

18

18

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.349 OF 1996

Cuttack, this the 18th day of March, 1998


Gadadhar Mishra Applicant

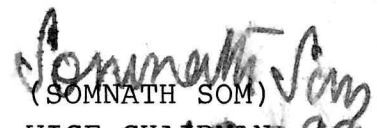
Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(S.K.AGARWAL) 18/3/98
MEMBER(JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 18.3.98

19

CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGARWAL, MEMBER(JUDICIAL)

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Gadadhar Mishra,
s/o late Parsuram Mishra,
At/PO-Chotamakana
Dist. Bolangir

Applicant

By the Advocates -

M/s Manoj Misra &
U.C.Patnaik

Vrs.

1. Union of India, represented
through the Post Master General, Orissa,
Department of Posts,
At/PO-Bhubaneswar,
Dist. Khurda.
2. Superintendent of Post Offices,
Department of Posts,
Bolangir Division,
At/PO/Dist.Bolangir.
3. Post Master,
Bolangir Head Office,
Department of Posts,
At/PO/Dist.Bolangir.
4. Branch Post Master,
Chandanabhati Sub Posts,
At/PO-Chandanabhati,
Dist.Bolangir

By the Advocate -

Respondents
Mr.Ashok Mohanty,
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 applicant has prayed

for quashing the order dated 24.4.1996 (Annexure-5) putting him off duty. He has also prayed for a direction to respondent nos. 1 and 2 to reinstate him in his post and to pay him the allowances.

2. Facts of this case, according to the applicant, are that he is working as Extra-Departmental Branch Post Master (E.D.B.P.M.), Chotamakana Branch Office for the last 31 years with good record of service. One Bakharia Bhoi has been working in the same Branch Office as E.D.D.A. for the last 15 years. According to the applicant, after introduction of the scheme of Mahila Samridhhi Yojana (M.S.Y.), Bakharia Bhoi was in charge of procuring deposits. He collected money from the depositors but did not deposit in the postal account and misappropriated the same. On the matter being detected, Bakharia Bhoi committed suicide. An enquiry was conducted by the Assistant Superintendent of Post Offices and the Overseer and a number of Pass Books and a sum of Rs.1640/- were recovered from the house of Bakharia Bhoi, E.D.D.A. This amount of Rs.1640/- was deposited in the postal account vide Annexure-1. After thorough enquiry, it was found that an amount of Rs.8371/- has been misappropriated by late Bakharia Bhoi, ex-E.D.D.A. Under pressure of the departmental authorities, the applicant deposited a sum of Rs.6707/- on different dates in the postal account. Xerox copies of the receipts have been

Samriddhi Sam
18.3.98

81

20

filed at Annexure-2 series. Aggrieved by the direction of the departmental authorities to deposit the money, the applicant filed a representation to Chief Post Master General vide Annexure-3. After the amount misappropriated by the ex-E.D.D.A. was thus deposited by the applicant, in the impugned order (Annexure-5) he was put off duty. The applicant's case is that the deposits had been collected from the local public and misappropriated by the ex-E.D.D.A. Bakharia Bhoi and the applicant is in no way responsible for the same. During enquiry, the depositors gave statements that the deposits had been collected from them by the ex-E.D.D.A. The receipts and Pass Books were also recovered from the house of Bakharia Bhoi after his death. In view of this, the applicant states that there is no basis to put him off duty. It is also submitted that no charges have been framed against the applicant nor has any showcause notice been served on him. In view of the above facts, the applicant has come up with the aforesaid prayers.

3. Respondents in their counter have submitted that at the relevant time the applicant was working as E.D.B.P.M. Chotamakana Branch Office and one Bakharia Bhoi was working as E.D.D.A. in the same office. According to the departmental instructions laying down the duties of a Branch Post Master (Annexure-R/1), the E.D.B.P.M. is in charge of custody of the stamps and seals and he is supposed to have the

Summit Sam
18.3.98

stamps and seals locked up when they are not in use. It is further submitted that the E.D.B.P.M. is personally responsible for Savings Bank, Money Order, Registration work and Receipt and Despatch of mails, etc.. After M.S.Y. was introduced, the B.P.Ms. and S.P.Ms. were authorised to receive deposits and issue M.S.Y. Pass Books in accordance with the letters dated 16.9.1993 and 24.4.1994 (Annexure-R/2). Therefore, according to the respondents, the applicant was squarely responsible for receiving deposits and issuing M.S.Y. Pass Books. During visit of Overseer, Mails, to the Branch Office on 11.10.1995 it was found that the applicant had received deposits in respect of some Savings Bank Pass Books, Recurring Deposit Pass Books and M.S.Y. Pass Books but had not taken the same into Government account on the very date of receipt. Thereafter Assistant Superintendent of Post Offices, Bolangir, investigated into the case and found misappropriation of Rs.9345/- by the applicant. The applicant took the stand that he had not misappropriated the money and this had been done by Bakharia Bhoi, ex-E.D.D.A. The respondents' stand is that E.D.D.A. is in no way responsible for collection of deposits. Moreover, in this case deposits had been collected with date stamps which are required to be in the custody of the applicant and therefore, the applicant is responsible for misappropriation. As regards the assertion that Bakharia Bhoi committed suicide, the respondents have stated that this is not known to them. They only know that

*Journal Jm
18.3.98*

23

23

E.D.D.A. died on 14.10.1995 and Rs.1000/- was paid to his widow immediate financial assistance according to the departmental instructions. The respondents have further stated that the applicant himself deposited Rs.1640/- which, according to the said applicant, was to have been recovered from the house of deceased E.D.D.A. Subsequently on different occasions he has deposited Rs.6707/-. Thus, according to the respondents, out of the total misappropriated amount of Rs.9345/-, the applicant has deposited Rs.8347/. As, according to the respondents, a prima facie lapse of the applicant has come to notice, he has been put off duty. In the counter it has been further stated that the charges are being framed and will be shortly served on the applicant requiring him to give his explanation. On the above grounds, the respondents have opposed the prayers of the applicant.

4. The applicant has filed a rejoinder in which he has stated that on receipt of the allegations, the Overseer conducted enquiry on 11.10.1995 and in course of the enquiry, the depositors gave statements that it was the deceased E.D.D.A. who had taken the money and the Pass Books from them. The signatures appearing in the Pass Books and receipts are that of the deceased E.D.D.A. The Pass Books were also seized from the house of ex-E.D.D.A. This was not within the knowledge of the applicant and therefore, the applicant cannot be held

Sanjay Vam
18.3.98

24

responsible for the actions of the E.D.D.A. The applicant has further stated in his rejoinder that under pressure from the departmental authorities, he has been forced to deposit the money as indicated in the O.A. He has never been intimated that the total misappropriated amount is Rs.9345/-.

5. We have heard Shri Manoj Misra, the learned lawyer for the petitioner and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing on behalf of the respondents, and have also perused the records. The learned lawyer for the petitioner has also given written note of submissions with copy to the other side which has been taken note of.

6. The first submission made by the learned lawyer for the applicant is that the deceased E.D.D.A. had collected the deposits against running Pass Books which had been issued in normal course by the applicant. The Pass Books are kept with the depositors. The deceased E.D.D.A. collected the Pass Books and the deposit amounts from the depositors. He never intimated the applicant about such deposits and therefore, the applicant had no means of knowing that the E.D.D.A. had collected such amounts by way of deposits in respect of M.S.Y. It is further stated that according to the departmental instructions, an employee should be put off duty only when charges against him are so serious as to merit his dismissal/removal from service. It is submitted that as in this case the lapses have been committed by the deceased E.D.D.A.,

Manoj Misra
18.3.98

this is not a case where such stringent punishment could be imposed on the applicant and therefore, putting him off duty is not in accordance with the departmental instructions. It is further submitted that the departmental instructions also provide that after putting a person off duty, the fact has to be intimated to the higher authorities, but in this case that has not been done. In case the applicant is in any way responsible for such collection of deposits from the public and not crediting the amounts in the postal account, then the charges certainly are serious enough to put him off duty. Not informing the higher authorities would not in any way invalidate the order putting him off duty. Before proceeding further, one aspect of the M.S.Y. will have to be taken note of. In the instructions dated 16.9.1993 it has been made clear in paragraph 6 that M.S.Y. is not a part of Small Savings. This instruction has been reiterated in the circular dated 24.4.1994 and from these two circulars it is clear that for M.S.Y., separate M.S.Y. Pass Books will have to be issued and these deposits cannot be collected through any Pass Books, Savings Bank and Recurring Deposit, of any person. The entire case of the applicant is that the deceased E.D.D.A. collected deposits in respect of M.S.Y. and misappropriated the same. The respondents in their counter have pointed out that besides M.S.Y. Pass Books, it was noticed through inspection of

Submitted
18.3.98

26

Overseer, Mails, that in respect of certain other Savings Bank and Recurring Deposits Pass Books, the applicant has received the deposits but not credited the amount in the postal account on the same day. This aspect of non-crediting of deposits in respect of Pass Books other than those relating to M.S.Y. has not been denied by the applicant in his rejoinder. In view of the above, the action taken by the respondents to initiate departmental enquiry against the applicant and to put him off duty cannot be found fault with. The prayer for quashing the impugned order at Annexure-5 is, therefore, rejected. In this case counter was filed in June 1996 wherein it has been mentioned that the charges are going to be served on the applicant shortly. In course of hearing, learned Senior Standing Counsel was directed to indicate if in the meantime charges have been served on the applicant. It has been submitted by the learned Senior Standing Counsel on 27.2.1998 that the charges have been served on the applicant on 24.7.1996, i.e., within three months of his being put off duty, but the enquiry has not been completed. In view of the above, the respondents are directed to complete the enquiry within a period of 90 (ninety) days from the date of receipt of copy of this order. The applicant is directed to co-operate with the enquiry to ensure its early completion. In case, however, the applicant does not co-operate in the enquiry without sufficient reason, then the respondents are directed to complete the

26

Summit
18.3.98

enquiry ex parte within the period indicated above.

7. In the result, therefore, the application is rejected with observation and direction contained in paragraph 6 of this order. No costs.

(S.K. AGARWAL)

MEMBER (JUDICIAL)

18/3/98

(SOMNATH SOM)

VICE-CHAIRMAN

18.3.98

AN/PS