

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00108/2018

Date of Order: This, the 19th Day of February, 2021

THE HON'BLE SMT. MANJULA DAS, MEMBER (J)

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)



Shri Kartik Sarmah
Retired Asstt. Postmaster
Mangaldai H.O.
Son of Late Rupeswar Sarmah
Vill – Bamparbatia, P.S. – Tezpur
P.O. – Tezpur – 784001
District – Sonitpur, Assam.

... Applicant

- Versus -

1. The Union of India
Represented by the Secretary
To the Government of India
Ministry of Communication & IT
Department of Posts, Dak Bhawan
New Delhi – 110001.
2. The Chief Postmaster General
Assam Circle, Meghdoot Bhawan
Guwahati – 781001.
3. The Director Postal Services (HQ)
O/o the Chief Postmaster General
Assam Circle, Meghdoot Bhawan
Guwahati – 781001.

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4. The Superintendent of Post Offices
Darrang Division, Tezpur – 784001.

...Respondents.

For the Applicant : Sri D.N. Sharma

For the Respondents : Sri R. Hazarika, Addl. CGSC

Date of Hearing: 24.02.2021

Date of Order: 19.02.2021

ORDER

NEKKHOMANG NEIHSIAL, MEMBER (A):-



This O.A. has been filed by the applicant asking for the following reliefs:-

“8.1 The Hon'ble Tribunal be pleased to direct the respondents to set aside and quash the impugned punishment order under Memo No. F6-1(A)/2014-15/K Sarma/R-16 dated 25.08.17 and the order of the appellate authority modifying the order of disciplinary authority by his order dated.....in annexure-9.

8.2 Any other relief (s) which the applicant is entitled to as the Hon'ble Tribunal may deem fit and proper.”

2. The case was finally heard on 03.02.2021 and reserved for orders. Since Sri D.N. Sharma, learned counsel for the applicant had already submitted written

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argument, Sri R. Hazarika, learned Addl. CGSC for the respondents was allowed to file his short written argument. He has done it on 15.02.2021.

3. Facts of the case are that – while the applicant was working as Assistant Postmaster in Tezpur H.O. from 02.05.2012 to 31.05.2012, a fraud was committed by another employee called Sri Paban Ch. Deka to the extent of Rs. 12,43,537.00. Said Sri Paban Ch. Deka has since been dismissed from his service. As there was a clear evidence of lack of supervisory duties on the part of the applicant, he was also imposed with a penalty of recovery of Rs. 1,00,000/- only by the Disciplinary Authority vide his order dated 25.08.2017 @ Rs. 20,000.00 only per month commencing from the pay for the month of August 2017 payable in September 2017. The applicant made appeal dated 12.09.2017 against the penalty imposed on him. The Appellate Authority after detailed examination and in comprehensive speaking order reduced the penalty from Rs. 1,00,000/- to Rs. 60,000/- vide his order dated 28.12.2017.



4. In this O.A., the applicant through Sri D.N. Sharma, learned counsel submitted that fraud was committed from 02.05.2012 to 31.05.2012 and he was not on duty in any way during the fraud was committed. He also pointed out that the fraudulent withdrawals were not shown in the list of Transactions of the Tentebari S.O. on all the days of withdrawals and as such, it was not detected the fraud if any.



5. He also pointed out that he was not given reasonable opportunity during the enquiry including supply of documents. Learned counsel for the applicant further submitted two cases of law i.e.

1. State of Punjab and Others. Vs. Rafiq Masih (2015) 4 SCC 334 and

2. O.A. No. 325/2017, Mir Ruhul Amin Dewan Vs. Union of Ors wherein this Tribunal had set aside the order of the respondent authorities to recover balance amount of Rs. 1,10,000.00 from his gratuity after his retirement.

6. Sri R. Hazarika, learned Addl. CGSC appearing for the respondents in his short written argument submitted that against the order of recovery of Rs.

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1,00,000/-, the Appellate Authority appropriately and fairly reduced to recover an amount of Rs. 60,000/- due to lack of supervisory duties by the applicant. In fact, respondent authorities have lost an amount to the tune of Rs. 12,43,537/-. The applicant failed to perform and follow the prescribed procedure as provided in Rule 76 (b)(1) of Post Office Saving Bank Manual Volume-I. The applicant also failed to follow the instructions as contained in rule 38(1) of the same prescribed procedure i.e. Post Office Saving Bank Manual Volume-I. Sri Hazarika also pointed out that the applicant was working as Assistant Postmaster, SOSB in Tezpur HO during the period from 23.04.2012 to 09.06.2012, 03.03.2014 to 10.03.2014 & 01.04.2014 to 30.04.2014. He also pointed out that the case of **Rafiq Masih (supra)** relates to recovery of the employee on account of higher benefits given to them wrongly by the authority and not due to fraud committed by the employees as result of negligence of an individual towards his duties. He also highlighted that the amount has since been



recovered from the applicant and there is nothing to interfere with the impugned order.

7. We have considered the submissions and counter submissions on both sides. From the records, it is observed that the applicant was not in the post of Assistant Post Master during the entire period when the fraud was committed but there is certain period in which the applicant was definitely in-charge as Assistant Postmaster. We also have gone through the case cited by the learned counsel for the applicant regarding the order of Hon'ble Apex Court where in certain types of cases, amounts are not to be recovered from Group 'C' and 'D'. It is indeed seen that the present case does not attract the judgment of the Hon'ble Apex Court.



8. As regards to the order of this Tribunal in the case of **Mir Ruhul Amin Dewan (Supra)**, we have gone through it once again and found that the case is not exactly similar. It was similar only to the extent that there was supervisory failure of the applicant in that OA. Apart from this, certain amount has been refunded by the

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employee who committed the fraud. A total amount of Rs. 1,40,000.00 had already also been recovered from that applicant till date of his retirement and the respondent authorities proposed to recover balance amount of Rs. 1,10,000.00 from his gratuity. Having found substantial amount already been recovered from the applicant, an order to recover the balance amount from his retirement gratuity was found to be unjustified and unfair. Accordingly, the order for recovery of balance account was set aside.



9. In the present case, the applicant is equally found to be responsible to the extent as enumerated in the charge sheet as well as in the speaking order of the Appellate Authority. Since there is a provision for recovery in the department's instructions/guidelines under No. 3/312/70-Disc.I dated 17.08.1971, same is being reproduced below:-

"It is clarified for information of all concerned that recovery from pay as a punishment for any pecuniary loss caused by a Government servant by negligence or breach of orders should not exceed one third of basic pay (i.e. excluding dearness pay or any other allowances) and should

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not be spread over a period of more than 3 years. In other words, this recovery should not exceed one year basic pay in any case."

10. Keeping in view of the fact that applicant's responsibility for failure to supervise the work of the subordinate is well established and also the fact that the reduced amount of Rs. 60,000/- as ordered by the Appellate Authority has since been recovered, we do not see any justified reason to interfere with the order of the Disciplinary Authority dated 25.08.2017 as well as Appellate Authority' order dated 28.12.2017.



11, Accordingly, O.A. is hereby dismissed on merit.
No order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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