmaster could be able to commit fraud to the tune of Rs. 1.32 crore and Sri Sabar deserves to be punished suitably to recover the loss sustained by the Govt.

However taking into consideration the ingenuity of mode of fraud committed by Sri Kabiraj harija, a few other officials having their contributory negligence and the past records of Sri Sabar, I Sri Padmanava Das, Superintendent of Post Offices, Kalahandi Divison, bhawanipatna do take a lenient view and in exercise of powers vested on me under Rule-11 CCS (CC&A) Rules, 1965 award Sri Banamali Sabar, Postal Assistant Bhawanipatna HO with punishment of "Censure". I further direct immediate recovery of Rs. 2,00,000.00 (Rupees two lakh only) in 20 (twenty) equal instalments from the pay of Sri Sabar to meet the ends of justice. I hope that Sri Sabar, in his future periods fo service shall

be extremely careful and diligent enough to avoid recurrence of such cases.”

11. The appellate authority vide Annexure A/11 in response to the appeal preferred by the applicant stated the following:

“I have gone through article of charge, defence representation, appeal of Sri Sabar and other related records of the case carefully & applied my mind dispassionately and found that:

- (i) The Disciplinary Authority had supplied all the available and relevant documents to the Appellant on 01.11.2018. As per the submission made by the appellant, he was issued charge sheet three years after relinquishing the post of Treasurer as he was the subsidiary offender for his contributory lapses.
- (ii) All the relevant documents connected with the case have been supplied to the appellant and he perused all such documents on 01.11.2018. As such the request of the appellant for conversion of the proceedings to Rule – 16 (1-A) was not tenable and hence his request was duly considered and rejected by the Disciplinary Authority and also the Disciplinary Authority allowed extra ten days time for submission of his defence representation.
- (iii) The plea taken by the appellant that the postmaster has issued cheques with malafied intention without his knowledge is an after thought, which not only lacks logic but also intended to conceal his own mistakes. There is no “Hand to Hand Book” maintained at Bhawanipatna HO pertaining to the transfer of cheques by the Postmaster Bhawanipatna HO to the Treasurer. Irrespective of purpose issuance of the cheques, all

such cheques should have been entered in Bhawanipatna HO TCB by the Treasurer which he has failed miserably in this case.

The appellant deserves still a very serious punishment, considering the amount of loss in this case. However taking a very lenient view the punishment already awarded is found to be adequate. In view of the above, I Sri G. Gurunathan, Director of Postal Services (HQ), Circle Office Bhubaneswar being empowered to exercise the statutory powers of DPS, Berhampur Division Berhampur vide circle office L. No. ST/2-35(2)/2015 dated 09.06.2016 have gone through the appeal preferred by the appellant and all other connected records of the case very carefully and confirm the punishment of Censure and recovery of Rs. 2,00,000/- in 20 equal instalments from the pay of the appellant said Shri sabar issued in SPOs Kalahandi Division memo no. F7-1/2017-18/Ch-II dtd. 04.10.2018. Thus the appeal is disposed off.”

12. Heard the learned counsel for both the parties and material on record were perused.

13. Being a part of the Disciplinary Authority's order, the indictment against the applicant stands already extracted supra. The orders and materials on record would reveal the following infirmities in the process of conducting an inquiry:

- 1) The applicant has urged that the documents, as prayed for by him, were not supplied and no satisfactory reasons have been furnished for such non-supply or explanation offered why such documents were not found relevant.

2) The applicant had asked for the open inquiry under Rule 16, which provides for “holding an inquiry in the manner laid down in sub-rules (3) to (24) of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary”. Further, the DoP&T O.M. dated 28.10.1985 stipulates as follows:

“Rule 16(1-A) of the CCS (CCA) Rules, 1965, provides for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases where a minor penalty is to be imposed, Rule 16(1) ibid leaves it to the discretion of Disciplinary Authority to decide whether an inquiry should be held or not. The implication of this rule is that, on receipt of representation of Government servant concerned on the imputations of misconduct or misbehaviour communicated to him, the Disciplinary Authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In a case where a delinquent Government Servant has asked for inspection of certain documents and cross examination of the prosecution witnesses, the Disciplinary Authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the Disciplinary Authority could after without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice.

[G.I Dept of Per. & Trg. O. M. No. 11012/18/85-Estt.(A), dated the 28th October, 1985]”

Yet, the authorities have refrained from explaining why such opportunity was not afforded to the applicant. On both the counts they have violated principles of natural justice and fair play.

14. With regard to the contention that upon denial of the charges that are factual in nature an enquiry was imperative. In **O.K. Bhardwaj case [2002 SCC (L&S) 188]**, the Hon’ble Apex Court has ruled as under:

“even in the case of minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.”

The respondents have evidently and irrefutably denied an open enquiry without justifying their denial.

15. It is seen that while replying to the charge memo dated 04.10.2018, the applicant vide Annexure A/2 had sought for perusal of 59 documents and photocopies of the same, but the respondents vide Annexure A/3 only gave approval for perusal of 5 documents and refused to provide photocopies of any documents. The applicant again vide his representation at Annexure A/4 requested for photocopies of those 5 documents which were allowed to him for perusal and reasons for non-furnishing of other documents. The respondents vide Annexure A/5 intimated that “in the instant case necessary permission was accorded for perusal of the

documents which are relevant to the article of charge to enable you to submit defence representation. Therefore no further permission will be granted for inspection of documents additional documents.” The applicant then vide Annexure A/6 asked for converting the proceedings to Rule – 16 A of CCS (CCA) Rules 1965 which was rejected by the respondents vide Annexure A/7. But the authorities have not conducted regular inquiry under Rule – 16 (1) A of the CCS (CCA) Rules 1965.

16. In such view of the matter, this Tribunal is of the considered opinion that the punishment order of recovery and censure by Disciplinary Authority as well as Appellate Authority order cannot be allowed to sustain. The orders are, therefore, quashed with liberty to the Respondents to act in accordance with law, including regular inquiry under Rule 16 (1) A of CCS (CCA) Rules 1965. The recovery, already made, is directed to be refunded within two months from the date of receipt of copy of this order. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

(csk)

