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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACKBENCH: CUTTACK.

Original Application No.22 of 1990.

Date of decision: December 12, 1990.

Prafulla Kumar Mishra ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ::: M/s.S.Kr.Mohanty,
S.P.Mohanty, Advocates.

For the respondents ... Mr.Aswini Kumar Misra,
Sr.Standing Counsel (CAT)

C O R A M :

THE HONOURABLE MR.B.R.PATEL, VICE-CHAIRMAN
A N D

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

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.

J U D G M E N T

K.P.ACHARYA, VICE-CHAIRMAN, In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the impugned order passed by the competent authority directing realisation of Rs.3050/- from the applicant.

2. Shortly stated, the case of the applicant is that while he was functioning as Sub-Postmaster in Kutra Post Office under Sundargarh Head Office, on 8.4.1989, the applicant had kept Rs.13050/- in the iron chest placed in a portion of the building which is used as the Post Office. On the same night at about 3.00 a.m. a burglary occurred in the room which

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was ~~of~~ the Post Office and the entire amount of Rs.13050/- was stolen by some miscri^aent. In his turn, the applicant made an oral report at the Police-station infor^ming the authorities regarding the fact of burglary having been committed in respect of the said amount and on the following day an F.I.R. was lodged at the said police-station, which was investigated into and and ultimately the police submitted a final report holding the case to be true but no clue could be found but regarding the authorship of the crime in question. Thereafter, a departmental proceeding was initiated against the applicant and ultimately the disciplinary authority found the applicant to be negligent in discharge of his duties and ordered realisation of the above mentioned amount of Rs.13050/- in 36 equal monthly instalments. Being aggrieved by this order the applicant has approached this Bench with the aforesaid prayer.

3. In their counter, the respondents maintained that it is due to seer negligence of the applicant, Government money was removed from the iron chest causing very heavy loss to the Government and since admittedly the applicant had received the Government money and had kept in the iron chest which was ultimately removed for his negligence, it is the applicant who should reimburse the Government and therefore, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr.S.Kr.Mohanty, learned counsel for the applicant and Mr.Aswini Kumar Misra, learned Senior Standing Counsel(CAT) for the respondents at a considerable length.

Mr.Mohanty vehemently urged before us that keeping in view the ^{good} past/record of the applicant as observed by his authorities and keeping in view that in the dead of the night the miscrients

removed the cash of Rs.13050/-, in no circumstance it could be said that the applicant was negligent in his duties. The applicant is required to keep government money in the iron chest and he did so. Therefore, Mr. Mohanty contended that it is beyond one's comprehension as to how the applicant could be held to be negligent especially in the past there has been no iota of any adverse ^{opinion} ~~recording~~ having been passed against the applicant making any allegations against him. It was further contended that an ordinary prudent man which he would have done, the applicant has acted in the very same manner by reporting the matter to the Police and ultimately the police found the case to be true but the police could not find out the author of the crime in question and therefore, a final report was submitted which should be made use of in favour of the applicant and therefore, the order for realisation of the amount in question should be quashed. On the other hand, it was submitted by Mr. Aswini Kumar Misra, that nobody else except the applicant could be the miscrient because of tale-telling circumstances existing in this case. The chain of circumstances conclusively point at the guilt of the applicant and according to Mr. Aswini Kumar Misra, learned Senior Standing Counsel (CAT), the department has taken a liberal view in ordering realisation of the amount instead of imposing the extreme penalty of dismissal or removal.

5. We have given our anxious consideration to the arguments advanced at the Bar. Mr. Mohanty invited our attention to the observations of superior authorities of the applicant stating about the past good conduct of the applicant. Not for a moment we propose to throw any aspersion on the applicant ~~or~~ relating

to the conduct and character of the applicant. But we cannot lose sight of the fact that the applicant has been charged for negligence of duties. It was undisputed before us that under the Rules the Postmaster does not have the power to retain cash of the Government for more than Rs.2000/-. In order to wriggle out from this position it was vehemently contended by Mr.Mohanty that some requisitions had been received by the applicant for payment of heavy amount to a particular Post Office and one requisition had also been received by the applicant for payment of heavy amount to one of the Savings Bank Account holder. Since the applicant ^{did} ~~had~~ not have sufficient cash at his disposal, these requisitions could not be complied with and therefore, the cash was retained to comply with the requisitions at a later date and more so Sunday intervened between 8.4.1989 and 10.4.1989. At the outset we may say that these facts have not been proved to the hilt or to our satisfaction by the applicant. Conceding for the sake of argument, ^{that} these facts are true, the relevant rule not having made any exception by giving any discretion to any postal employee to retain cash for more than Rs.2000/-, it cannot but be said that the applicant had violated the rules. Mr.Mohanty submitted that there is a rule vesting discretion on the postal employee to retain cash for more than Rs.2000/- in these peculiar facts and circumstances of the case but such a rule not having been brought to our notice we cannot but hold that there is no exception to general rule disentitling the postal employee to retain cash for more than Rs.2000/-. However much the applicant may have a past good record we are concerned with

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the allegations levelled against the applicant on a particular date i.e.8.4.1989. Breach of rules also amounts to negligence. In view of these facts and circumstances, we do not feel it necessary to go into other facts of the case arising against the petitioner when it is successfully established ^{regarding} the negligence of duty on the part of the applicant and therefore without least hesitation we find that the charge has been established and rightly the competent authority ordered realisation of the amount from the applicant. Such order is hereby confirmed.

6. Mr.Mohanty further submitted that the competent authority has ordered realisation of the amount by 36 instalments which would be very hard punishment on the applicant because he has to pay each month approximately Rs.360/-.Therefore, Mr.Mohanty prayed that the number of instalments be raised. This was also objected to by Mr.Aswini Kumar Misra. Overruling the objection of Mr.Misra we think there is substantial force in the contention of Mr.Mohanty and therefore we would direct that the amount of Rs.13050/-be realised from the applicant in 50(fifty) equal monthly instalments and this will take effect from the date of receipt of a copy of this judgment by the respondents.

7. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

[Signature]
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Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
December 12,1990/Sarangi.



[Signature]
.....12/12/90
Vice-Chairman