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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.247 OF 1995
CUTTACK THIS THE 25th DAY OF June 2001

Trilochan Senapati Applicant(s)

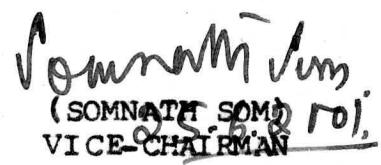
- v e r s u s -

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 Central Administrative Tribunal or not? No.


(G. NARASIMHAM)
MEMBER (J)


(SOMNATH SOM)
25/6/01
VICE-CHAIRMAN

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CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.247 OF 1995
CUTTACK THIS THE 25th DAY OF June 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM,
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER (J)

1. Sri Trilochan Senapati, aged 56 years
son of Sri Krushna Chandra Senapati,
Deputy Post Master, Cuttack G.P.O.,
Cuttack.

..... Applicant

By the Advocates

Mr. S.K.Mohanty
S.P.Mohanty

- V e r s u s -

1. Union of India, represented by its
Secretary Department of Posts,
Dak Bhawan, New Delhi.

2. Senior Superintendent of Post Offices
Cuttack City Division, Cuttack-753 001.

3. Director of Postal Services, Office of
the Chief Post Master General, Orissa
Circle, Bhubaneswar-751 001.

4. Member(P) Postal Services Board,
Government of India, Ministry of
Communication, (Department of Posts)
Dak Bhawan, Sansad Marg,
New Delhi-110 001.

..... Respondents

By the Advocates

Mr. A.K.Bose
S.S.C

.....

ORDER

MR. SOMNATH SOM: VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order of punishment of recovery dated 21.11.1991 at Annexure-8 ordering recovery of Rs.13,200/- the order dated 21.7.1992 at Annexure-9/1 of the Appellate Authority and order dated 31.5.1994 at Annexure-1 of the Revisional Authority rejecting his appeal and revision. The last prayer is for a direction to refund Rs.13,200/- already recovered from the applicant.

2. The case of applicant is that while he was working as A.P.M. (Accounts) in Bhubaneswar G.P.O., a minor penalty charge sheet was issued against him in Memo dated 20.5.1991 (Annexure-1). There was only one article of charge in which it was stated that a sanction memo dated 7.1.1988 for Rs.13,200/- purportedly issued under the signature of Shri J.C. Meher, APMG (SD), in the Office of the CPMG, Orissa, Bhubaneswar for payment of Rs.13,200/- to M/s Lingaraj Enterprises, Bhubaneswar-2 for supply of two battery invertors, was put up to the applicant by Shri Jagannath Dash, the then Bill Assistant of Accounts Branch, Bhubaneswar GPO alongwith duly prepared ACG-17 and register. The Bill of Lingaraj Enterprises for Rs.13,200/- was not enclosed to the sanction memo nor was any sanction of such bill enclosed. It is alleged that the applicant checked and verified the sanction memo and ACG-17 and put his initial and passed to Sr. Postmaster, Bhubaneswar GPO for giving his pay orders. Accordingly, payment was ordered and the amount was paid on

-3-

21.1.1988. Subsequently it was found that the sanction Memo was a fake one. It was not issued by the Circle Officer under the signature of Shri J.C.Meher, APMG (SD). It was also found that the amount was also paid to a fake person. It was not paid to Shri D.Behera of M/s Lingaraj Enterpriser, the actual payee. Applicant was charged with negligence of duty in performing his duties in so far as he did not raise any doubt about the genuineness of the fake sanction memo produced. Because of this, Govt. suffered loss of Rs.13,200/- It was further alleged that applicant knew fully well that this Memo was not received through proper channel and was not issued in conformity with Rule 357-A of P&T, F.H.B. Vol. I. He also did not examine the matter properly as required under Rule-40A. In the context of the above, he was charged with failure to maintain devotion to duty. Applicant was asked to submit his explanation within ten days of receipt of the Memo. Applicant in his letter dated 27.5.1991 at Annexure-2, asked for perusal and taking extract of nine documents. Respondent No.2 in his letter dated 13.6.1991 at Annexure-3 permitted the applicant to peruse the documents mentioned against Sl. Nos.1,2,3 and 4 on 27.6.1991 in the office of the Sr. Supdt. of Post Offices, Bhubaneswar and held that the other documents are not relevant. Applicant has stated that he perused only two documents out of the above four and requested Respondent No.2 in his letter dt. 28.6.1991 at Annexure-4 to make available documents against Sl. Nos.3 and 4 for his perusal for preparing the defence. Applicant has further stated that on perusal of document no.2 he found that the signature of Shri J.C.Meher was genuine signature and therefore in letter dated 28.9.1991, annexure-5, he sought for permission to ^{opinion of} peruse the handwriting expert. In letter dated 8.11.1991 he was permitted to attend the building section of the Office of the CPMG.

Bhubaneswar on 12.11.1991 for perusal of the records. He was also directed to submit his statement of defence by 15.11.1991.

Applicant has stated that on 12.11.1991, he perused only a part of the documents and to that extent a Memo was jointly signed by the applicant and the Assistant Director, Building, which is at Annexure-7. Applicant has stated that he genuinely believed that further time will be allowed to him to peruse the documents and after which he will submit his explanation. But without waiting for his explanation in the impugned order dated 29.11.1991, at Annexure-8, he was found guilty of the lapse and it was ordered that the amount of Rs.13,200/- would be recovered from his monthly salary in 36 equal monthly instalments at Rs.367/- . The appeal filed by applicant at Annexure-9 was rejected in order dated 21.7.1992 by the Appellate Authority. His revision petition at Annexure-10 addressed to Member (Personnel) P&T Board was rejected in order dated 31.5.1994 at Annexure-11. In the context of the above facts, the applicant has come up in this Original Application with the prayers referred to earlier.

3. Respondents in their counter have opposed the prayer of the applicant, on the various grounds. They have also enclosed xerox copy of rule 357-A and Rule 40-A. It is not necessary to refer to the averments made by Respondents in their counter because these will be referred to while considering the submissions made by learned counsel for both sides.

4. We have heard Mr. S.P. Mohanty, learned counsel for the applicant and Shri A.K. Bose, learned Senior Standing Counsel appearing for the Respondents and have also perused the records.

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5. From the above recital of averments made by the applicant it is clear that the first ground of challenge of applicant is that he was not provided with opportunity to peruse the documents asked for and even the documents of which perusal was allowed were not shown to him. For considering this petition it is necessary to refer to Annexure-2 in which the applicant has asked for opportunity to peruse the nine documents. On a perusal of Annexure-2 it is seen that five documents which were not considered relevant by Res. No. 2 are not at all relevant for the purpose of submission of the explanation by the applicant. For example as against sl. no. 5 applicant has stated that Circle Office habitually issued sanction memo without the bills being enclosed and therefore, he has asked for perusal of the file in the matter of payments concerning P&T dispensary for supply of medicines from January, 1988 to May, 1988 and the Circle Office file No. Bldg. / 2-18/Sub for the month of March, 1988 to May, 1988. Obviously file relating to supply of medicines to P&T dispensary is not relevant for the purpose of the applicant submitting his defence in the instant case. If the applicant's stand was that the Circle office generally issues sanction memos without the bills then it was open for the applicant to prove this through similar other sanction memos received in Bhubaneswar GPO or from some other offices. Document against Sl. No. 6 is the contingent register of the Circle office including the sanction memo for the month of January, 1988 and September, 1987. Reference to September, 1987 was not relevant because the alleged fake sanction memo was dated 7.1.1988 and therefore, the contingent register of the circle Office for September, 1987 is obviously no way relevant. Moreover, the contingent register of the circle office

would simply reflect the expenditure against the sanction of contingency and this is no way relevant to the case of the applicant. Document mentioned against Sl.Nos.7,8 and 9 are statements and reports of different persons and authorities with regard to the alleged fraud and consequent loss to Govt. It is not the case of applicant that no fraud was committed and that amount was rightly paid and to the right party and therefore, these statements are also not relevant. Above all, the applicant in his present petition has not mentioned a word as to how these five documents are essential for the purpose of submitting his explanation. As regards the four documents perusal of which was allowed, applicant has stated that on the appointed date he only perused the documents 1 and 2 but not the documents 3 and 4 and mentioning this the applicant submitted a representation dated 28.6.1991. Disciplinary Authority in his order at Annexure-8 has stated that no such representation dated 28.6.1991 was submitted by applicant. He has stated that on 30.7.1991 the applicant filed a representation to refer to his earlier representation dated 28.6.1991. With reference to this representation dated 30.7.91 the order dated 8.11.1991 at Annexure-6 was issued asking him to peruse the documents. From this it is clear that the applicant has been given adequate opportunity to peruse the documents which was allowed and it can not be said that there has been any denial of reasonable opportunity on this ground. Second point urged by the learned counsel for the applicant is that a detailed enquiry should have been held in the charge before holding him responsible and issuing the punishment. We are not inclined to accept this contention because minor penalty proceedings were initiated against the applicant ~~and~~ in such a proceedings it is

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open for the Disciplinary Authority to consider the explanation and pass necessary orders. The delinquent officer in such a case has a right to ask for a detailed enquiry and in case the Disciplinary Authority even after receipt of such a prayer decides not to hold a detailed enquiry then he is required to record his reasons in not holding a detailed enquiry.

In the instant case, the applicant has not submitted his explanation at all. He has also not submitted any prayer for holding a detailed enquiry and therefore, he can not claim that automatically a detailed enquiry as is required to be held in case of major penalty proceeding, should have been held. The next point urged by the counsel for the applicant is that the applicant is not the Drawing and Disbursing Officer and his action in the matter is not violative of the relevant Departmental Rules. For considering this contention it is necessary to refer to these two Rules which have been enclosed by the Respondents alongwith their counter. It is not necessary to quote the entire Rule 357-A. It is only necessary to note that under sub rule-(2), it is provided that whenever under the provisions of clause (1) of this rule, a contingent bill is endorsed to a private party, the Drawing Officer shall, before signing the bill obtain the specimen signature of the party on the body of the bill which he shall attest before signing the bill. The Drawing Officer, shall simultaneously issue an advice direct (not through the endorsee) to the postmaster or the Disbursing Officer concerned giving full particulars of the bill. The bill must at once be entered in the Contingent Register and a note made to the effect under the initials of the Drawing Officer that the amount has been drawn. It is further provided that where the endorsee wishes to collect payment on the bill through a messenger (other than a banker), the messenger must produce a letter of

authority in Form T.R.-72 which may be obtained from the Drawing Officer concerned. It is specifically provided that an endorsement on a contingent bill by a Drawing officer in favour of a messenger is not an endorsement for the purpose of this rule. Note 2 below the Rule is important. It is provided that in the event of a contingent bill having been endorsed to a private party under the provisions of sub-rule -1 of this rule and being presented before the relative advice is received from the drawing officer, the postmaster or the disbursing officer shall not make payment of the bill till the advice is actually received and verified. Before considering the implication of the above Rule with reference to the facts of this case, it would be advantageous to note the provision of Rule 40-A under which it provided that the bill or other document presented as a claim for money will be received and examined by the Accountant, and then laid before the Postmaster, who if the claim be admissible, the authority good, the signature and counter-signature where necessary genuine and in order, and the receipt a legal quittance, will sign the order for payment at foot of the bill etc. taking care to adopt the precautions prescribed in Rule 37(c) of Financial Hand Book, Volume-I. It is further provided that after payment order has been signed by the Postmaster on the bill or other document, it should be passed on to the Treasurer who will make the payment and indicate on the bill mode of payment i.e. whether in cash, by cheque or by Bank draft/Government Drafts, enter it in his cash book deface the stamp, if any, with the date stamp and stamp it with the Cash paid stamp. In the instant case, the admitted

position is that the sanction order which was produced was a fake one. In this Original Application also the applicant has not taken the stand that a genuine sanction order was issued by the office of the CPMG under the signature of Shri J. C. Meher. The second admitted position is that payment was made to a fake person. In the context of these two admitted facts, the liability of the applicant with regard to the lapses alleged have to be considered. It is the admitted position that fake sanction memo was not accompanied with the bills. It is also the admitted position that the sanction memo was not received through proper channel. In view of this, the applicant should have raised objection for payment instead of simply initialling the bill and passing the same to the Postmaster for payment. As a matter of fact, it appears from the order of the Appellate Authority that in his appeal memo applicant has stated that earlier he had raised objection with regard to non receipt of bills alongwith the sanction Memo. In view of this it is indeed strange that in this instant case he did not raise any objection. More so when the sanction memo was not received from the Circle office and no advice was also received as is required to be received before the payment is made as provided note-2 to Rule 357-A. Moreover, the payment admittedly was made to a fake person. Rule 40(a) provides adequate safe guard against payment made to a fake person. Obviously the identity of the person who received payment was not checked. Applicant was working as APM (Accounts) and being a person in charge of the accounts it was his responsibility to check the sanction memo from all angle before the payment is

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made. The cardinal principle is payment is to be made against a Bill. In the instant case the Bill was not enclosed and therefore, payment was, *prima facie*, unauthorised. Even if the sanction memo had been genuine, payment could not have been made without the bill. In view of the above, we find no infirmity on the part of the Disciplinary Authority in imposing the order of punishment. The prayer of applicant to quash the order of punishment is accordingly rejected. We have also gone through the order of the Appellate Authority and the Revisional Authority and we note that they have considered the submissions made by the applicant in his appeal memo and revision petition and both these authorities have passed speaking order. The Tribunal has no power to re-assess the evidence and come to a different finding.

6. In view of all the above, we hold that the application is without any merit and the same is rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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SOMNATH SOM
VICE-CHAIRMAN
25/6/2001

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