

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 431 of 2015

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

Guru Prasad Mohapatra, aged about 41 years, S/o Late Baidyanath Mohapatra, At-South Mundamuhan, PO-Janla, Dist-Khurda-752054, now working as PA Puri HO.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Chief Post Master General, Odisha Circle, Bhubaneswar-751001.
3. Director of Postal Services (Hqrs), O/o Chief Post Master General, Odisha Circle, Bhubaneswar-751001.
4. Sr. Superintendent of Post Offices, Puri Division, At/PO/Dist-Puri-762001.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.A.Pradhan, counsel

Heard & reserved on : 18.2.2021 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 :

“In view of the facts stated above, it is humbly prayed that the Hon'ble Tribunal may be graciously pleased to quash Annexure A/1, 5, 8 & 10.

And any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice.

And for this act of kindness, the applicant as in duty bound remain ever pray.”

2. The facts of the case in a nutshell are that the applicant was appointed as Postal Asst. on 1.1.1993 and while working as such in Jatni Mukhya Dak Ghar, the Post Master of Jatni MDG committed some mischief in his own account amounting to Rs.6,10,000/-. When it came to the notice of the applicant, he immediately informed the authorities regarding the illegalities. But the respondent No.3 charge sheeted the applicant vide order dated

12.5.2009 (Annexure A/1) who is in the lowest rank of the official work and to carry out the order of his immediate authority i.e. Postmaster of Jatani MDG and the supervisor. The article of charges is as under :

Article-1

Sri Guru Perasad Mohapatra PA Khurda HO now working as SPM Rajabazar Jatani was proceeded against under Rule 16 of the CCS (CCA) Rules, 1965. And office memo even number dated 20.5.2009. A statement of imputations of misconduct or misbehavior on which action is proposed to be taken Sri Mohapatra was as under :

Sri Guru Prasad Mohapatra while working as SB counter pa at Jatani MDG during the period 14.09.05 to 14.11.05 accepted cheques drawn on different banks on different dates as detailed below, to the tune of Rs.3,70,000/-)three lakhs seventy thousands) for deposit against SB account No. 272439 standing open in the name of Sri E.C.Singh the then postmaster Jatani MDG and Smt. Minerva Singh wife of Sri E.C.Singh along with filled S.B. pay in slips (SB-103) on different dates. Said Sri Mohapatra accepted the cheques and without awaiting encashment/necessary clearance of the cheques credited the amount of cheques into said S.B.accounts on date of presentation and allowed withdrawal of the amount of cheques to Sri E.C.Singh.

Sl.No.	Cheque No.	Date issue of/ presentation	Name of Drawee Bank	Amount
1	819228	21.10.2005	Punjab National Bank	100000/-
2	819229	21.10.2005	Punjab National Bank	60000/-
3	959092	05.11.2005	UCO BANK JANLA	50000/-
4	959091	25.10.2005	UCO BANK JANLA	60000/-
5	959093	07.11.2005	UCO BANK JANLA	50000/-
6	959094	11.11.2005	UCO BANK JANLA	50000/-
			TOTAL	3,70,000/-

Later on the cheques were bounced back had Sri Mohapatra awaited for the acknowledgement to encashment/clearance of the said cheque from SBI Jatani before entering the amounts of cheques aggregating to Rs.370000/- against SB A/C No. 272439 on different dates. Fraudulent withdrawal of Rs.3,70,000/- made by Sri E.C.Singh from the said account would have been prevented. The action of Sri Mohapatra is in contravention of Rule 31(6) & appendix 6 and 7 of POSB manual volume 1.

Thus it is imputed that Sri Mohapatra by his above act failed to maintain due devotion to duty & acted in a mannrr which is unbecoming of a Govt. servant & there by violated the provision of Rule 3(1)(ii) and (iii) CCS (Conduct) Rule 1964.”

The applicant made representation dated 20.5.2009 (Annexure A/2) and asked for 12 relevant documents for submission of his defense statement. Respondent No.3 issued letter dated 27.5.2009 (Annexure A/3) directing the ASPOs to allow the applicant for perusal of 4 documents. The applicant submitted his defence statement on 13.7.2009 (Annexure A/4) stating the details of incident and as to how he is not at all responsible for the circumstances and the amount has been credited by the Principal offender with interest on 17.11.2005 i.e. within a month of misappropriation of public money and prayed to exonerate him from the charges. Respondent No.3 without

conducting any enquiry and simply after obtaining the show cause reply held the applicant guilty and imposed the punishment of stoppage of one increment for 3 months without cumulative effect vide order dated 30.9.2009 (Annexure A/5) which reads as under :

“I have gone through the memo of charges dated 12.05.2009 defence representation dated 14.07.2009 and other connected records of the case very carefully and applied my own mind. The plea of Sri Mohapatra that he was not getting reasonable opportunity to submit his defence representation is not acceptable as the relevant records/documents have already been perused by him on 07.07.2009 before the ASP(OD), Divisional Office, Puri. On the other had the arguments that the office was managed with heavy pressure of work is not tenable since a Govt. servant is required to work as per the well settled rules and regulations of the department for the standard hours assigned to him,. The official Sri Mohapatra had made the fraudulent entry of the amounts of cheques drawn on different banks in different dates and also made the payments without awaiting to the clearance of the cheques in accordance with the verbal instructions/orders of the Post Mater is not sustainable. As Sri Mohapatra, being a senior most official could have reported the irregularities of Sri E.C.Singh to the higher authority through Error Entry much prior to the occurrence of fraud. The gross negligence of Sri Mohaptra facilitated Sri E.C.Singh, the then Post Master to defraud huge amount of the Govt. money and I found Sri Mohapatra as guilty of the case. However, I, Sri Satyabrata Satpathy Senior Supdt. of Post Offices, Puri Division, Puri inclined to take a lenient view considering all the aspect of the case and the past service rendered by Sri Guru Prasad Mohapatra orders that one increment of the official which falls due next should be kept withheld for 3 (three) months. I hope that this will meet the ends of justice.”

The applicant preferred his revision petition on 3.8.2010 to respondent No.2, who rejected the same vide order dated 18.7.2011 (Annexure A/6) on the ground that the applicant has approached him without approaching the appellate authority and the petition is time barred and that the applicant has not offered reasons for delay in submitting his petition. Being aggrieved by such rejection order the applicant approached this Tribunal in OA 816/2012 which was disposed of on 14.11.2012 with a direction to the applicant to prefer an appeal within 10 days. The applicant preferred appeal on 27.11.2012 (Annexure A/7) but the same was rejected vide order dated 14.1.2013 (Annexure A/8) which reads as under :

“On the whole, I find that the appellant as a SB counter assistant failed to do his own duty entrusted to him due to which such a fraudulent withdrawal from the SB account No. 272439 of Jatni MDG could happen. The entire episode could have been prevented had the appellant awaited for clearance of the cheques.

In view of the discussions made above, I find the appellant guilty of the charge and do not want to interfere on the orders of the disciplinary authority.

I, Shri Suvendu Swain, Director Postal Services (HQ) Bhubaneswar therefore, uphold the order of punishment passed by the disciplinary authority, and reject the appeal.”

Being aggrieved with the rejection order, the applicant preferred an appeal to respondent No.2 on 10.5.2013 (Annexure A/9) ventilating his grievances but the same was rejected vide order dated 17.2.2014 (Annexure A/10). Being aggrieved by the inaction on the part of the respondents, the applicant has filed the present OA. The applicant has relied on the decision of Hon'ble High Court of Orissa in the case of Sukamal Bag -vs- Union of India [WP(C) No.4343/2010] in support of his case.

3. The respondents in their Counter have stated that the applicant did not follow the procedure enumerated in Rule 31(6) and Appendix-1 (para 6 & 7) of POSB Manual Volume-1 while making transactions in respect of Jatni MDG Joint-B SB account No. 272439 for which the depositor-cum-fraudster had got scope in crediting the amount in the said account before the clearance of the cheques and managed to withdraw the entire amount fraudulently. The contributory negligence on the part of the applicant led the fraudster to commit huge amount of fraud subsequently for which he was identified as one of the Subsidiary Offender and charge sheeted vide order dated 12.5.2009. On receipt of the charge sheet the applicant submitted his defence representation dated 13.7.2009. Taking into consideration his defence representation and the contributory negligence in duty committed by him, he was punished for stoppage of increment for 3 months. The copy of the punishment order was served on the applicant on 9.10.2009 but after a long gap the applicant preferred a petition before respondent No.2 on 3.8.2010 which was duly considered and disposed of being time barred. Challenging the said order the applicant approached this Tribunal in OA 816/2012. Therefore he has not exhausted the departmental remedies available to him. Moreover, the applicant did not furnish any relevancy in respect of the requisitioned documents for his perusal and as such his argument in not supply the rest documents and suppressing the records, is baseless. It is further stated that the appeal of the applicant is duly considered and disposed of by discussing vividly the contributory negligence in duty by the applicant. The respondents have also stated that the disciplinary proceeding instituted against the applicant is in

strict conformity to the provisions of CCS (CCA) Rules, 1965 and the punishment so awarded is commensurate with the lapses/contributory negligence in duty by the applicant and as such the present OA being devoid of any merit is liable to be dismissed.

4. We have heard both the learned counsels and have gone through the pleadings on record. The applicant in his application vide Annexure A/2 dated 20.05.2009 addressed to Sr. Supdt. of Post Offices i.e. Respondent no. 4 had requested to supply of 12 documents as mentioned below for his perusal and taking extract for submission of defense:

- i. Xerox copy of cheques received by Jatni S.O. during the aforesaid period for which I have been charged.
- ii. Copy of ledger card Jatni MDG bearing A/c No. 272439 standing in the name of EC Singh and Mrs. Minerva Singh.
- iii. Counter foils of these cheques which were accompanied in the pay in slips on respective dates at Jatni MDG (as charged in the memo of charges).
- iv. Hand to hand receipt book of S.B.P.A.I. Jatni MDG from 14.09.05 to 14.11.05.
- v. Bank scrolls of the aforesaid cheques i.e. 21.10.05, 25.10.05, 05.11.05, 07.11.05 and 11.11.05 issued by the SBI Jatni to the Postmaster, Jatni MDG and to the Postmaster, Khurda HO.
- vi. Statement of Shri E. C. Singh, the then SPM, Jatni MDG on the above transaction (as he was the head of office).
- vii. Statement of Sri Rabin Sethi, the then supervisor, Jatni MDG (in the above case as he was my supervisor) (ASPM).
- viii. Statement of Sri Yudhistir Nayak who was also working as Treasurer as well as Supervisor some times and on which date some cheques have been received through him.
- ix. Long book and hand to hand receipt book of S.B. Branch.
- x. Memo of distribution of work of Jatni S.O/MDG issued by the Sr. Supdt. of P.Os., Puri Division.

- xi. Statement of Yudhistir Nayak and Rabin Sethi in the aforesaid case given to the Disciplinary Authority.
 - xii. Statement of Sri kartik Oram the then PA. Jatni given during preliminary inquiry to Sri B. K. Patra the then ASP (OD) who conducted preliminary investigation in the above cheque bounce case along with his report.
5. Respondent No. 4 had sent letter vide annexure A/3 dated 27.05.2009 directing the ASPOs (OD) to proceed to Jatni, Sub Office along with four documents i.e. (1) Xerox copy of cheques received by Jatni S.O. for October 05 and November 2005, (2) Xerox copy of Jatni MDG ledger card bearing A/c No. 272439 standing in the name of Sri E. C. Singh & Mrs. Minerva Singh, (3) Xerox copy of counter foils of cheques bearing No. 819228, 819229, 959091, 959093, 959092 and the bank scrolls of the cheques & (4) Xerox copy of Jatni MDG Log Book, for the purpose of perusal by the applicant.
6. The applicant in his application to respondent no. 4 vide annexure A/4 dated 13.07.2009 had mentioned that he had perused two documents i.e. (1) Xerox copy of cheques issued by Jatni MDG as at serial 1 and (2) Xerox copy of Jatni MDG Long book. The applicant had mentioned in the said letter vide annexure A/4 that out of 12 documents only two documents were shown and others could not be supplied which is contravention of DGP&T Letter No. 6/61/60 Disc. Dtd 25.09.61, thereby the applicant was deprived of getting reasonable opportunity to submit his defence effectively. In the memorandum of appeal vide annexure A/7, the applicant had raised the said point specifically and mentioned that natural justice was violated in particular case and the applicant has been greatly prejudiced.
7. The appellate authority in the order vide annexure A/8 dated 14.01.2013 had mentioned "*As regards plea taken by the appellant regarding perusal of records & denial of reasonable opportunity, it is seen that he had been supplied with the records relevant to the case on 07.07.2009 for perusal in the Divisional Office, Puri. The appellant may have requisitioned number of documents for perusal but the authority has supplied those documents which have relevance to the case. As such, the plea is not sustainable. Secondly, the*

plea of the appellant that the information relating to the clearance of cheques were limited within the Postmaster Sri E. C. Singh and the treasurer Sri Rabin Sethi is also not acceptable. The fact remains that the appellant without awaiting for the clearance of the cheques, credited the amount of Rs. 3,70,000/- in the SB account No. 272439 on different dates which gave scope to Sri E. C. Singh to withdraw the amount.” In the revision petition filed by the applicant vide annexure A/9 dated 10.05.2013, while mentioning about the relevancy and importance of said document sought to be perused by him and supplied to him he had also specifically mentioned “*I had requisitioned 12 documents and one of the documents i.e. counterfoil of the pay in slip which is a very very important document of transaction. The bank scroll which was issued by SBI Jatni on the alleged dates of my working the SB counter were also very important for defence purpose. Further the SBI Cheques meant for Jatni (only local cheques) should have been cleared through Postmaster, Khurda instead of SBI Jatni. So for that Sri E. C. Singh being the head of the office was solely responsible and I being subordinate officials of Jatni SO under E C Singh, was not required to point out such thing. I had also called for the statement of Rabin Sethi, Supervisor and also the statement of Judhistir Naik and also E C Singh SPM which were not supplied. These documents were vital documents and were very relevant for my defense. As per instruction of the Govt. of India, Ministry of Home affairs OM No. F 30/5/66/61 – AVD dtd. 25.8.61 communicated vide D G Post & Tels No. 6/61/60 – Disc. Dated 25.9.61 and circulated by DPT Cuttack on dt. No. staff/Rlg – 13/ Ch II – 66 (s) dtd. 4.11.61 the question of relevancy should be looked at from the view point of defence. So the Disc. Authority as well as Appellate Authority are absolutely wrong in refusing supply of the relevant defence documents for which the entire proceedings stands null and void. Apart from that the supply of documents is to be looked at from the defence point of view and such power should be sparingly exercised. Thus the denial of supply of document is in violation of Art 311 (2) of the Constitution”.* The Revisional authority vide order at Annexure A/10 dated 17.02.2014 had mentioned that “*The petitioner perused the available relevant documents in the*

Divisional Office, Puri Division on 07.07.2009. The allegation of denial of reasonable opportunity to the petitioner is therefore not admitted and it is far from truth.”

8. In the counter affidavit it has been mentioned at para 4.1 that *“On receipt of the charge sheet vide Annexure A/1, the applicant requested for supply of certain records/documents enabling him to submit his defence representation. The applicant has been given reasonable opportunity to peruse the relevant documents connected with the charge sheet which were perused by him through the ASP (OD), O/o the respondent No. 4.”*. Again in para 4.4. of the counter affidavit it has been mentioned that *“Only the documents relevant to the charged sheet issued vide Annexure A/1 framed against him due to his contributory negligence in duty were supplied for his perusal. Moreover, the applicant did not furnish any relevancy in respect of the requisitioned documents for his perusal vide Annexure A/2 as per the provision of rule. As such the argument of the applicant in not supplying the rest documents & suppressed the records etc is purely base less & imaginary only to draw sympathy from the Hon’ble Tribunal”*.

9. Thus the Revisional authority was not aware with regarding to exact documents which were allowed to be perused by the applicant and copy supplied to him. The relevancy or otherwise of the documents have not been discussed by any of the authorities. No ground at all has been intimated to the applicant by respondent no. 4 as to why rest document were not permitted to be perused by the applicant and copy of the same were not supplied to him. The relevancy and importance of the document have been specifically mentioned by the applicant as mentioned above. Taking into consideration the nature of the allegation as made against the applicant, this Tribunal also finds that the applicant has been seriously prejudiced due to non consideration of his request for perusal of rest 10 documents which include statement of some witnesses which have been stated to have been recorded during preliminary enquiry. The authorities were at liberty to consider the said request of the applicant in accordance with relevant rules and guidelines as per law in proper

perspective and should have given reasons that as to whether those documents where relevant or not and required to be supplied to the applicant in order to enable him to effectively submit the show cause. These aspects have not been duly considered also by the revisionary authority and the same have been rejected by cryptic order in this regard.

10. Accordingly, it is necessary to remand back the matter to disciplinary authority so that he shall consider the relevancy and importance and scope of perusal of rest 10 documents by the applicant and for supply of copy of same in accordance with law and relevant circulars within a period of three months from the date of receipt of copy of this order. Besides considering the said aspect the disciplinary authority shall also consider the revision on merit and if necessary pass order in accordance with law. The impugned order vide Annexure A/10 is quashed.

11. The OA is accordingly disposed of with above observation but in the circumstances without any order to cost.

(T.JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

I.Nath