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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

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ORIGINAL APPLICATION NO: 322 OF 1989.

Date of decision: 21st May, 1990.

Bijaysen Jagatdeo, S/o Late Pitambar Jagatdeo,
Village:Post: Indupur, P.S.:Kendrapara,
District: Cuttack. Now working as Assistant
Postmaster, Cuttack G.P.O. 753001.

• • • • Applicant

—Versus

1. Senior Superintendent of Post Offices,
Cuttack City Division, Cuttack-753001.
2. Additional Postmaster General,
Orissa Circle, Bhubaneswar-751001.
3. Director General of Posts,
Dak Bhawan, New Delhi-110001.
4. Union of India, represented through
the Secretary Ministry of Communication,
Government of India, New Delhi-110001.

• • • • Respondents.

For the applicant : Mr. D.P.Dhalsamant, Advocate
For the Respondents : Mr. Aswini Kumar Misra, Senior
Standing Counsel (CAT).

C O R A M S

THE HON'BLE MR. R.BALASUBRAMANIAN, MEMBER (ADMN.)

A N D

THE HON'BLE MR. N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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JUDGMENT

N. SENGUPTA, MEMBER (JUDICIAL)

This application is directed against the order passed by the Senior Superintendent of Post Offices, Cuttack City Division, Cuttack directing recovery of Rs.7,500/- from the pay of the applicant as part adjustment of the loss said to have been sustained by the Government and the order passed by the Director, Postal Services, Sambalpur Region, Sambalpur in appeal.

2. The material facts are that the applicant admittedly was the Deputy Postmaster of Chandinichouk Head Post Office in December, 1985. An application for transfer of S.B.A/c No.559938 of Bhubaneswar was received in Chandinichouk Head Post Office for transfer to the latter Post Post Office. The application for transfer was presented at Chandinichouk Head Post Office on 21.12.1985. In the advice for transfer there was a remark, " S/s N/A PL Pay on P/I". The account stood in the name of one Nagendranath Nayak. The Senior Superintendent of Post Offices, Cuttack City Division on 5.9.1988 issued a memorandum proposing to take action against the applicant under rule 16 of the C.C.S. (C.C.A.) Rules, 1965 on the allegation that the applicant while functioning as the Deputy Post Master of Chandinichouk Head Post Office had to supervise the Savings Bank Branch, the applicant did not properly supervise the opening of the account as a result of which withdrawals of Rs. 15,000/- on 20.1.1986 and

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Rs. 1015.05p on 27.1.1986 were made by a stranger from the account. The applicant was called upon to make a representation if he so desired. In the memorandum of charge it was alleged that the ~~transfer~~ application for ^{- transfer -} was really submitted of Chandinichouk Head Office on 21.12.85 and the signature of the P.A. appeared at the space provided for countersignature of the Post Master and the signature of the depositor was attested by a person not competent to do the same and that the applicant failed to take note of the remarks of the transferring office 'S/s N/A, PL. Pay on P/I' on the SB-10-(b). The applicant made it ^{over} ~~over~~ to the ledger clerk who opened an account on transfer and assigned the number SB a/c No.446846. The applicant did not see ~~to~~ the preparation of the application card as prescribed under Rule 441(3) of the P & T Manual Vol. VI. Part II and on his failure to do so, those defects remained undetected. The applicant also acted upon the specimen signature card purported to be of N.Nayak attested by some body who described himself as Lecturer S.C.B.Medical College, there was no official seal on it yet the applicant accepted the same. The applicant submitted his representation in which he stated that there was no contravention of any of the Rules of the P&T Manual and further that when one Ghosara Nayak who was the Postal Assistant working in the same Post Office had attested the signature there was no difficulty for him to accept the application for transfer. In fact he did not act on the attestation of the person who described himself as the

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Lecturer, S.C.B. Medical College. He also stated in his representation that infact no loss casioned to the Government. and as such he could not be proceeded against. The Sr. Superintendent of Post Offices, Cuttack City Division passed the impugned order, copy at Annexure-3 holding that the applicant failed to discharge his duties properly as there was negligence on his part. Thereafter the applicant preferred an appeal which was rejected by the Director, Postal Services, Sambalpur Region, Vide his order at Annexure-5.

3. The counter filed by the respondents is just a reiteration of what was observed by the Respondent No.3 while passing the order at Annexure- 3 to the application. So, there is no necessity to set out the allegations in detail.

4. We have heard Mr. D.P.Dhalsamant, learned counsel for the applicant and Mr. A.K.Misra, learned Sr. Standing Counsel (CAT) for the respondents. Mr. Dhalsamant, learned counsel for the applicant has raised a contention that the charge was wholly misconceived as Rule 441(3) of the P & T. Manual Vol.VI. Part II did not cast any duty on the applicant in the matter of opening an account on transfer. We are unable to agree with Mr. Dhalsamant. Mr. Dhalsamant's contention is that Rule 441(3) speaks of the duties of the Ledger Clerk. No doubt that sub-rule starts with what a ⁹ Ledger Clerk is to do when the application for transfer is not accompanied by an advice for transfer.

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But a Deputy Postmaster, who is charged with supervision of the work of different Clerks attached to the Savings Bank Branch has to see that those clerks act according to Rules. If he fails, there is a failure to discharge his legitimate duties. From that sub-rule it would be found that Postmaster is to sign the application card after it is produced before him. In the instant case, the functions of the Postmaster were delegated to the Deputy Post Master. Therefore, this sub-rule has relevance to the extent that the applicant was to sign the application card, and this without doubt, was to be done by proper verification. That sub-rule further provides that if the signature does not agree, suitable remark has to be made in the ledger card stating that withdrawals should not be permitted in the account till the depositor produces proper identification. Application for withdrawal dated 20.1.1986 was the first withdrawal after the opening of the account on transfer. As would be evident from Annexure-A/1, and also from the averments made in the application and the counter, the transferring office i.e. Bhuban~~s~~war Post Office informed that specimen signature was not available and the payment could be made on personal identification. In view of this specific endorsement it was incumbent on the applicant to see that the person presenting the application was the real depositor.

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5. Mr. Dhalsamant has further contended that Rule 425A(a) provides that if the signature of a depositor on an application for withdrawal differs from the specimen

on record, identification may be necessary, therefore the charge that the provisions of rule 425 (A) of the P&T Manual Vol.VI Part II were not followed was without basis because it was never the case of the Department that there are any difference between the specimen signature and the signature appearing on the application for transfer or withdrawal. A rule has to be interpreted taking into account its spirit. Where the specimen signature is not available this rule can be pressed into service to charge a person ordering acceptance of the transfer or withdrawal with an obligation to get the signature identified, in that sense we do not find any illegality in mentioning Rule 425A in the Memorandum of charge.

6. Mr. Dhalsamanta has cited the case of Sudhir Kumar Das Vs. Union of India reported in 1988 (7) S.L.R. 615 to contend that there was really no cause for a disciplinary proceeding against the applicant. The facts of that case were entirely different where under the instructions of the Superintendent of Post Offices, the S.B. Clerk was signing both as clerk and sub-post. Master, so the Sub Post master had no occasion to detect the fraud. In the instant case the applicant having had the opportunity to check did ^{not} examine the application for transfer or the first application for withdrawal.

Mr. Dhalsamanta has sought reliance on A.I.R. 1979 S.C. 1022 (Union of India Vs. J. Ahmed) to

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contend that a disciplinary proceeding against the applicant was improper. The case cited related to an error of judgment, ^{where} it is a case of not exercising proper care to discharge a duty, hence the case cited is of no assistance.

7. For what has been stated above, it would be clear that the applicant did not stick to the rules or conform to the standard of supervision required of him. Therefore, it cannot be said that the charge was wholly misconceived. Learned Counsel for the applicant has very ^{been} vehemently contending that the findings of the disciplinary authority and the appellate authority that loss had occasioned to the Government are unsustainable. While elaborating this contention Mr. Dhalsamant has contended that no complaint was made by the depositor that he had not received the amount, ^{the} under two applications for withdrawal. In this regard it has been urged on behalf of the respondents that the Depositor Nagendranath Nayak stated that he had never applied for transferring the account nor had he filed any application for withdrawal. Copy of the statement is Annexure-R/4 to the counter. On referring to Annexure R/4 it would be found that the statement is by one Dr. Nagendranath Nayak dated 4.4.87. This statement of Dr. Nagendranath Nayak on referring to Annexure-3 would appear was not taken in the presence of the applicant. It is an elementary principle of natural

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justice that no statement taken behind the back of a person could be utilised against him to find him guilty of the delinquency. It is also pertinent to note that in the statement of imputation of misconduct or misbehaviour no reference had been made to the statement of Dr. Nagendranat Nayak. Therefore, the applicant was not made aware of the existence of such statement till he got the order of punishment on 13.1.1989. Under Clause (iii) to Rule 11 of the C.C.S.(C.C.A) Rules, 1965 a penalty of recovery from the pay of the Government servant can be imposed in case of any pecuniary loss caused by such Government servant by negligence or breach of orders. The only evidence in support of the alleged loss was the statement of Dr. Nagendra Nath Nayak and that not having been recorded in the presence of the applicant and there being no mention of it in the memorandum of charge, it would not be utilised against the applicant. If that is taken out of consideration, there is nothing else to say that any loss occasioned to the Government.

8. In the result Annexure 3 and 5 are quashed but the department would be at liberty to dispose of the case afresh after examining the depositor in the presence of the applicant. We are not inclined to allow the applicant wages for the period he did not actually work as his conduct was not free from blemish. No Costs.

N. A. Mohanramanai 21/5/96
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MEMBER (ADMINISTRATIVE)

A. C. S. Eapli 21.5.96
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MEMBER (JUDICIAL)