

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 13 of 2017

**Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. T.Jacob, Member (A)**

Radhakrushna Sahoo, aged about 56 years, S/o Late Padma Charan Sahoo, permanent resident of Plot No. 327/A, Rudrapur, PO-Naharakanta, PS-Baliana, Dist-Khurda and presently working as Asst. Supdt. of Post Offices (HQ), Keonjhar Divsiiion, Keonjhar.

.....Applicant

VERSUS

1. Union of India, represented through its Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi.
2. Director Postal Services, Berhampur Region, Berhampur, Dist.Ganjam-760001.
3. Director Postal Services (HQ), Bhubaneswar, Office of the Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist-Khurda-751001.
4. Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist-Khurda-751001.

.....Respondents

For the applicant : Mr.S.K.Ojha, counsel
Mr.S.K.Nayak, counsel

For the respondents: Mr.A.Pradhan, counsel

Heard & reserved on : 12.2.2021 Order on :12.07.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

- “(i) To admit the OA;
- (ii) To quash the charge Memo No. INV/7-161/2012-13(Ch-I), dated 26.08.2015 (Annex. A/2)
- (iii) To quash the order No. INV/7-161/2012-13/Ch-I, dated 24.05.2016 (Annex.A/5) of Disciplinary Authority and order dated 30.12.2016 (Annex.A/8) of Appellate Authority.
- (iv) To direct the Respondents to extend the consequential benefits to the applicant;
- (v) To pass any other order/orders as deem fit and proper for the ends of justice.”

2. The facts of the case in brief are that after working for more than 32 years the applicant has been proceeded against under Rule 16 of CCS (CCA) Rules, 1965 vide order dated 26.8.2015 (Annexure A/2). Charge sheet has

been issued against the applicant alleging supervisory lapses during his incumbency as ASPO(HQ)/Cuttack North Division in 2011. As per regular practice, the applicant has been directed vide office order dated 15.11.2011 to carry out inspection of various post offices including Kariopatana SO and to submit inspection report latest by 31.12.2011. However, the applicant carried out inspection as per the advice contained in the letter dated 15.11.2011 and submitted his report much prior to the last date fixed by the Head Quarter. Inspite of timely action by the applicant, he has been charge sheeted with vague allegation that he had he conducted inspection two months prior to conduction of last inspection, then there was possibility to prevent the misappropriation made by the SPM. The applicant has taken the ground that since the charge sheet is unsigned and does not contain any charges expect the imputation of misconduct, the charge sheet is a vague one and is liable to be quashed. The applicant vide representation dated 7.9.2015 (Annexure A/3) and sought for supply of 10 number of documents. When the documents were not supplied to him except allowing the applicant to inspect some documents, he submitted preliminary reply dated 1.12.2015 (Annexure A/4) denying all the allegations and seeking liberty to file final reply after supply of documents or on inspection of documents. Without supply all such documents and without giving any further time to file final show cause to the charge memo, respondent No.3 passed the punishment order dated 24.5.2016 (Annexure A/5) for recovery of Rs.3,60,000/- (Rupees three lakh sixty thousand) only from the pay of the applicant @ Rs.10,000/- per month in 36 (thirty six) monthly equal installments with immediate effect." The applicant submitted his appeal dated 2.6.2016 (Annexure A/6) praying for quashing the order of punishment and praying for staying the operation of punishment order till consideration of the appeal. His appeal being not responded, the applicant filed OA 421/2016 before this Tribunal which was disposed of on 24.6.2016 (Annexure A/7) with a direction to the respondent No.4 to consider and dispose of the appeal dated 2.6.2016 filed by the applicant and pass a reasoned and speaking order within a period of three months from the date of receipt of the order. It was further

directed that until the decision of the appellate authority is communicated to the applicant, no further recovery shall be affected from the salary of the applicant. The appeal was rejected by respondent No.4 vide order dated 30.12.2016 (Annexure A/8). Being aggrieved by such rejection order, the applicant has filed the present OA.

3. The respondents have filed their Counter stating that the charge sheet was not an unsigned one and in case of Rule 16 charge sheet there is neither annexure required as a separate list of documents, nor the imputation is required to be signed. Hence the charge sheet is not a defective one as alleged by the applicant. It is submitted that the applicant had not gone through the charge memo in details because the reference of documents was all along available there. It is further submitted that the order of the Disciplinary Authority is not illegal as alleged by the applicant and the punishment imposed by the appellate authority was all within the ambit of rules of disciplinary proceedings. Moreover, it is submitted that the present OA is not maintainable in the eyes of law because the decision of recovery is in order as the pecuniary loss to the department was caused due to the contributory negligence by the applicant. Therefore the respondents have stated that the applicant is not entitled for any relief sought for in the present OA and have prayed for dismissal of the same.

4. We have heard both the learned counsels and have gone through the pleadings on record.

5. It was submitted by learned counsel for the applicant that at best, allegation of contributory negligence has been made against the applicant in his capacity as the inspecting authority. It has been alleged that the applicant did not inspect concerned post office in time. In this regard learned counsel for the applicant submitted that soon after receiving the letter of the authority dated 15.11.2011, the applicant had made the annual inspection on 24.11.2011 and had sent the inspection report much prior to the last date fixed by the Head Quarter, which was received by the higher authority on 19.12.2011. Therefore, there was no unintentional delay by the applicant in

inspecting the post office. It has been alleged that fraud has been committed by one Arun Kumar Mohanty, Branch Post Master in between the period 17.3.2012 to 28.7.2012, as seen from Annexure A/2. It is alleged that the said person closed the MIS accounts prematurely by forging the signature of concerned depositors and the applicant had inspected the branch post office after about two and half months after receiving the letter from his higher authorities. There was no instruction that the applicant should make periodical inspection of the said branch post office, although he was required to make annual inspection of the same. It is submitted by learned counsel for the applicant that the applicant had joined at Cuttack North Division in 2011 and soon thereafter he had made inspection in question. It is specific and categorical stand of the applicant that there was no closed MIS accounts for verification by the time he inspected the branch post office. It was also submitted by learned counsel for the applicant that although no recovery has been made from Arun Kumar Mohanty, the principal offender and it is not known if he has been convicted in the vigilance case, the respondents have departmentally proceeded against the applicant which is arbitrary.

6. Although the applicant had prayed for production of office order dated 15.11.2011, the same was not produced in the departmental proceeding. The applicant had also furnished list of document he had called for in his application dated 7.9.2019 (Annexure A/3) made to the disciplinary authority. The said documents were not supplied to him on the ground that document in question have been seized by the CBI. The mere fact that the said documents might have been seized by CBI, by itself is not sufficient valid ground not to accept the request of the applicant for supply of those documents. In the fact and circumstances of this case, this Tribunal finds that those were vital documents which were required by the applicant in order to enable him to effectively defend himself in the departmental proceeding against him. Non-supply of the said documents has put him in disadvantageous position and thereby deprived him of his right to effectively defend himself in the departmental proceeding. Hence the applicant has been seriously prejudiced in

this regard. Although the applicant had demanded regular inquiry in his show cause submitted to the inquiry officer, the same was not accepted. The ground given for non-conducting of regular inquiry in this regard is also not satisfactory.

7. It was submitted by learned counsel for the respondents that the fraud was going on since the year 2009 and therefore the omission of the applicant in not inspecting any MIS accounts during the course of his inspection has facilitated subsequent fraud committed by principal offender i.e. Arun Kumar Mohanty. The finding in this regard is to the effect that, in case the applicant would have inspected closed MIS accounts then it would have been a threat in the mind of other employees in committing the fraud in question and it would have prevented commission of similar fraud in future. Such a stand taken by the respondents is purely hypothetical and as it appears is figment of imagination by them since in the background and circumstances when there is no material in the charge sheet to show that such type of similar fraud was continuing since the year 23009. This finding of the Tribunal is fortified from the fact that there was no finding to show that any particular MIS account was closed during the period in question and was available to be inspected by the applicant on the relevant date of inspection. In the absence of any categorical finding given by the inquiry officer or allegation to that made in article of charges, it cannot be said that there must have been closed MIS accounts available for inspection of the inspecting authority i.e. the applicant. In the article of charges there is no mention that any such fraud was going on since the year 2009. Therefore the applicant has been taken by surprise due to subsequent stand taken by the department that such type of fraud was going on since the year 2009 and in the background and circumstances it was expected from the applicant that he should have inspected such type of accounts in order to avoid future fraud to be committed by any employee of the department. Such ground not having been intimated to the applicant at the earliest, such subsequent stand taken by the respondents in their Counter or

in the findings given by the inquiry officer in this regard, has caused serious prejudice to the applicant.

8. In the circumstances this Tribunal finds that the applicant has not committed any negligence or omission or was insincere in inspecting the post office in his capacity as inspecting authority. The mere delay of about 25 days in sending the inspection report to the higher authority cannot be itself a ground to punish him in this background and circumstances.

9. The subsequent ground taken in counter affidavit by the respondents cannot be permitted to supplement the findings already given by the inquiring officer or thereafter by disciplinary authority, when there was no allegation in article of charges or there was no material available in the departmental inquiry in question that such type of fraud was going on since the year 2009. Therefore the orders dated 24.5.2016 (Annexure A/5) and 30.12.12016 (Annexure A/8) are quashed and set aside. Accordingly the applicant is entitled to all consequential benefits. This order is to be implemented by the respondents within three months from the date of receipt of the copy of this order.

10. The OA is allowed with above observations. There will be no order as to costs.

(T.JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

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