

Jiban Kumar Behera, ... Applicant

Versus

Union of India & Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? 7¹²

2. Whether it be circulated to all the Benches of the CAT or not? *no*

(B.B.MISHRA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.755 of 2005
Cuttack, this the ~~23rd~~ day of March, 2007.

C O R A M:

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

Jiban Kumar Behera, Aged about 36 years, Son of Khetramohan Behera of village and post: Avana, Ps: Sora, Dist. Balasore, presently working as Postal Assistant, Baragarh Head Post Office, Bargarh.

..... Applicant.

By legal practitioner: M/s.D.P.Dhalsamasnta,
P.K.Behera, Advocates.

-Versus-

1. Union of India represented through its Director General, Department of Posts, Ministry of Communications, Dak Bhawan, New Delhi-110 001.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurdas-751 001.
3. Director of Postal Services, Office of the Postmaster General, Sambalpur Region, Sambalpur.
4. Postmaster General, Sambalpur Region, Sambalpur.
5. Superintendent of Post Offices, Sambalpur Division, Sambalpur.

...Respondents.

By legal practitioner: Mr.P.R.J.Dash, ASC.

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ORDER

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

Applicant while working as Postal Assistant in the Baragarh Head Post Office, Bargarh, he was issued Memo dated 10th November, 2004 (Annexure-1) under Rule 16 of CCS (CCA) Rules, 1965 calling upon to show cause within ten days, on the allegation that in the incumbency of Ledger Assistant II of Jharsuguda HO, while posting the LT dated 09.10.2000 of Bamra SO for deposit transaction of Rs. 15000/- made in SB account No. 855956 standing in the name of Shri Kumarmani Ping he failed to call for the said pass book for posting of annual interest as required under Rule 74 (3) of POSB Manual Vol-I. As a result, the earlier suppressed deposit of Rs.6000/- on 03.12.1999 in the pass book could not come to light earlier. It was pointed out that the aforesaid lapses on the part of the Petitioner resulted in non-detection of the

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fraud committed by Shri C.K.Topno, Ex-SPM, Bamra SO between 03.12.1999 to 06.11.2002 to the tune of Rs.591090.00 and thereby he failed to maintain absolute integrity and devotion to duty violating the provisions of Rule 3(l)(ii) of CCS (Conduct) Rules, 1964. Thereafter, applicant requested for supply of documents mentioned in his representation dated 20.11.2004 (Annexure-2). The Respondents under Annexure-A/3 dated 03.02.2005 permitted him to be present in the office on 14.02.2005 at 10.00 AM to peruse the documents and take extract if any in the presence of ASP (OD) Divisional Office, Sambalpur. On 14.02.2005 (Annexure-A/4) applicant submitted his reply and again in his representation dated 17.02.2005 (Annexure-A/5) he requested that though he was permitted to peruse the records and take extract of the records sought for by him, it was not possible on his part to take extract of all records. Therefore, he requested to

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supply copies of those documents to submit his written statement of defence. The said request of the Applicant was rejected on 25.02.2005 (Annexure-A/6). Thereafter, he submitted his show cause on 26.02.2005 (Anexure-A/7). On receipt of the show cause reply of the Applicant, the Superintendent of Post Offices, Sambalpur Division, came to the conclusion that had the Applicant followed the instructions as envisaged under Rule 76(a)(1) of POSB Manual Vol.-I, the net discrepancy of Rs.6000/- which was defrauded on 03.12.1999 by Shri Topno could have been detected and the fraud committed after 09.10.2000 including non credit of Rs.10000/- in the A/c on 12.02.2001 could have been avoided and accordingly he being the Disciplinary Authority of the Applicant, imposed the punishment of recovery of Rs.20,000/- (Twenty Thousand only) from the pay of the Applicant in twenty five equal installments @ Rs.800/- per month. Being

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aggrieved, the Applicant preferred appeal on 03.05.2005 (Annexure-A/9) and the said appeal having been rejected in order dated 19th August, 2005 (Annexure-A/10), he has preferred this OA under section 19 of the Administrative Tribunals Act, 1985 challenging the order of punishment dated 22-03-2005 (Annexure-A/8) and the order of the Appellate Authority dated 19.08.2005 (Annexure-A/10) seeking direction to the Respondents to refund the amount recovered from the pay of applicant with interest.

2. The first limb of challenge of the Applicant is that according to the Respondents as he failed to call for the said pass book for posting of annual interest as required under Rule 74 (3) of POSB Manual Vol.-I, earlier suppressed deposit of Rs.6000/- on 03.12.1999 in the pass book could not come to light earlier. If there was any mistake, his predecessor not he, should have been held responsible, he having taken the charge of the Ledger

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Assistant II of Jharsuguda HO only on 11.10.2000. The second ground of his submission is that on taking the charge of the Ledger Assistant, he noted his remarks of non-calculation and non-entry of the interest and other defects in the error book which was duly acknowledged by the supervising authority giving no direction to update the same as per Rules. Also the supervisor did not call for the pass book. But while his predecessor and supervising authority were allowed to go scot-free, the entire blame has been put on him in violation of Article 14 of the Constitution. The third step of challenge is that in spite of his request, the Error Book (LC-II) of Bamara SO, interest calculation sheet for the year 1990-2000 and Nominal Roll for the period, in question, of Jhasuguda HO which had direct connection with the charge and vital documents in support of his innocence were intentionally and deliberately kept away from him. This has disabled him from

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showing that he was not the actual defaulting employee to be punished. His fourth ground of challenge is that the order of punishment is liable to be quashed as the same has been passed without supplying copies of documents and without holding any enquiry in the manner laid down in sub rule (3) to (23) of Rule 14 though asked for by the Applicant. In this connection he has relied on the decision of the Hon'ble Apex Court made in the case of **O.K.Bhardwaj v. Union of India and others**, 2002 SCC (L&S) 188 wherein it was held that "even in the case of minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect of the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for." This is the minimum requirement of principles of natural justice and the said requirement cannot be dispensed with" thus says the decision of

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this Tribunal in the case of **Uday Sankar Das v. Union of India and Others** (OA No. 436 of 2001 disposed of on 12.03.2003). His fifth limb of challenge is neither the Applicant committed any fraud nor was he a party to the same but he has been visited with the order of punishment in gross violation of the principles of natural justice inasmuch as in taking note of some extraneous materials without confronting the same or giving adequate opportunity to him. He has, therefore, fervently prayed for allowing this Original Application with costs.

3. Respondents by filing counter have opposed the stand taken by the Applicant in support of his prayer. It is the case of the Respondents that it is not correct on the part of the Applicant to say that he was kept Ledger Assistant II of the Jharsuguda HO w.e.f. 11.10.2000. The Applicant was actually working as Postal Assistant, Jharsuguda HO and also worked as Ledger Assistant No.II

from 23.06.1998 to 14.06.2003, dealing with the savings transactions made at Bamra SO. During November, 2002 the fraud committed by the SPM/PA of Bamra SO came to light and on enquiry it revealed that due to failure to follow the procedures/instructions prescribed under the Rules on the part of the Applicant such recurring loss happened to the Department. The fraud committed by Topno at Bamra SO started from 3.12.1999 to 6.11.2002 which involved an amount of Rs. 591090/-. The Applicant posted the list of transaction of Bamra SO dated 9.10.2000 in which there was a deposit of Rs. 15000/- on 9.10.2000 in Bamra SO Sb A/c No.855956 but prior to this fraud in this account was Rs.6000/- on deposit transaction dated 03.12.1999. So had the Applicant acted as per Rules with devotion to duty, pointed out the discrepancy in balance and called for the pass book as required under rule 74 (3) of POSB Manual Vol.I for verification, then the fraud of

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Rs. 6000/- could have been detected earlier and a major fraud as above could have been avoided. All the officials whose laxity has caused this heavy loss to the Department have been brought to book and necessary action is being taken against them. The Applicant cannot escape the responsibility by pointing finger at his predecessor. Though the applicant posted the transaction dated 09.10.2000 and reported the balance, he did not take any action on the discrepancy. They have also denied the submission that the supervising officer was in know of the discrepancy. According to Respondents, all the documents which were relevant to the matter were perused by the Applicant and he was given opportunity to take extract of the same. The documents at Sl. VII and Sl. VII were to be maintained by the Applicant himself as per rule 74 (3) of POSB Manual Vol. I, but he did not maintain the same for which he was proceeded against. The document asked for

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by the applicant at Sl.IX of his representation has no relevance to the charge framed against the applicant. Respondents maintained that holding of enquiry in the manner laid down in sub rules (3) to (23) of Rule 14 of CCS (CCA) Rules, 1965, in the present case, was not thought appropriate since charge framed against the applicant was based on undisputed records/documents and regarding non-observance of prescribed Rules. The Respondents have again maintained that had the applicant called for the Pass book and verified it as required under rules, the mischief would have been detected at the initial stage and the fraud could have been nipped in the bud without giving scope to culprit, to commit more fraud to the tune of Rs.5,91,090/-.

The cardinal principle is that a Government servant is liable to pay the whole or part of any pecuniary loss caused to Govt. by his negligence or breach of orders.

Failure on the part of the Applicant to take follow up action as required under rules led the Department to sustain a heavy loss, and, therefore, it was felt just and appropriate to proceed as against the Applicant under Rule 16 of CCS (CCA) Rules. Since the Disciplinary Authority was satisfied that for the fault of the Applicant the recurring loss was sustained by the Department, the Disciplinary Authority has rightly imposed the order of punishment of recovery of a part of the loss sustained by the Government. On appeal the same was also confirmed. It has been submitted that there being no violation of the Rules and the principles of natural justice having been followed, there is hardly any scope for this Tribunal to interfere in the matter and to substitute its findings and punishment in place of the findings and punishment reached by the authorities. Therefore, they have prayed for dismissal of this OA.

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4. By reiterating the stand taken in the Original Application as also by relying on the decisions of the Jabalpur Bench in the case of **Smt. Kalpana Shinde and Ors. v. Union of India and Others**, 2005(1) ATJ 45 and the decision of the Ahmedabad Bench of the CAT in the case of **J.M.Makwana v. Union of India and others**, 2002 (1) ATJ 284 in support of the plea that one who is not directly responsible for causing any pecuniary loss to the Government cannot be made liable for recovery of the loss sustained by the Government, has been the attempt of applicant to persuade to declare the order of punishment illegal, unjust and against the settled principle of law.

5. On the other hand, Mr. P.R.J.Dash, Learned Additional Standing Counsel for the Respondents, relying on various averments made in the counter has argued that since the Applicant was partially responsible for the heavy loss caused to the Government, recovery order was rightly



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passed by the Disciplinary Authority and confirmed by the Appellate Authority. It has been submitted that it is the exclusive jurisdiction of the authorities to decide what should be the quantum of punishment imposed on a Government Servant for proven misconduct committed by him. Also it is the position of law that judicial Review is not an appeal from a decision but a review of the manner in which the decision is made. Power of Judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is only to determine whether the inquiry was held by a competent authority or whether rule of natural justice is complied with, whether the findings or conclusions are based on evidence, and whether the authority entrusted with the power to hold

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inquiry has jurisdiction. According to him, the Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. In the present case since proceedings was initiated in accordance with rule and after giving due opportunity the authority came to conclusion of guilt of applicant and imposed the punishment, the same warrants no interference.

6. I have heard the parties and have carefully gone through the materials placed on record. Before dealing with the points offered by the parties, it is worthwhile to mention that there is no doubt that the disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of

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legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be contested before the Court/Tribunal. Similarly, the legal position is well settled that the disciplinary authority and the appellate authority, being fact finding bodies have exclusive power to consider the evidence with a view to maintaining discipline. They are vested with the authority to impose appropriate punishment keeping in view the gravity of the misconduct. The Tribunal, while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. But this does not mean that in no circumstances can the Court interfere. The power of judicial review available to the Tribunal takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the

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findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority. The findings, recorded in a domestic enquiry can be characterized as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. Keeping the above parameter in mind, it is to be examined as to whether the punishment awarded is justified, based on evidence and/or is passed in violation of the principles of natural justice.

7. With regard to the plea of the applicant that he was not the Ledger Assistant during that period needs no examination in view of the submissions made in paragraph 4.3 of the counter that the applicant had admitted to have worked as Ledger Assistant II at Jharsuguda HO on

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11.10.2000 posted the Bamra SO SB LOT dtd. 9.10.2000 for which the muster roll is not required for verification. The second argument of the Applicant also fails as the Respondents denied to have seen the Error Book by the Supervising Officer. This has not been controverted by the Applicant. The third point advanced by the applicant is of no help in view of the reply given by the the Respondents that as the applicant failed to maintain the special ^RError Book of (LC-II) Bamra SO as required under Rule 74(3) of POSB Manual Vol. I he was charge sheeted. He has also not pleaded either before his Disciplinary Authority or Appellate Authority as to how he was prejudiced by non-supply of the such documents.

On perusal of the records, it is seen that the applicant had never prayed before any of his authorities to enquire into the matter in the manner laid down in sub rules (3) to (23) of rule 14. It is not in dispute that it is the

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prerogative of the authorities to decide as to whether a particular case under Rule 16 needs to be enquired into in the manner provided under Sub rule 3 to 23 of Rule 14 or decision can be taken based on the explanation furnished by an employee. Therefore, by not holding regular enquiry, no fault can be found with the authorities. The decisions of the Hon'ble Supreme court in the case of O.K.Bhardwaj (supra) does not specifically warrant holding such enquiry. No mandatory direction was given to hold enquiry whenever the authorities proceed under Rule 16 as against a Government Servant. Also the decision of U.S.Das (supra) does not lay down any law about the matter. Therefore, both the cases are of no help to the case of Applicant.

8. But I find substantial force in the submission of the Applicant that in absence of any finding that the Applicant has committed any fraud nor was he a party to

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the same he should not be visited with the kind of punishment as has been imposed on him. In this regard, reliance is also placed on the decision of the Jabalpur Bench of the CAT made in the case of Smt. Kalpana Shinde and Others (supra) . In the said case the applicant was also visited with the punishment for failure to point out the mistake while working as Ledger Assistant. 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

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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”.

9. This was also the view expressed by the Ahmedabad Bench of the Tribunal in the case of J.M.Makwana(supra).

10. I find that the facts and law decided by the Jabalpur Bench and Ahmedabad Bench of the Tribunal are fully applicable to the present case. Therefore, applying

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the above law, the order of Disciplinary Authority dated 22nd March, 2005 (Annexure-A/8) and the order of Appellate Authority dated 19th August, 2005 (Annexure-A/10) are hereby quashed and the matter is remitted back to the Disciplinary Authority to pass appropriate order keeping the above observations in view.

11. In the result, this OA stands allowed to the extent stated above. No costs.

13/3/2007
(B.B. MISHRA)
MEMBER(A)

KNM,PS.