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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 985 of 2002
Cuttack, this the 29th day of April, 2008

Santosh Kumar Ranbida .... Applicant.
Versus
Union of India & Ors. .... Respondents

For instructions

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?.

(JUSTICE K.THANKAPPAN)
MEMBER(JUDL.)

(C.R.MOHAPATRA)
MEMBER(ADMN.)

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CORAM:
THE HON'BLE MR. JUSTICE K.THANKAPPAN, MEMBER(JUDICIAL)
AND
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)

Santosh Kumar Ranbida .... Applicant.
Versus
Union of India & Ors. .... Respondents

(For Full details, see the enclosed cause title)
By legal practitioner: Mr. T.Rath, Counsel
By legal practitioner: Mr.U.B.Mohapatra,SSC

ORDER

MR.C.R.MOHAPATRA, MEMBER(A):

Facts leading to filing the present Original Application, by the Applicant are that although he was a Postal Assistant, he was asked to work as Deputy Postmaster of the Sambalpur Head Post Office for the period from 10.01.1998 to 31.01.1998. On 19.01.1998, the Applicant sanctioned the closure of Sambalpur HO NSS A/C No. 71617 amounting to Rs.1,19,759 and paid the amount to a person other than the depositor Shri Sachidananda Singh without observing the provisions envisaged under Rule 43 of the PO SB Manual Volume 1 and thereby causing loss of Rs. 1,19,759/- to the Department. For such omission and commission on the part of the Applicant he was proceeded under Rule 14 of the CCS (CC&A)

Rules, 1965. Finally, on the conclusion of the departmental proceedings, the Applicant was visited with the punishment of recovery of Rs.1,20,000/- in 48 monthly installment @ Rs.2500/- PM and reduction of two stages from Rs.6050/- to Rs.5750/- in the time scale of pay of Rs.5000-150-8000/- for a period of four years with immediate effect with direction that the applicant will not earn increment during the period of such reduction and that the reduction will have the effect of postponing his future increment of pay vide order dated 28.06.2002 (Annexure-7). As against the above order of punishment, the Applicant preferred appeal under Annexure-8. During the pendency of the appeal as the order of punishment had taken effect, he has approached this Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985 to annul the order of punishment of the disciplinary authority and till final decision on this OA, the order of punishment should not be given effect to. However, during pendency of this OA, the appellate authority disposed of the appeal of applicant by modifying the penalty to that of recovery of Rs.30,000/- being the portion of the loss sustained by the Department from the pay of the applicant in 12 monthly installment @ Rs.2500/- per month under Annexure-11 on receipt of which the applicant amended this OA challenging the same to be illegal, arbitrary and against the sound principles of natural justice.

2. In the counter filed by the Respondents it has been stated that as there was no violation of the any of principles laid down under the disciplinary proceedings Rules/Instructions and principles of natural justice have scrupulously been followed, interference of this Tribunal is not warranted. It is the further stand of the Respondents that in due application of mind the Appellate Authority modified the order of punishment imposed by the Disciplinary Authority, the same needs to be sustained.

3. Arguments were heard and materials on record were perused. In support of the stand of non-sustainability of the order of punishment, the applicant has argued that the applicant was highly prejudiced to meet the charges as the same were not specific. Besides the above, the applicant was not supplied with the copy of the GEQD and the depositor was not examined during the enquiry. His further argument is that the lapses of the applicant were not pinpointed either during enquiry or by the Disciplinary authority while imposing the punishment and that the authority imposed the punishment but held that the integrity of the applicant was not in doubt. He has also argued that the order of punishment is disproportionate. On the above grounds, he has prayed for quashing the orders of punishment imposed by the authority. Per contra, Learned Counsel for the Respondents while reiterating some of the points taken in the counter has argued that the

Appellate Authority after taking into consideration all aspects of the matter reduced the quantum of punishment which needs no interference.

4. At the out set it is to be stated that as held in the case V.Ramana **v. S.P. SRTC and Others** [2005] 7 SCC 338 "the common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court in the sense that it was in defiance of logic or normal standards. In view of what has been stated in the Wednesbury's case (supra) the court should not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision". [See also **Hombe Gowda Edn. Trust & Anr v. State of Karnataka and Ors**(2005 (10) SCALE 307=2006(l) SCC 430; **State of Rajasthan and another v. Mohammed Ayur Naz** (2006 (l) SCALE 79= (2006) 1 SCC 589, and **Union of India v Dwarka Prasad Tiwari,** (2006) 10 SCC 388. Further in the case of **State of Tamil Nadu and another v S. Subramaniam, 1996 SCC (L&S)** 627 it is view of the Hon'ble Apex Court that Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of

the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not that the conclusion which the authority reaches is necessarily correct. Thus, it is to be seen whether there was any legal lacuna either in the procedure followed by the IO or by the Disciplinary Authority or Appellate Authority. It is seen from the record that Sambalpur NSS Account No. 71617 was standing in the name of Shri Sachidananda Singh, with a balance of Rs. 1,19,759/- and the same was closed whereas the amount was paid to a person other than the depositor on 19.1.1998. The IO during enquiry examined the SB 7 withdrawal form marked as Ext. S-III, NSS Long Book of Sambalpur HO dated 19.1.1998, NSS List of Transactions of Sambalpur HO dated 19.1.1998 and the written statement of Schidananda Singh dated 27.09.99. All the witnesses cited in Annexure IV of the memo of charges including the depositor, were examined during the enquiry. In the inquiry held on 10.12.2001, the Depositor-Sachidananda Singh had also confirmed non withdrawal of the balance at credit in his NSS account on 19.1.1998 and he disowned his signature appearing in the SB 7 form. The SB 7 form has the signature of the depositor on both halves, namely the application side and payment side. The name of the authorized messenger was written as M.R.Nath in a hand different from the other entries on the form. Applicant being the Deputy Postmaster should have taken step to verify the same before passing for

payment. Therefore, it was not correct to say that the position has not been ascertained from the depositor in the disciplinary proceedings. It is seen that the charges leveled against the applicant were proved during enquiry without any reference to the report of GEQD. Notwithstanding the above, it has not been brought out by the Applicant as to how due to non-supply of the copy of report of the GEQD, he was prejudiced. This document was also not asked for by the applicant during the inquiry. Applicant was punished for his negligence and failure to discharge his supervisory duty. Thus, when no prejudice is caused, non supply of documents cannot be fatal to inquiry. In this regard support could be had from the decision of the Apex Court in the case of **U.P. State Textile Corporation Ltd. V. P.C.Chaturvedi** (205) 8 SCC 211, "it has not been shown as to how the on supply of this list caused any prejudice." Support could also be had from the decision of the Apex Court in the case of **Suresh Pathrella v Oriental Bank of Commerce**, (2006) 10 SCC 572, "No prejudice, whatsoever, has been caused to the appellant by non-furnishing of the copy of the handwriting expert confirming the statement of Mr.G.C.Luthra in cross-examination. There is no allegation of *mala fides*, bias or violation of principles of natural justice, which has been brought to our notice.

5. Besides the above, it was one of the submissions of the Applicant in his appeal that instead of recovering full loss from him alone, it

should have been recovered from the entire subsidiary offenders and considering all aspects of the matter, the Appellate Authority modified the punishment to the extent of recovery of the loss proportionately. We find that the order of the appellate authority is comprehensive and well considered. The requirement in respect of appellate order is that there must be manifestation of application of mind in considering the appeal (Ref. **Ram Chandra v Union of India,** 1986 (3) SCC 103; **R.P.Bhatt v Union of India**, 1986 (2) SCC 651 and **Narendra Mohan Arya v United India Assurance Co,** (2006) 4 SCC 713).

6. Coming to the quantum of penalty it must be first spelt out that there is a limited scope for the court to modify the penalty orders. In the instant case it must be kept in mind that the applicant was a public servant, dealing with public money. The Applicant was held guilty for his negligence in not verifying the documents i.e. the application for withdrawal when it was placed before him before ordering payment and failure to discharge the supervisory duty. Though negligence *per se* may not constitute a serious misconduct, but where the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high, negligence in discharge of duty would certainly constitute grave misconduct. Any case of misappropriation or fraudulent transaction of

public money must have to be viewed strictly. It has been held in the case of **UCO Bank v Rajinder Lal Capoor**, (2007) 6 SCC 694 "it is also true that the officers of the Bank enjoy a part of confidence in them. In the event if a manager of a Bank is found to have embezzled or misappropriated any amount or exceeded the jurisdiction in the matter of grant of sanction of loans, the court takes a strict view of the matter". This dictum applies in all four squares to the fact of this case. Hence no leniency would be justified in the matter.

7. In this view of the matter, we find no substantial force in the contention of the Applicant to interfere in the orders of punishment. Hence, this OA stands dismissed by leaving the parties to bear their own costs.

Thankappan

(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

(C.R.MOHAPATRA)
MEMBER (ADMN.)

KNM/PS