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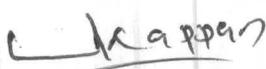
**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 176 OF 2007
Cuttack, this the 3rd day of July, 2009

Sri Durga Charan Mohanty..... Applicants
Vs.
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(K. THANKAPPAN)
JUDICIAL MEMBER

V
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
ORIGINAL APPLICATION NOS. 176 OF 2007

Cuttack, this the 3rd day of July, 2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Sri Durga Charan Mohanty, aged about 60 years, S/o.-Late Haribandhu Mohanty, previously working as Sub-Post Master, Bhandari Pokhari S.O., Po- Bhandari Pokhari, Via/Dist-Bhadrak.

..... **Applicant**

By the Advocate(s) M/s. M.B.K. Rao,
P.K. Pattnaik

Vs.

1. Union of India represented thorough the Chief General Manager, Orissa Circle, Bhubaneswar, Dist-Khurda.
2. Director of Postal Services, Office of the Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda
3. Superintendent of Post Offices, Bhadrak Division, At/Po/Dist-Bhadrak.

..... **Respondents**

By the Advocate(s)..... Mr. S. Mishra, A.S.C.

ORDER
(ORAL)

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)

Challenging Annexure-A/3 order, dated 23.11.2006, of minor penalty of recovery of Rs.28,081.50 paise in twelve monthly installments from his pay, the applicant has filed this Original Application with the following prayer:-

“(i) Quash the order in Annexure-A/3 and allow this application. And/or pass such other order as deem fit in the circumstances of this case;

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(ii) And/or quash the order dated 25.07.07 of the appellate authority (Respondent No.2) under Annexure-A/6."

2. The brief facts leading to filing of this O.A. are as follows:

While the applicant was working as Sub-Post Master in Bhandari Pokhri S.O. in the district of Bhadrak during 2005-06, theft of Postage Stamps, Revenue Stamps and C.R.F. worth of Rs.18,498.50, a V.P.P. for Rs.2095.00 and an Iron safe worth Rs.7488.00 occurred on the night of 09.05.06. A charge memo had been issued to the applicant on 15.09.06 (Annexure-A/1) along with statement of imputation of misconduct for his having failed to maintain devotion to duty as required of him under Rule-3(1) (ii) of CCS (Conduct) Rules, 1964 and an enquiry was conducted. The applicant's case is the Sub Post Office was working in a small room and he was not given any attached Quarters to the Post Office and he was residing 9 k.m. away from the Post Office at Dhamnagar. Hence he was not aware of the theft that had taken place. However, he had filed complaint with Bhandari Pokhri P.S. on the very next day and Police registered the case as P.S. case No.76(9) under Section 457 and 380 of IPC. The F.I.R. was also sent to the concerned Criminal Court and thereafter the Police investigated the said case and after due investigation the police filed a report on facts in the concerned Criminal Court. Hence the applicant put up a case of his innoce in the matter. However on the basis of the inquiry report filed by the

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Inquiry Officer, the Disciplinary Authority, the Superintendent of Post Offices, Bhadrak Division, Bhadrak, observing that though the applicant deserved to be awarded with heavy punishment, yet keeping his past service in view and that he would retire after a short period, ordered a sum of Rs.28,081.50 to be recovered from the pay of the applicant in 12 monthly installments. Aggrieved by the above order of punishment, the applicant had filed an appeal before the Appellate Authority. However, on considering the appeal filed by the applicant the Appellate Authority confirming the findings ended and the punishment awarded by the Disciplinary Authority, upheld the order of punishment. Hence, the applicant challenges the above orders in this O.A.

3. The O.A. has been admitted by this Tribunal and notice has been ordered. While admitting this O.A., this Tribunal passed an interim order that the recovery shall be subject to result of this O.A.

4. On receipt of the notice from the Tribunal, a counter has been filed for and on behalf of the Respondents justifying the action taken by the Respondents and also supporting the punishment awarded against the applicant by the Disciplinary Authority and conformed by the Appellate Authority.

5. The Tribunal heard Mr. M.B.K. Rao, Ld. Counsel for the applicant and Mr. Subhasis Mishra, Ld. Addl. Standing Counsel for the Respondents and perused the documents submitted in this O.A. Mr. Rao, Ld. Counsel for

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the applicant, reiterating of the grounds urged in this O.A., submits that though the charge framed against the applicant suffers from no infirmity, the Inquiry Officer committed errors in holding the entire charge against the applicant as proved without considering the case set up by the applicant in his defense statement submits that as per his defence statement submission the Inquiry Officer committed serious error in not accepting the stand taken by the applicant and the case put forward by him while accepting the charge proved. The specific case, according to Mr. Rao, Ld. Counsel for the applicant, is that the Post Office was functioning in a small room and there was not enough facility to accommodate the Post Office. Further, it is stated in the written statement filed by the applicant that the applicant had no ulterior motive or personal motive in keeping extra Postage Stamps in the Post Office. The reason for keeping some more Postage Stamps is due to the regular need. Further, in the statement, it is stated by the applicant that the Iron safe, which was supplied to the Post Office, was retained by him due to non availability of space and kept properly in the Post Office. Even though three locks were used in the Post Office, the miscreants broke open F1 Departmental pad lock used in the grill gate and uprooted the ring of the door where Novtal lock was used and also broke upon the Mobaj lock used in the hinge of the door and the applicant was innocent in the above theft and he was not aware of such apprehension by anybody during his tenure as Sub-Post Master at the Station prior to the said occasion. The Ld.

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Counsel also submits that due to innocence and non-involvement and keeping more interest in the Post Office, the applicant himself filed the compliant before the P.S on the very next day. From the above circumstances, it can be seen that the theft had occurred without an iota of doubt in the mind of the applicant. That apart, these facts were inquired into and the police reported to the Criminal Court that they could not locate or collect evidence regarding the theft that occurred. Further, the Counsel submits that the Post Office was situated in a village area where no houses were situated nearby. However, these facts were not considered by the Disciplinary Authority while imposing penalty on the applicant. In the above circumstances, the Ld. Counsel for the applicant submits that this Tribunal may take a lenient view and pass an appropriate order.

6. In reply to the above contentions, Mr. Subhasis Mishra, Ld. Addl. Standing Counsel for the Respondents submitted that as per Inquiry Report filed by the Inquiry Officer it is proved that the Postage Stamps, Revenue Stamps and C.R.F. worth of Rs.18,498.50, a V.P.P. for Rs.2095.00 and an Iron safe worth Rs.7488.00 had been stolen. The applicant did not return the VPP to the sender on 09.05.06 and had retained postage stamps on 09.05.06 beyond the authorized limit. The applicant was also instructed by the Inspector of Post Offices, Bhadrak, to embed the Iron safe of Bhandaripokhari S.O. locally for safe custody of cash, stamps and other valuables. But the applicant did not carry out the instruction of the higher

authority and take any action to embed the Iron Safe. All these things would show that the applicant was negligent in keeping the Post Office and Postal Articles, for which lose was caused to the Government. According to the Ld. Counsel for the Respondent- Department, once the facts had been proved, it was not proper for the disciplinary authority to take any lenient view and impose lesser punishment. Ld. Counsel submits that on taking a lenient view the Disciplinary Authority had only imposed a minor penalty of recovery of Rs.28,081.50 paise. Hence, the Ld. Counsel submits that the Appellate Authority has considered all the facts and grounds urged in the appeal memo and confirmed the order passed by the Disciplinary Authority.

7. On anxious consideration of the arguments on either side and the records produced before the Tribunal, the question to be considered is, whether the punishment awarded against the applicant is justifiable or not. Before considering the question, the facts and circumstances under which the theft occurred in the Post Office have to be analyzed. Admittedly, the Post Office was functioning in a small room of the house covered by grills and without any safe condition. However, this Tribunal is not ignoring the fact that the Department had allowed the applicant to continue the Post Office in the small room without any more safety arrangement. That apart, it is a fact that the applicant had not any malafide intention or ulterior motive to keep excess stamps in the Sub Post Office. The applicant had also narrated in the written statement that the

Secretary, All Orissa National State Awards Teachers Organisation, applied on 01.05.06 to supply stamps of Rs.9550/- including Rev. Stamp Rs.700/-. The Secretary is a regular customer and bulk mailer. In order to meet his demand, the applicant kept postage and Rev. Stamps in excess of the authorized balance. As regards CRS, the applicant states that the H.O. had supplied the same without being asked for it. It was only Rs.200/- in excess and the applicant did not think it necessary to return the same in order to avoid unnecessary remittance and the reason for sending the excess CRS stamps to this office by the H.O. was not known to the applicant. Regarding the Iron safe, the miscreants utilized their scientific method and removed iron safe to their convenient place. As there was not sufficient space the Iron safe was not embedded. However, it is an admitted fact the miscreants got enough time and entered inside the Post Office during night hours and committed the mischief and it could not be a bar for them to break open the lock in the iron safe if embedded. The applicant further submits that the room provided for the Post Office is not a suitable room to conduct the office. However, the Department allowed the Post Office in a village area in a small place where the applicant had conducted the office and residing 09 km from the office. That apart, this Tribunal cannot ignore that the applicant was not given any accommodation nearer to the Post Office and that the applicant's residence was 9 k.m. from the Post Office. Another fact also to be considered is that the applicant had already filed F.I.R. on the very next day and

the Police after through investigation of the case found that they could not stress out the culprits and the case ended "F.R.T. No clue". In the above circumstances, this Tribunal is very much impressed in the case set up by the applicant and sees that even though some loss was sustained by the Department, there was no culpable negligence or intentional act committed by the applicant which instigated the culprits to commit the theft in the Post Office. If so, a lenient view can be taken by this Tribunal. In the above circumstances, though this Tribunal is not right to set aside the orders passed by the Respondents, yet it is only proper for this Tribunal to hold that the punishment awarded against the applicant can be dispensed with. It is also to be noted that the applicant subsequently retired on 31.12.07 after putting in more than 31 years of service in the Department and this is the first case of misconduct alleged against him. Taking into account all these facts, this Tribunal is quashing the punishment now awarded against the applicant and the O.A. is allowed. Consequently, Annexure-A/3 and the appellate order Annexure-A/6 are hereby quashed. It is also ordered that any recovery made from the salary of the applicant shall be returned to the applicant forthwith.

K. Thankappan
(K. THANKAPPAN)
JUDICIAL MEMBER