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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No.137 of 2005  
Cuttack, this the 20th day of April, 2007.

Rabinarayan Lenka ... Applicant  
Versus  
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 CAT or not?. NO.

*B.P. 20/4/07*  
(B.B.MISHRA)  
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

O.A.No. 137 of 2005  
Cuttack, this the 20<sup>th</sup> day of April, 2007

C O R A M:

THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Rabinarayan Lenka, Aged about 61 years, S/o. Balabhadra Lenka, Vill. Mahadia, PO.Belpada, PS. Motanga, Dist. Dhenkanal, Retired Assistant Postmaster of Angul Head Office, At/Po/Dist. Angul.

..... Applicant.

By legal practitioner: Mr.Laxmikanta Mohanty, Advocate.

-Versus-

1. Union of India represented through the Secretary to Government of India, Department of Post, At-Dak Bhawan, New Delhi.
2. Director of Postal Services, Sambalpur Region, At/Po/Dist. Sambalpur.
3. Superintendent of Post Offices, Dhenkanal Division, At/Po/Town/Dist: Dhenkanal.
4. Postmaster of Angul Head Post Office, At/Po/Dist. Angul.

.... Respondents.

By legal practitioner: Mr.B. Dash, ASC,

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## ORDER

### MR.B.B.MISHRA, MEMBER(A):

In short, the case of the Applicant is that he is a retired Postal Employee. While he was in service alleging that due to failure in his supervisory duty as a Deputy Postmaster of Dhenaknal HO from 22.12.2001 to 13.11.2002 a fraud involving huge amount was committed by Shri Prasan Kumar Tripathy, RD/Certificate Counter Assistant of the said post Office which could not come to the notice of the Department earlier. Hence a set of charges under Rule 16 of the CCS (CCA) Rules, 1965 was issued to the applicant vide memorandum dated 25.04.2003 asking him to show cause. Applicant by filing reply under dated 18<sup>th</sup> October, 2003 denied the charges and prayed for exoneration of the charges. The Disciplinary Authority after considering the show cause reply of the Applicant and connected documents, vide order dated 21.11.2003 (Annexure-2) imposed the following punishment:

“As Supervisor of SB Branch of Dhenakanal HO the said Sri Lenka was expected to take all possible steps to ensure the integrity and devotion to duty of all the Government servants for the time being under his control. But the said Sri Lenka did not ensure the same and in fact admitted his lapses for which the department sustained huge pecuniary loss in shape of double discharge of KVPs.

The lapses on the part of Sri Lenka is very serious and deserves a severe punishment.

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However, considering the fact that the said Sri Lenka is at the fag end of his long service career, I took a lenient view in this case. As such I, Shri S.Satapathy, Supdt. of Post Offices, Dhenkanal Division, Dhenaknal do hereby order that an amount of Rs.30,000/- (Rupees thirty thousand) only to be recovered from the pay of the official @ Rs.6,000/- per month in five(s) installments with immediate effect with a view to make good the loss sustained by the department in the case, I hope this will meet the ends of justice.”

2. Being aggrieved by the order of punishment, applicant preferred appeal on 10.1.2004 and during the pendency of the appeal he retired from service on 31.03.2004. Thereafter in representation dated 14.07.2004 he requested for payment of bonus, release of MIS Pass books and sanction of leave etc. The appeal preferred by him was ultimately rejected on 4<sup>th</sup> October, 2004 (Annexure-5). As it appears from the record, due to non-finalization of the disciplinary case initiated against the applicant, he was sanctioned only provisional pension of Rs.3,000/- P.M.. He submitted representation for enhancement of such provisional pension and having failed to remedy his grievance in the hands of his authorities, has approached this Tribunal in the present Original Application filed u/s.19 of the administrative tribunals act, 1985 praying as under:

“(a) The Original Application be allowed;

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- (b) The order of punishment dated 21.11.2003 under Annexure-2 and the order of rejection dated 4.10.2004 under Annexure-5 be quashed/set-aside;
- (c) The Respondents be directed to release the leave salary of the Applicant of Rs.30,000/- and bonus for the year 2002-2003 and 2003-2004 and other Private Postal deposits;
- (d) The Respondents be directed to release all the pensionary benefits of the Applicant;
- (e) The Applicants (sic 'Respondents') be directed to finalize the pension of the Applicant and pending finalization provisional pension be enhanced to 50% of last pay drawn;
- (f) And such other order/orders be passed giving complete relief to the Applicant."

3. In support of the proportionality/justification of the order of punishment, the Respondents in their counter filed on 20<sup>th</sup> June, 2005 have stated that during the incumbency of the applicant, as he had failed to discharge his onerous supervisory duty with due devotion, the ex- RD/Cash Certificate Counter Assistant of Dhenkanal HO, committed fraud involving huge amount, at the first instance to the tune of Rs.4,80,225/- in 31 KVPs and two NSCs by showing double encashment of a single KVP/NSC and in second instance to the tune of Rs. 3,79,730/- in RD deposits. Hence, for such careless supervision and failure to discharge his duties with devotion the Applicant was proceeded against under Rule 16 of CCS (CCA) Rules, 1965. On consideration of the reply given by the Applicant and all other connected records, since it was established that he is directly/partly responsible for the fraud committed

by ex-RD/Cash Certificate Assistant, the Disciplinary Authority passed the order of punishment which was also subsequently confirmed by the Appellate Authority. They have further submitted that the Applicant was placed under suspension with effect from 17.12.2003 due to criminal case instituted against him for the fraud of the above amount, by the CBI Bhubaneswar. As on 31.03.2004, the Applicant retired from service on reaching the normal age of superannuation, the punishment of recovery of Rs.30,000/- was made from the leave salary of the Applicant. As regards release of other retirement dues it has been averred by the Respondents that the applicant was sanctioned provisional pension but his other retirement benefits including Bonus have been withheld due to the following reasons:

- (i) The departmental proceeding under Rule -14 of CCS (CCA) Rules, 1965 is under progress and the chance of recovery of the huge loss sustained by exchequer from retirement dues and the bonus depends on the outcome of the proceeding as contained in provisions of Rule 9 of CCS (Pension) Rules, 1972 which is annexed as Annexure-R/1.
- (ii) The CBI prosecution is under trial in the court of Special Judge, CBI, Bhubaneswar against the said Sri Lenka and the chance of recovery of loss from the retirement dues cannot be ruled out if the said Sri Lenka is convicted by the designated Court.

4. But in subsequent paragraph 19 (b) of the Counter at page 7 it has been submitted by the Respondents that all pensionary

benefits except the gratuity have been released and paid to the applicant. The gratuity has been held up due to proceedings pending. The payment of full pension will be decided after completion of the departmental proceeding under Rule 14 of the CCS (CCA) Rules, 1965. They have therefore, strongly opposed for granting any of the relief claimed by the applicant in this OA.

5. Heard Learned Counsel for the Applicant and Mr. B.Dash, Learned Additional Standing Counsel for the Respondents and perused the materials placed on record.

6. On the point that the punishment order dated 21.11.2003 (Annexure-2) and the order of rejection of his appeal dated 04.10.2004 (Annexure-5) are bad in law, Learned Counsel for the Applicant has argued that neither the Applicant was involved in the fraud nor was he in any way responsible for it. It is his case that till date no punishment has been imposed on the employee who had committed the fraud; whereas he was imposed with the punishment of recovery. His argument is that he was not given the documents in support of the charges and that though he has been visited with the punishment, on the self same incident again he has been subjected to disciplinary proceedings under Rule 14 of the CCS(CCA) Rules, 1965 and Criminal Case. His next submission is that there was no order to recover the amount from the retirement dues of the

Applicant and in absence of any such order, recovery of Rs.30,000/- from the retirement of the Applicant is bad in law. According to him, recovery of any loss from the dues of a retired employee can only be made in accordance with Rules, by the competent authority that too, after giving due opportunity to the employee concerned. But in the present case, the recovery was made without following rules, principles of natural justice and without any order of the competent authority. As regards release of gratuity, it has been argued that since the applicant has not been held guilty till date, withholding of Gratuity amount is nothing but an arbitrary exercise of power.

7. On the other hand, Learned Additional Standing Counsel for the Respondents has pointed out that had the Applicant pointed out the embezzlement committed by his subordinate, the second fraud could have been avoided. Since the applicant failed to discharge his duties with sincerity, fraud committed by another employee could not come to the notice at the right time and, therefore, he was rightly visited with the punishment of recovery. In regard to supply of documents, he has pointed out that in proceedings under Rule 16 of the CCS(CCA) Rules, there is no provision for supply of documents. He has also argued that Shri Prasanna Kumr Tripathy, principal offender of the case has not been charge sheeted for the same defrauded amount of Rs.30,000/- because he

was placed under suspension w.e.f. 05.03.2003 and it was not feasible to initiate disciplinary proceeding under Rule 16 of CCS (CCA) Rules, 1965 and to impose penalty to recover some portion of the said defrauded amount of Rs.30,000/-. It is his argument that applicant has been imposed with the punishment for lack of supervision and the proceedings which is pending is with regard to his involvement in the fraud. Therefore, it cannot be said that the applicant is subjected to double jeopardy.

8. Going through the various submissions of the parties and materials placed on record, I may record that disciplinary authority after considering the materials available including the show-cause reply submitted by applicant in the proceedings under Rule 16, in order dated 21.11.2003 (Annexure-2) directed recovery of an amount of Rs.30,000/- from the pay of the official @ Rs.6,000/- per month. It is seen that on appeal the said order was also confirmed by the Appellate Authority in order dated 4<sup>th</sup> October, 2004 (Annexure-5). According to Respondents the punishment could not be given effect to because the applicant was placed under suspension with effect from 17.12.2003 following CBI case and Rule 14 proceedings on the self same allegation. Whatever may be the fact, the disciplinary authority passed the order of recovery from the pay of the Applicant @ Rs.6,000/- per month, which was confirmed by the Appellate Authority. It is a cardinal principle of law that when the

language of the Disciplinary Authority's order is plain and unambiguous, then the executing authority must give effect to the words used in the order and it would not be open to the subordinate authority to adopt methods other than explicitly provided. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified. Further, it is true that the order is administrative in character, but even an administrative order which involves civil consequences, must be made consistent with rules of natural justice. But in the present case, none of the principles has been followed by the Respondents while recovering the amount from the retirement dues of the Applicant. Also it is the statement of the Respondents that for this incident a CBI case as also departmental proceedings under Rule 14 of CCS (CCA) Rules 1965 are pending against the Applicant. Therefore, the Respondents ought not to have recovered the amount from the applicant without waiting for the result of such proceedings. Therefore, the submissions made by the Respondents in support of their action cannot be countenanced in law.

9. Moreover, undisputedly, the fraud was committed by the Counter Assistant working under the Applicant who has not been visited with any punishment till date. But the Applicant has been proceeded with on the ground that because of his lack of supervision such fraud could not

come to light and thereby the Counter Assistant was able to commit more fraud. Recovery of amount from the employee who is not directly responsible for causing any pecuniary loss to the Government came up for consideration before the Jabalpur Bench of the CAT in the case of **Smt. Kalpana Shinde and Ors. v. Union of India and Others**, 2005(1) ATJ 45, and before the Ahmedabad Bench of the CAT in the case of **J.M.Makwana v. Union of India and others**, 2002 (1) ATJ 284. After considering the provisions of the Rules and judge-made-laws, it was held by the Tribunal that recovery from the employee who is not directly responsible for causing any pecuniary loss to the Government is bad.

10. The Jabalpur Bench of the Tribunal relying on the earlier decisions made in the case of **S.K.Chaudhury v. Union of India and others** (OA No. 504 of 1996 disposed of on 26.03.2001) quashed the order of punishment of recovery imposed on Smt. Kalpana Shinde (supra). The observations made in the case of S.K.Chaudhury (supra) is quoted herein below:

“The reasoning of the disciplinary authority proceeds on the ground that if the applicant had carried out these duties, no fraud would have been committed but this is a mere surmise, as even after carrying out these duties, the Sub Post Master being in possession of the cash was in a position to misappropriate the amount. Further more such negligence even if there is one,

cannot be a cause for punishing the applicant with the recovery of loss sustained by the department. The applicant obviously was not directly responsible for the misappropriation of this amount and therefore, the recovery if any was to be made for the loss of the amount ought to have been made from the person directly responsible for the misappropriation merely because the department found that it was not possible to recover the amount from the main culprit some other scale goat cannot be found out and cannot be leveled with the punishment of recovery of the loss".

11. Recently, relying on the aforesaid decisions, this Bench of the Tribunal in the case of Jiban Kumar Behera v.Union of India and others ( OA No. 755 of 2005) took the same view and quashed the order of punishment imposed on the Applicant-Jiban Kumar Behra.

12. In view of the consistent view referred to above and in view of the peculiar facts and circumstances stated above, I find substantial force in the submission of the Applicant to quash the order of punishment dated 21.11.2003(Annexure-2) and the order of rejection dated 04.10.2004(Annexure-5). Hence the same are hereby quashed. However, this would not in any way prejudice the Respondents for taking action in accordance with Rules and laws.

13. Since criminal case and departmental proceedings under Rule 14 of the CCS (CCA) Rules are pending as against the

Applicant, I refrain from passing any order with regard to release of pension and gratuity amount of the Applicant.

14. In the result, with the observations and directions made above, this OA stands disposed of by leaving the parties to bear their own costs.

B.B.M.  
(B.B.MISHRA)  
MEMBER(A)

KNM/PS.