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OA No. 203 of 2007

Alekh Bihari Mohanty .... Applicant  
Versus  
UOI & Ors. .... Respondents

1. Order dated 4<sup>th</sup> September, 2009.

C O R A M  
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (ADMN.)

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Applicant, a Sub Post Master, has been posted to Meramandali Sub Post Office in Dhenkanal Postal Division in the District of Dhenkanal. Vide Memo under Annexure-A/5 dated 3<sup>rd</sup> March, 2006 he was communicated a statement of misconduct or misbehaviour on the basis of which it was proposed to take action under Rule 16 of CCS (CC&A) Rules, 1965. The allegation of misconduct or misbehaviour levelled against the Applicant reads as under:

**“Charge No.1**

Sri Alekh Bihari Mohanty was working as PA, Meramandali SO with effect from 29.05.2001 and as SPM, Meramandali SO with effect from 01.12.2004 while working as such the said Sri Mohanty allowed one Sri Sushil Kumar Patnaik, GDSMD of Meramandali SO to function as SAS agent for outside investors and converted the purchase of cash certificates by the investor I the outside through the aforesaid Sri Sushil Kumar Patnaik treating the said Sri Patnaik as SAS agent irregularly instead of challenging his agency under authority no.46/02. Enquiry made revealed that the said Sri Mohanty allowed payment of commission at source to the said Sri Sushil Kumar Patnaik GDSMD of his office as follows for purchasing cash certificates on behalf of investors in the outside who purchased cash certificates at Meramandali SO between January 2004 and August, 2005.

.....  
Total Rs.1,85,695/-

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By way of allowing payment of SAS agent commission as above to the aforesaid Sri Sushil Kumar Patnaik irregularly, the said Sri Mohanty had not only put the department to huge pecuniary loss but had also failed to check the irregular payment. Thereby the said Sri Mohanty violated the provisions of Rule 17(1) of Post Office Savings Bank Manual Volume II read with Ministry of Finance (Department of Economic Affairs) letter no.F.1/5/83-NS dated 16.2.85 and DG Posts letter No.60-3/83-SB dated 20.8.1983. The said Sri Mohanty vide his letter dated 10.8.2005 failed to explain his lapses convincingly and as such the said Sri Mohanty committed grave misconduct.

By his above acts the said Sri Mohanty in his capacity as SPM Meramandali SO failed to maintain absolute integrity and devotion to duty as enjoined in Rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

**Charge No.II**

The said Sri Mohanty while working as such also allowed one Smt. Swarnalata Patnaik Wife of Sri Sushil Kumar Patnaik GDSMD of his office to function as Mahila Pradhan Kshetriya Bachat Yojana aged under Standardised Agency System instead of challenging her agency issued vide C.A.No.49 dated 27.6.02 of Sub Collector Dhenaknal. Enquiry made revealed that the said Shri Mohanty caused payment of MPKBY commission to the tune of Rs.50296/- between 1.1.04 to 30.9.05 to the aforesaid Smt. Swarnalata Patnaik wife of Sri Sushil Kumar Patnaik GDSMD of his office irregularly being fully aware of the fact that near relatives of GDS employees are debarred to function as MPKBY agent. As such the said Sri Mohanty violated the provisions contained in Ministry of Finance (Department of Economic Affairs) letter No.F 1 (1)-NS/71 dated 29.1.72 read with Ministry of Finance letter No.7885-NS.II dated 6.4.1988 and Ministry of Finance (Department of Economic Affairs) letter No.F1/5/83 DATED 3.1.84 and 16.2.85 circulated from time to time and the said Sri Mohanty committed grave misconduct.

By his above acts the said Mohanty in his capacity as SPM Meramandali SO failed to maintain absolute integrity and devotion to duty as enjoined in Rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964."

Annexure-A/6 dated 30.03.2006 is the reply of the applicant to the aforesaid notice of show cause. Thereafter the

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Disciplinary Authority imposed the order of punishment under Annexure-A/7 dated 28.6.2006/10.7.2006 imposing the following punishment:

"In view of the discussions made in the foregoing paragraphs and considering the gravity of the offence and the interest of justice it is hereby directed that a penalty of recovery of Rs.38,400/- (Rupees thirty eight thousand four hundred only) should be imposed on Shri Alekh Bihari Mohanty to adjust a portion of loss sustained by the department and the amount should be recovered in 48 monthly installments @ Rs.800/- per month. Besides that one increment of the official which falls due next should be withheld for a period of two years without cumulative effect."

2. Thereafter, applicant preferred appeal under Annexure-A/8 dated 14.08.2006 followed by another representation under Annexure-A/9 dated 18.9.2006. During the pendency of the appeal he approached this Tribunal in OA No. 674 of 2006. Since the appeal of the applicant was pending this Tribunal in order dated 21.09.2006 disposed of the matter by directing the appellate authority to consider and dispose of the appeal of the applicant within a period of two months. Vide order under Annexure-A/11 dated 12<sup>th</sup> December, 2006, the Appellate Authority modified the order of punishment imposed by the Disciplinary Authority to the extent extracted herein under:

"With all the arguments and facts as narrated above, it is proved beyond doubt that the appellant, Shri Mohanty has failed miserably to follow the departmental rules and check illegal payment of commission to an illegally appointed SAS Agent and one MPKBY aged. However, taking into view the totality of the case, I modify the punishment to that of recovery of the amount as ordered by the disciplinary authority only. The second part of the

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punishment of withholding of increment will not be there."

Hence by filing this Original Application the

Applicant seeks the following relief:

"to quash the charge sheet in Annexure-A/5 and orders in Annexure-A/7 and A/11;

And

To direct the departmental authorities to refund to him the amount already recovered from him;

And

To pass any order/orders as deems fit in the circumstances of the case;

And

To pass any other further order/orders, direction/directions and relief/reliefs as deems fit in the circumstances of the case."

3. It has been contended by the Respondents in their counter filed in this case that the applicant committed negligence in duty in not intimating the irregularity in the appointment of the agents thereby putting the department to pecuniary loss to the tune of Rs.1,83,695/- towards payment of commission to the agents. The very appointment of the agent was in gross violation of the Government of India instruction. As such after giving him due opportunity and considering the reply given by the Applicant the Disciplinary Authority came to the conclusion as the loss sustained by the department was due to the fault of the applicant, he was imposed with the punishment of recovery of the loss sustained by the department and stoppage of increment for two years without cumulative effective. However on considering the appeal preferred by the Applicant the appellate authority waived out the punishment of stoppage of increment but sustained the recovery ordered by the disciplinary Authority which needs no interference by this

Tribunal as there has been no breach of principle of natural justice or extant rules. Accordingly the Respondents prayed for dismissal of this OA.

4. Heard Learned Counsel for both sides and perused the materials placed on record. It was contended by Learned Counsel for the Applicant that it is not correct to state that there was loss to the Department. Appointment of the agents in question was made by the Government of Orissa to promote the investors to keep the money in various deposits in lieu thereof the agents get their commission. By stating many of the factual aspects in support of his prayer for quashing of the impugned order of punishment, he has submitted had there been an enquiry it would have certainly been established that the applicant was not at fault so as to be visited with the punishment as has been imposed on him. On the other hand, Learned Counsel appearing for the Respondents has opposed the contention of the applicant that after taking into consideration all the grounds taken by the applicant in his reply and appeal he has been visited with the punishment and as such the contention of the applicant that there should have been enquiry before the order of punishment is beyond the rules.

5. Going through the charges levelled against the Applicant as also the points raised by the Applicant, in my considered opinion the Respondents ought not to have passed an order without making a detailed enquiry; especially when the charges are factual and have been denied by the Applicant. It is

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no doubt but true that under Rule 16 there is no provision for holding enquiry before passing the order by the disciplinary authority unless it is asked for by the Applicant. But Rule 16 provides that subject to the provisions of sub rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of Rule 11 shall be made except after (b) holding an inquiry in the manner laid down in sub rules (3) to (23) of Rule 14 in every case in which the disciplinary authority is of the opinion that such inquiry is necessary. No finding has been reached by the Disciplinary Authority that though the charges are factual and ~~financial~~ involving financial implications no enquiry is necessary. Imposition of punishment under rule 16 without holding enquiry came up for consideration before the Hon'ble Apex Court in the case of

**O.K.Bhardwaj v Union of India and others**, 2002 SCC (L&S)

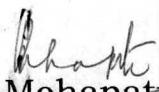
188 therein it was held by the Hon'ble Supreme Court as under:

“Even in the case of a **minor penalty** an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to 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 the principles of natural justice and the said requirement cannot be dispensed with.”**

6. Fact remains that the order of punishment has been passed without holding any enquiry and without any basis of arriving at the recovery amount. Hence, for the discussions made above and by applying the ratio of the decisions in the case of **O.K.Bhardwaj** (supra), without expressing any opinion

on the merit of the matter, it is held that the order of punishment passed by the disciplinary authority under Annexure-A/7 and the order of appellate authority under Annexure-A/11 are not sustainable in the touch stone of judicial scrutiny. Hence both the orders are hereby quashed. Liberty is given to the Respondents to proceed in the matter, if so advised, only after holding detailed enquiry with due opportunity to the Applicant.

7. With the aforesaid observations and directions this OA stands disposed of by leaving the parties to bear their own costs.

  
(C.R. Mohapatra)  
Member (Admn.)