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ORIGINAL APPLICATIONS NO: 305 of 1990 AND 255 OF 1990.

Date of decision : 8th November, 1990.

Ghosara Nayak

Applicant

Versus

Union of India and others

## Respondents

A N D

Upendra Nath Behera

Applicant

Versus

Union of India and others

## Respondents

For the applicants

Mr. D.P.Dhalsamant, Advocate

## For the Respondents

Mr. A.K.Misra, Standing Counsel,  
( C.A.T.)

C O R A M:

THE HON'BLE MR. B.R.PATEL, VICE-CHAIRMAN

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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J U D G M E N T

N.SENGUPTA, MEMBER (J), As common questions of law and facts arise in both the cases, a common judgment is being delivered.

2. The common facts of both the cases are that on 21.12.1985 the applicants in both the cases were working in Chandinichowk, H.P.O. On that day Bhubaneswar S.B. A/C.No. 559938 was presented to the applicant in O.A. No.305/90 who was then Postal Assistant of Enquiry counter, by a person unknown to him, for transfer. The holder of the Pass Book Nagendra Nath Nayak was also not known to him and the said Nagendra did not sign the application for transfer in his presence. After receiving the transfer application the applicant in O.A. 305/90 put his signature in the place meant for countersignature by the Postmaster and sent the application and the Pass Book by registered Post to Bhubaneswar and handed over the Registration receipt to the person presenting the application. After that, S.B. A/c No.446846 was opened in Chandinichowk H.P.O. by the applicant in O.A. 255/90 who was then the Postal Assistant of the S.B.Counter. Applications for withdrawal of Rs. 15000/- on 20.1.1986 and for Rs. 1015.05 on 27.1.1986 were presented in the Chandinichowk H.P.O; those applications were purported to have been signed by the depositor Nagendranath Nayak. The applications for withdrawals were processed by the two applicants and

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the then Deputy Postmaster. Later the Postal Department found that the withdrawals were fraudulent. So, Disciplinary Proceedings were started against the persons through whom the applications for transfer and withdrawals passed and the Disciplinary Authority finding the applicants guilty of the charges levelled against them passed the punishment of recovery of Rs. 3415 from the pay of the applicant in O.A. 255/90 and Rs. 5000/- from the pay of the applicant in O.A. 305/90 to make good the loss caused to the Central Government. These orders of punishment are impugned in the applications under consideration. On various grounds including a plea that no loss was caused to the Government.

3. The case of the Respondents, put in a nut-shell, is that both the applicants failed in their duty to make proper verification and deviated from the rules they were required to follow.

4. We have heard Mr. D.P. Dhalsamanta, learned Counsel for the applicant and Mr. A.K. Misra learned Standing Counsel (CAT) for the Respondents. Mr. Dhalsamant has referred to the decision of this Tribunal<sup>in</sup> O.A. 322 of 1989 which was filed by the then Deputy Postmaster of Chandinichowk who also faced a Disciplinary Proceeding for the same withdrawals. In that case this Tribunal found that a punishment of recovery of amount can be inflicted only on proof of loss having been caused to the Government and that as during the enquiry no

*Mr. T. S. S. S.*

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evidence of any loss to have been caused to the Government was adduced, the punishment was not sustainable. In these two cases also the depositor was <sup>- not -</sup> examined during the enquiry and no evidence of the Government having had to pay any extra amount was adduced, therefore, there is really no distinguishing feature. The contentions raised on behalf of the applicant of that case, have again been raised in these cases. In the judgment delivered in OA 322 of 1989 reference to the relevant rules had been made and it was shown how there was a failure to strictly follow the rules; the reasons mentioned therein equally apply to the facts of the cases now under consideration. In view of what has been stated above, we would quash the impugned orders of punishment but this would not debar the department to pass such order ~~it~~ feels necessary after examining the depositor in the presence of the applicants.

5. The cases are disposed of accordingly. No costs.

*K. Mohanty* 8/11/90  
.....  
VICE-CHAIRMAN



*M. S. Enph* 8/11/90  
.....  
MEMBER (JUDICIAL)

Central Administrative Tribunal,  
Cuttack Bench/K. Mohanty.