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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 541 OF 1992.

Cuttack this the 15th day of January, 1999.

Upendranath Behera. Applicant.

- Versus -

Union of India & Others. Respondents.

(FOR INSTRUCTIONS)

1. whether it be referred to the reporters or not? *Yes*
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

15-1-99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 541 OF 1992.

CUTTACK, this the 15th day of January, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

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UPENDRA NATH BEHERA,
Postal Assistant,
Mangalabag S.O.,
CUTTACK-753 001.

APPLICANT.

By legal practitioner : Mr. D. P. Dhal Samant, Advocate.

-VERSUS-

1. Union of India represented through
the Chief Postmaster General,
Orissa Circle, Bhubaneswar-1.

2. Director of Postal Services,
Office of the Chief Postmaster
General, Orissa Circle, Bhubaneswar-1.

3. Senior Superintendent of Post Offices,
Cuttack City Division, Cuttack-1. ...

RESPONDENTS.

By legal Practitioner : Mr. Ashok Mishra, Standing Counsel
(Central).

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O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :

Applicant, Upendra Nath Behera, a Postal Assistant
prays for quashing of the recovery order of Rs. 3,415/- from
his pay in 30 instalments imposed by Respondent No. 3 in a
disciplinary proceeding (vide Annexure-3, dated 30-09-1991).
He also prayed for refund of the amount already recovered.

Facts not in controversy are as follows:

On 13-1-1986, the applicant Upendra Nath Behera, was serving as Postal Assistant at Savings Bank Counter of Chandinichowk Head Post Office, Cuttack. SB A/c. No. 559938, received on transfer, from Bhubaneswar GPO was re-numbered as SB A/c. No. 446846 on 31-12-1985. On 13-1-86, one person signing as Ashok Kumar Nayak taken receipt of this SB Pass Book on production of receipt issued to him by Chandinichowk Head Post Office, though the depositor was Shri Nagendranath Nayak. This, ultimately resulted in fraudulent withdrawal of Rs. 15,000/- on 20-1-1986 and Rs. 1,015/- on 27-1-1986 from the said SB Account. On both these dates, the withdrawal were processed by the Applicant.

This SB Account was originally opened at Bhubaneswar GPO in the name of Shri Nagendra Nath Nayak. On 21-12-1985 SB Pass Book was presented at Chandinichowk Head Post Office for transfer to Chandinichowk Head Office to Bhubaneswar GPO. Postal Assistant, Ghosal Nayak, processed it and Bhubaneswar GPO was addressed by Registered Post, about the transfer of the Pass Book and the Registered receipt was handed over to the person, presented the pass Book ~~in~~ the counter.

Disciplinary proceedings were initiated against the applicant, Ghosal Nayak and the Deputy Postmaster. Ultimately, Disciplinary Authority i.e. Respondent No. 3, ordered recovery of amount of Rs. 3,415/- from the applicant. As against other two persons, also recoveries were ordered. Applicant, challenged that order in Original Application No. 255/1990 and Ghosal Nayak in OA No. 305 of 1990 before

this Tribunal. This Tribunal by common judgment dated 08-11-1990, quashed the punishment orders in the absence of proof of loss having been caused to the Government and in the absence of depositor's examination. At the same time, the Tribunal observed that this Judgment would not be bar on the department to pass such orders, if felt necessary, after examining the depositor in presence of applicants. The said judgment of this Tribunal is under Annexure-1.

The grievance of the Applicant is that though the Tribunal quashed the earlier proceedings, the disciplinary authority issued the same charges on 25.2.1991 and passed impugned order under Annexure-3 dated 30-9-1991, even though there was no findings regarding the loss to the Department. In the enquiry, conducted by the Authorities, examined the depositor in presence of the applicant.

2. The stand of the Department is that the SB Account was opened at GPO, Bhubaneswar by Nagendranath Nayak, Deputy Director of Stores in the Office of the Director of Medical Education and Training, Bhubaneswar. After examination of the depositor i.e. Shri Nayak, who by then retired from Govt. service, denied to have submitted any SB Pass book at Chandanichowk Head Office, requesting for transfer from Bhubaneswar. The Department also sought confirmation from the Director of Medical Education and Training, Bhubaneswar, ^{who} in letter dated 15-2-1991 (Annexure-R/1.).

intimated that the Original Pass Book was verymuch available in the office of the Directorate and none from the directorate applied for its transfer or for withdrawal at any time. Hence, it can not be said that there is no pecuniary loss to the Department.

3. The main ground alleged by the applicant is that the same charge, which was issued earlier and quashed by the Tribunal, has been issued to him for second time. However, he has not annexed copies of these charges issued to him on two occasions but the charge issued to him on 2nd occasion i.e. on 25-2-1991 finds quoted in extenso in order dated 30-9-91 of the Disciplinary Authority under Annexure-3. There is clear mentioned in the charge that the Department sustains a loss of Rs.16,015.05 Hence the contention of the applicant. Hence the contention of the applicant that the very same charge without mention of the loss was served on him on the second occasion, can not be accepted.

4. Applicant has not pointed out any other procedural irregularity or illegality in conducting the proceeding. Facts mentioned in the charge and relied on by the Deptt. have not been denied.

Admitted fact is that the Original pass book was opened by the Directorate of Medical Education and Training in the name of Nagendranath Nayak, who was by then attached to the Directorate. By the time of this fraudulent transfer took place, Nagendranath Nayak already retired

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from Government service. It is his positive stand before the Inquiring Authority that he did not present any pass book at Chandinichowk Head Post Office requesting for transfer of Account, nor did he withdrew the amount. This statement was given by him in presence of the applicant who did not contradict the same. It is also not in dispute that the original pass book given to the Directorate of Medical Education and Training, by Bhubaneswar GPO is still with the Directorate and none from that office had withdrawn the amount from Chandinichowk Post Office. Under such circumstances, it can not be said that there is no pecuniary loss to the Postal Department because the Directorate of Medical Education, if not already applied for withdrawal of the amount, can, at any time approach the Postal Authorities for withdrawal the amount in which case, the Postal Authorities, can not but disburse the amount which in turn necessarily incur pecuniary loss to the Postal Department because of the double payment. Hence, it can not be said that there is no pecuniary loss to the Postal Department. The loss is writ alege at the face of the postal Authority. We, therefore, do not see any irregularity or illegality in the impugned order under Annexure-3.

5. In the result the Original Application is dismissed. No costs.

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The stay order dated 29.10.1992 against
realisation of the amount passed in this OA stands
vacated.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

G. Narasimham
(G. NARASIMHAM)
MEMBER(JUDICIAL)

KNM/CM.