

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 262 OF 1993

Cuttack, this the 7th day of September, 1999

Krushna Chandra Mallik Applicant

Vrs.

Union of India and 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*

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
7-9-99

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CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Krushna Chandra Mallik, Postal Assistant, Office of the
Superintendent of Post Offices, Cuttack North Division,
Cuttack-753 001..... Applicant

Advocate for applicant - Mr.D.P.Dhalsamant

Vrs.

1. Union of India, represented through the Chief Post
Master General, Orissa Circle, Bhubaneswar-751 001.
2. Director of Postal Services, Office of the Chief Post
Master General, Orissa Circle, Bhubaneswar-751 001.
3. Superintendent of Post Offices, Cuttack North
Division, Cuttack-753 001.... Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for quashing the order of recovery at Annexure-2
passed by the disciplinary authority and the order of the
appellate authority at Annexure-4 rejecting the appeal of
the applicant. The second prayer is for exoneration of
the applicant from the charge and for quashing the
chargesheet. The third prayer is that the amount already
recovered should be ordered to be refunded to the
petitioner.

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2. The admitted case of the parties is that a series of misappropriations on account of fraud were committed by J.K.Mohapatra, EDSPM, Dala EDSO, during 1987 and 1988. The applicant was working as Postal Assistant, Jajpur Head Office and was dealing with ledger work of Dala EDSO from 16.6.1987 to 18.7.1987. In connection with certain alleged lapses of the applicant a minor penalty proceeding was initiated against him in memo at Annexure-1 and after considering the explanation of the applicant the disciplinary authority imposed the punishment of recovery of a sum of Rs.4000/- from the pay of the applicant in ten monthly instalments. The petitioner's appeal to the appellate authority was also rejected. In the context of the above facts the applicant has come up in this petition with the prayers referred to earlier.

3. The respondents have filed counter opposing the prayers of the applicant and have stated that the lapses have been rightly held proved against the applicant and considering the lapses and the resultant loss of Rs.91,000/- and odd to the Department, punishment of recovery of Rs.4000/- is lenient. On the above grounds the respondents have opposed the prayers of the applicant.

4. We have heard Shri D.P.Dhalsamant, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have also perused the records.

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5. It has been submitted by the learned counsel for the petitioner that the cause of loss is still under investigation. The accused EDSPM has been apprehended and is in custody. At this stage when the investigation is yet to be completed, fixing of

responsibility of the applicant for the alleged loss is unwarranted. We have considered the above submission of the learned counsel for the petitioner carefully. The lapses alleged against the applicant are not that he has committed the fraud or misappropriation. The lapses relate to his not taking action in accordance with the rules with regard to the accounts of Dala EDSO when the applicant was working as Ledger Clerk No.2 and was dealing with SB work in the Head Post Office relating to Dala EDSO. The applicant has not been charged with commission of fraud or misappropriation. The liability of the EDSPM for committing fraud and misappropriation is in no way connected with the alleged lapses of the applicant. This contention is therefore held to be without any merit and is rejected.

6. It is further submitted by the learned counsel for the petitioner that according to Rule 106 of P&T Manual, Vol.III, copy of which has been enclosed at Annexure-5, in proceedings relating to recovery of pecuniary loss caused to Government by negligence or breach of orders, penalty of recovery can be imposed only when it is established that the act of commission or omission of the concerned Government servant has caused the loss. It is submitted that in this case there is no material that any act of negligence or breach of rules on the part of the applicant has caused the loss and therefore the order of recovery is not sustainable. It has also been submitted that just because of some minor clerical mistakes it could not be held that the action or inaction of the applicant, as alleged in the statement of imputation, has resulted in the loss and the order of recovery is liable to be struck down on this count as well. The next contention is that the charges as also the

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impugned order of the disciplinary authority do not indicate how it is alleged/held that but for the lapses of the applicant enquiry could have been made and the frauds committed could have been avoided. We have mentioned these three submissions of the learned counsel for the petitioner together because consideration of these submissions would require reference to the charges and the findings of the disciplinary authority. At this stage it is necessary to note that the applicant has not enclosed a copy of his explanation denying the charges and therefore it is not possible to refer to the explanation of the applicant except to the extent these have been mentioned in the order of the disciplinary authority.

7. In the statement of imputation three charges have been made. The first charge is that while the applicant was working as Ledger Clerk-II in Jajpur Head Office and was dealing with the SB work of H.O. relating to Dala EDSO. The EDSPM, Dala, did not account for withdrawal of Rs.300/- on 18.6.1987 and deposit of Rs.427/- on 17.7.1987 in SB Account No. 345521 standing in the name of Sangram Keshari Bhanja. Subsequent to the withdrawal dated 18.6.1987, there were withdrawals of Rs.250/- on 18.6.1987 and Rs.50/- on 19.6.1987 and these withdrawals were posted to Head Office Ledger Card by the applicant. At that time the annual interest for 1986-87 was not posted in the concerned Pass Book Account. As per Rule 452 (5) of P&T Manual, Vol.VI, Part-II, if any transaction takes place in the Pass Book after 31st March and the Pass Book is not received for addition of interest the facts should be noted in the Special Error Book and the Pass Book should be called for. The applicant while posting the above withdrawals dated

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18.6.1987 and 19.6.1987 in the Head Office Ledger Card did not ensure the entry in the Special Error Book in respect of this Account and also did not take action to call for the Pass Book. It is alleged that had the Pass Book been called for, the short-accounting and non-accounting of these two withdrawals would have been detected in June 1987 and further frauds committed by the EDSPM, Dala, beyond June 1987 could have been prevented. The second charge is that a list of Pass Books standing at Branch Offices and at Single-handed Sub-Post Offices which were not received in the Head Office for addition of interest till 30th June was required to be prepared by the Head Office by 1st of July and sent to the concerned Sub-Divisional Inspector (Postal) for verification of balances. This procedure is intended for the early detection of SB fraud at the ED offices and Single-handed Sub-Post Offices. Though the applicant joined as Ledger Clerk-II in Jajpur Head Office on 16.6.1987, he did not take any action for preparation of the aforesaid list and therefore the provision for verification of balances of Pass Books which were not received for addition of interest was frustrated and the fraud committed by EDSPM, Dala, remained undetected till 22.9.1987. The third charge is that while the applicant was functioning as Ledger Clerk-II he sanctioned a withdrawal of Rs.236.60 on 29.6.1987 from Five-year T.D.Account No.116013 in the name of Premananda Mohanty towards payment of first instalment of interest. In the application for withdrawal the balance of the Pass Book after the withdrawal has been written as Rs.3000/- by the depositor, but the same was corrected to Rs.2000/- by the EDSPM subsequently. Again there was an entry of deposit of Rs.1000/- made by EDSPM in the Pass Book supported by dated initial of the EDSPM and the balance had been struck as Rs.3000/-. The entry of deposit of Rs.1000/ -on

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27.6.1987 in the TD Account Pass Book had not been posted in the Head Office Ledger Card. According to Rule 425 of P&T Manual, Vol.VI, Part-II the Ledger Clerk is required to examine SB-7 as well as TD Pass Book and he should ensure that SB-7 has been properly filled in before according sanction for withdrawal. But the applicant did not scrutinise the TD Pass Book nor the application form for withdrawal properly and did not raise any objection as to non-accounting of Rs.1000/- on 27.6.1987 entered in the Pass Book. He also did not raise any objection with regard to the correction in the balance made by the EDSPM. These entries in the Pass Book were sufficient to suspect the transactions dated 27.6.1987 and 29.6.1987 and further action as per rules should have been taken, but the applicant did not do so for which the fraudulent action of the EDSPM, Dala, remained undetected till 22.9.1987. It is further stated that the EDSPM not only did not account for the deposit of Rs.1000/- in this TD Account on 27.6.1987 but he defrauded a total sum of Rs.99,102.30 from various SB/RD/TD Accounts and NSCs causing pecuniary loss to the Department. It is alleged that had the applicant acted properly as per Rules 425 and 404(4) of P&T Manual, Vol.VI, Part-II, then not only the nonaccounting of Rs.1000/- would have been detected but further fraud by EDSPM could have been avoided.

8. Before going into the explanation of the applicant and the finding of the disciplinary authority, it has to be noted that in disciplinary proceedings the Tribunal does not act as an appellate authority and cannot substitute its finding and judgment in place of the finding and decision arrived at by the disciplinary authority. The Tribunal can interfere only when findings are based on no evidence or are patently perverse. The

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further examination of these three charges is being done keeping in mind the aforesaid well settled position of law.

9. With regard to the first charge the applicant has stated that due to his inexperience of work in the SB Branch he had to depend upon the instructions of the Supervisor and the Supervisor had not instructed him to maintain the Special Error Book not only in respect of SB Account No.345521 but also in respect of SB Accounts in other Sub-Post Offices. With regard to charge no.2 the applicant has stated that he was not allowed to complete his tenure of four years in the SB Branch as required under the rules. He worked in the Branch only for a month from 16.6.1987 to 18.7.1987. Had he continued there he would have got scope to cope up with the work of SB Branch. He has also stated that none of the Supervisors had instructed him to prepare the list and no such list was ever prepared previously. As regards charge no.3 the applicant has stated that there was no entry of deposit of Rs.1000/- dated 27.6.1987 in the TD Pass Book Account No.116013 when the Pass Book along with SB-7 was presented to him for sanction of withdrawal on 29.6.1987. There was no correction in the Pass Book as well as in SB-7 when he sanctioned the withdrawal. The balance in the Pass Book was correctly struck in the SB-7 as per entry in the Pass Book. The applicant has stated that these corrections were subsequently made by the EDSPM, Dala, after the sanction was accorded and therefore he had no occasion to detect the discrepancy. The disciplinary authority in his order has rejected the explanation of the applicant with regard to all the three charges. With regard to the first charge he has held that the applicant has been adequately trained to work in the Post Office and he should have been aware of the rules

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and procedure incorporated in the P&T Manual and therefore his plea that he was inexperienced has not been accepted. It has also been held that Supervisors are not supposed to instruct the Postal Assistants on each and every item of work to be done by the Postal Assistant. With regard to the second charge the disciplinary authority has stated that the tenure is six months and not four years, as has been stated by the applicant. During his incumbency he should not have neglected in his duties on the plea of inexperience. It is further held that blaming the Supervisors will not absolve the applicant of his lapses. As regards the third charge the disciplinary authority pointed out in his order that a close look at the concerned SB-7 would have revealed to the applicant that the depositor has clearly noted the balance as Rs.3000/- obviously taking into account his previous deposit of Rs.1000/- on 27.6.1987 and the EDSPM had subsequently corrected the balance to Rs.2000/-. Had the applicant closely scrutinised the Pass Book as also SB-7, then he could have easily found the mistake. We have considered the charges, the explanation of the applicant in so far as it appears from the order of the disciplinary authority, and the findings of the disciplinary authority. As regards the first charge the applicant has in a way admitted his lapses and has ascribed to his inexperience and absence of instruction from the Supervisor. The disciplinary authority has not accepted the explanation of the applicant and it cannot be said that the finding of the disciplinary authority with regard to this charge is based on no evidence. But at the same time it has to be noted that the applicant worked as Ledger Clerk in charge of SB accounts for little over than a month. The EDSPM had committed a

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series of frauds in the SB accounts for over a number of years and SB Pass Books in other cases were also not called for by persons who were in charge of the work of the applicant before or after the applicant and therefore even though these lapses of the applicant in not making an entry in the Special Error Book with regard to SB Account No.345521 and not calling for the Pass Book have been proved, it cannot be said that because of this alone the EDSPM continued to indulge in fraud and misappropriation. With regard to the second charge, the charge itself shows that a list of Pass Books which had not been received in the Head Office till 30.6.1987 was required to be prepared by the Head Office on 1st July 1987. The applicant was in charge of the ledger work till 18.7.1987 and therefore his lapse in this regard is for not preparing the list of wanting Pass Books for these 18 days. The person who remained in charge of the work of the applicant after 18.7.1987 is also responsible for not calling for the Pass Books. So far as the third charge is concerned, the disciplinary authority has not accepted the explanation of the applicant and to our mind rightly. Even granting the applicant's explanation that correction in this account was made by the EDSPM after the sanction of withdrawal, the fact remains that there was a deposit of Rs.1000/- on 27.6.1987 and this deposit had not been posted in the Head Office Ledger Card. The applicant should have noted this aspect and acted in accordance with the instructions. The finding of the disciplinary authority in respect of this charge cannot therefore be held to be based on no evidence. In view of our discussions above, we hold that the contention of the applicant that there is no negligence on his part resulting in loss to the Government is without any merit and is rejected.

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10. Lastly it has been submitted by the learned counsel for the petitioner that before ordering recovery of any amount from a Government employee, the precise quantum of the loss which has occurred because of negligence or violation of rules by the charged Government official has to be determined and as this has not been done in this case and a lump sum amount has been ordered to be recovered, the order of recovery is bad in law. We have already referred to the relevant rule in this regard which has been enclosed at Annexure-5. It has to be noted in this connection that here the applicant has not been charged with commission of misappropriation or fraud. He has been charged only with contributory negligence and in a matter of contributory negligence necessarily no precise determination of the loss is possible. But even then the fact remains that the applicant worked in the Branch for just about a month and even taking the lapses with which he has been charged, to have been proved, it is ^{not} clear from the order of the disciplinary authority how ^{^ J. Vans} the amount of Rs.4000/- has been arrived at. Under these circumstances, we would have normally quashed the order of recovery and remitted back the matter to the disciplinary authority to determine the loss caused due to the negligence of the applicant with some amount of logical proximation and impose a fresh penalty on the applicant. But considering the fact that the incident relates to the year 1987 and more than ten years have passed in the meantime, we think it would be in the ends of justice to reduce the amount of recovery to a lumpsum amount of Rs.1000/-. It is so ordered. If any amount beyond Rs.1000/- has been recovered from the

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applicant in the meantime, then the same should be returned to him within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order.

11. In the result, therefore, the Original Application is disposed of in terms of the observation and direction given above, but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
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