

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.250 OF 2007

Cuttack this the 5th day of January, 2010

Sri Anirudha NayakApplicant

-VERSUS-

Union of India and others Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B., CAT, or not?


(C.R.MOHAPATRA)
ADMN. MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER

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CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...

Sri Anirudha Nayak, aged about 62 years, S/o. late Haldhar Nayak,
At/PO-Gomu, Via-Indupur, P.S.Bari, Dist-JajpurApplicant

By the Advocates: M/S.K.C.Kanungo,S.Behera & S.Pattanaik

-VERSUS-

1. Union of India represented through the Secretary-cum-D.G.Posts, Dk Bhawan, New Delhi-1.
2. The Chief Post Master General, Orissa Circle, Bhubaneswar-1, Dist-Khurda
3. The Director of Postal Services (Hqrs.), O/o. the Postmaster General, Orissa, Bhubanesar-1, Dist-Khurda
4. The Sr.Superintendent of Post Offices, Cuttack City Division, Cuttack ...Respondents

By the Advocates: Mr.U.B.Mohapatra, SSC

O R D E R

JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

This Original Application has been filed by the applicant,

Shri Anirudha Nayak challenging the charge sheet as per Annexure-A/11, the order of penalty issued by Respondent No.4 as per Annexure-A/15 in consequence of disciplinary proceedings and the order of the Appellate Authority at Annexure-A/17, rejecting the appeal preferred by the applicant.

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2. The brief history leading to filing of this Original Application is that the applicant, while working as Assistant Post Master (in short 'A.P.M.') (Counter), Cuttack G.P.O., on the initiation of proposed action against him under Rule 16 of CCS(CCA) Rules, 1965, was issued with Memo dated 6.2.2006 (Annexure-A/11) enclosing therewith a statement of imputation of misconduct or misbehaviour requiring him to make such representation as he wished to make. In response to the above, the applicant submitted his representation dated 17.2.2006 (Annexure-A/14) requesting the authorities to absolve him of the charges. In consideration of his representation, the Sr. Superintendent of Post Offices imposed the punishment of recovery of Rs.54,000/- from the pay of the applicant in nine equal monthly installments at the rate of Rs.6000/- per month commencing from the pay and allowances of May, 2006 towards partial adjustment of the loss sustained by the Department. Against the order of punishment, the applicant, on preferring an appeal dated 30.6.2006(Annexure-A/16), moved this Tribunal on 9.8.2007. As per order dated 14.5.2008, this Tribunal admitted the Original Application and directed notice. While the matter stood thus, the Tribunal, having regard to the fact that the appeal was pending before the Appellate Authority issued direction on 16.5.2008, directing the Appellate Authority, viz., Director of Postal Services, (Headquarters),

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Bhubaneswar (Respondent No.3) to consider and dispose of the appeal under Annexure-A/16 by a reasoned order. In compliance with the above direction of the Tribunal, the Appellate Authority, as per Annexure-A/17 dated 11.7.2008 disposed of the appeal by confirming the penalty as imposed by the Disciplinary Authority. In the above background, the Original Application has since been amended bringing within its ambit the impugned appellate order (Annexure-A/17) and in the circumstances, the applicant has sought for the following relief:

“...to quash the chargesheet in Annexure-A/11, the order of penalty in A/15 and A/17 for the ends of justice, to direct the Respondents to pay back the amount of Rs.54,000.00 recovered from the pay of the applicant with interest @ 18% per annum from the date of recovery till the date of payment and to award cost of Rs.5000.00 on Respondent No.4 for his wrongful action towards the cost of the suit”.

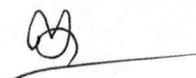
3. Before narrating the relevant facts as set out by the applicant in the Original Application, for the sake of convenience, it is profitable to quote the imputation of misconduct or misbehaviour attributed against the applicant (Annexure-A/11), in seriatim, which reads as under:

i) Shri Anirudha Nayak, A.P.M.(Counter) Cuttack GPO, while functioning as APM (SB-I) at Cuttack GPO during the period from 23.10.2002 to 23.9.2008, allowed on 2.4.2004 closure of one Security Deposit Account No.28003 opened for Rs.1,40,000/- (Rs.one lakh forty thousand) only in the name of Shri



Chhabindra Nath Nayak, Prop. Aparna Construction, At-Alijanga, PO-Arhua, Dist-Jajpur to a person other than the depositor.

- ii) This Security Deposit Account was pledged in favour of Executive Engineer, Rural Works Division, Cuttack vide his Memo No.5377 dated 21.1.2003.
- iii) Shri Nayak Allowed Closure of the said Security Deposit Account with an amount Rs.1,40,933.35 (Rs.one lakh forty thousand nine hundred thirty-three paise thirty-five only) basing on the release order No.1316 dated 25.3.2004, issued by the Executive Engineer, RWD, Cuttack, the copy meant for the depositor when the copy of the release order meant for the Sr.Postmaster, Cuttack GPO was yet to be received.
- iv) Before sanction of final closure of the said account, Shri Nayak failed to ensure that both the copy of the release order meant for Sr.Postmaster, Cuttack GPO and the copy meant for the pledger were kept on record.
- v) He also failed to make the following remarks under his dated signature in the ledger card below the last entry "Pledge released vide letter No.....dated..... Interest is to be calculated only upto.....or the date of closure whichever is earlier" in contravention of DG Posts letter No.35-38/90-SB dated 21.1.1991.



- vi) He also failed to scrutinize the SB withdrawal form (SB-7) to point out the corrections, alterations in the entries and discrepancies in the specimen signature found in it and thus violated the provision of Rule-33(3) of Post Office Savings Bank Manunal, Voll. I.
- vii) Shri Nayak also failed to ensure that the remarks "Written authority of the pleadge attached" was on the warrant of payment, thus violated the provisions of Rule 42 of Post Office Savings Bank Manual, Vol.I
- viii) The payment order in SB-7 has been written by the Ledger Assistant instead of Counter P.A.in violation of Rule 43 of Post Office Savings Bank Manual, Vol. 1, but Shri Nayak in the capacity of APM (SB-1) failed to raise any objection.
- ix) Had Shri Nayak taken precautionary measure in this regard, the fraudulent withdrawal/closure of the Security Deposit Account for Rs.1,40,933.35 could have been averted and the Department might nt have been sustained a pecuniary loss of Rs.1,40,933.35 (Rs.one lakh forty thousand nine hundred paise thirtyfive only).
- x) On Warrant of payment, amount of Rs.1,40,933.35 has been sanctioned, whereas an amount of Rs.1,40,000/- has been acknowledged by the party and this discrepancy could not be pointed out by Shri Nayak while comparing the vouchers with that of the list of transactions and the long book dated 2.4.2004



and thus, violated the provisions of Rule-40 of Post Office Savings Bank Manual, Vol.1

xi) He failed to sign below the totals in the long book dated 2.4.2004 in token of having carried out the check as prescribed under Rule 10 of Post Office Savings Bank Manual, Vol.1

4. In reply to the above, the applicant submitted his written note of statement as per Annexure-A/14 dated 17.2.2006. For the sake of clarity, the explanations so offered by the applicant read as under:

a) The deposits in S.B. Account are governed by "The Post Office Savings Bank General Rules -1981" made by the Central Government under the powers conferred by Section 15 of Govt. Savings Bank Act, 1973. Rule-15(a) of the Post Office Savings Bank General Rules, 1981 prescribes that the Post Office Savings Bank shall not be responsible to a depositor for any fraudulent withdrawal by a person obtaining possession of the Passbook. Since the depositor, Shri Nayak had authorized his associate to take possession of the passbook with release order from the Executive Engineer, Rural Works, Cuttack, as per his own revelation before the investigating officer of the Department, it was therefore, his duty to guard against fraudulent use of the passbook by a person getting possession of it. The withdrawal from the passbook is



allowed only when the passbook is presented with the application for withdrawal. The production of passbook establishes identification of the person presenting it to be depositor to a great extent. In the absence of passbook withdrawal is not permissible.

- b) Applicant along with Ledger Assistant and Counter Assistant having acted in good faith, the proceedings against him (applicant) should not have drawn up.
- c) He had allowed withdrawal on the basis of the release order meant for the pledger without receipt of copy of the same meant for the Sr.Postmaster, Cuttack GPO and by doing so there has been no contravention of any Rule and in this respect, the applicant has relied on Rule 42(2) of Post Office Savings Bank Manual, Vol.I
- d) It is not a fact that the remark "pledge was released" was not noted on the ledger card and that the said remark is aimed at guarding against payment of interest beyond three months after the pledge is released. It has been submitted that comparison or detection of signature on the application for withdrawal with that of the specimen signature of the depositor on record is required to be done by the counter Assistant and Ledger Assistant under Rule 33(2)(iii) of Post Office Savings Bank Manual, Vol.I and for their lapse, if any, no responsibility could be fixed on the applicant.



e) There was no correction and alteration in entries in the application for withdrawal (SB-7). The fact that the amount of withdrawal applied for was filled up at the top of the warrant of payment which was corrected by the counter P.A. was noticed at the time of signing warrant of payment. In this connection, the applicant has relied on Rule-33(3)(iii) of Post Office Savings Bank Manual, Vol.I, which only requires him to scrutinize the application for withdrawal, to see that it does not bear any eraser, overwriting or suspicious correction or alteration, but not the warrant of payment. Since there was no such correction, erasure, alteration etc. on the application for withdrawal, there was no option but to sign the warrant of payment.

f) The applicant has admitted the allegation that Rule-42(2) requires that the written authority from the pledgee authorizing the depositor to withdraw the deposit full or part of it should be forwarded to the Control Organization attached to the warrant of payment with a remark on it as written authority of the pledgee attached. He has also admitted that the said remark is not made on the warrant of payment. But the fact remains that the authority of the pledgee was forwarded to the Control Organization, as per the allegation made.

g) The applicant has admitted the allegation that the warrant of payment was written by the Ledger



Assistant instead of Counter Assistant in violation of Rule-43(a)(i) of Post Office Savings Bank Manual, Vol.I to which he had not objected, but he has stated that even if warrant of payment had been written by the Counter P.A. there was no scope available to forestall the fraudulent withdrawal.

- h) The applicant had admitted that while checking the warrant of payment with the long book entry under Rule-46(5) of Savings Bank Manual, Vol.I, he failed to detect acquittance of Rs.1,40,000/- by the depositor on it as against Rs.1,40,933.35, sanctioned for payment, But he has stated that so pointing out the fraudulent withdrawal could not have been avoided.
- i) The applicant has admitted to have omitted inadvertently to sign below the total truck in the long book entries dated 2.4.2004 as per Rule 10 of Post Office Savings Bank Manual, Vol.I, but it has no nexus with the fraudulent withdrawal.
- j) Fraudulent withdrawal by the imposter depositor could have been avoided if the SB Counter P.A and Leger P.A. required to verify the signature on the application for withdrawal with the specimen signature on record under Rle-33(2)(iii) had found out disagreement between the signature on comparison but they failed. Thus, SB Counter P.A. and Ledger P.A. might be responsible for such lapse. He has stated that he being not saddled with the duty of



comparing the signature on the application for withdrawal with the specimen signature under Rule-33(2)(iii) of Post Office Savings Bank Manual, Vol.or any other Rule of the said manual, no responsibility could be fixed on him for such fraudulent withdrawal.

5. Having regard to the above, we feel it proper to quote hereunder the basic and important findings of the Disciplinary Authority while imposing penalty as per Annexure-A/15 dated 22.5.2006 with a view to catching a glance over the entire matter.

- 1.1) Mere production of passbook with the application for withdrawal for final closure of a S.D.Account is not sufficient evidence to establish identification of the person as the depositor, unless the person presents the copy of the release order endorsed to the depositor. In absence of pledger's copy of release order with the passbook and withdrawal application at the S.B.Counter, it cannot be said that the identification of the person was established. The copy of release order of the pledger must be presented at the S.B.Counter with the passbook to establish identification of the depositor in the instant case.
- 1.2) Unless the Postmaster receives the release order issued in his favour, the noting/remark that "Pledge released vide letter No.....dated could not be mentioned on the ledger card with the calculation of interest due.



1.3) The release order bearing Memo No.1316 dated 25.3.2004 is an endorsement copy of the pledger could not be treated the release order meant for Sr.Postmaster, GPO even though it was included in the Office Dak to APM (SB). Thus, before the release order could be received by the Sr.Postmaster, GPO, Cuttack, the withdrawal was allowed.

1.4) Being the supervisor of the Branch, the applicant did not object inclusion of the copy of the release order endorsed to the pledger in the Dak Register nor attach any importance to the release order addressed to the Sr.Post Master, GPO, Cuttack

6. We have heard Shri K.C.Kanungo, learned counsel for the applicant and Shri U.B.Mohapatra, learned Senior Standing Counsel for the Respondents and perused the materials on record.

7. The main thrust of the Original Application, as it reveals, is Rule – 15(a) of Post Office Saving Bank General Rules, 1981, Rule-33(3) of Post Office Savings Bank Manual, Vol.1 and Rule-42(2) of POSB Manual, Vol.1, whereas it is the basic case of the Respondent-Department is based on D.G.Posts letter No.33-38/90-SB dated 21.1.1991. For the sake of convenience those Rules are extracted hereunder:

“ Rule 15(a) of POSB General Rules, 1981:

Responsibility of the Savings Bank – The Post Offices Savings Bank shall not be –

(a) Responsible to a depositor for any fraudulent withdrawal by a person obtaining possession of the pass



book or a cheque from the cheque book of the depositor:

- (b) Liable if any fraud takes place due to failure of the depositor to ensure that the amount sought to be withdrawn is entered in the application for withdrawal before the same is prescribed at or sent duly signed by him to the Post Office Savings Bank for withdrawal;
- (c) Responsible to a depositor, if he or, in case the withdrawal is presented by his agent, the agent, fails to ensure that the receipt of the payment is signed by him or the agent, as the case may be, only at the time of actual payment and not at the time of presentation for withdrawal.

Rule-33(iii) of POSB Manual, Vol.I –

The Postmaster should carefully scrutinize the application for withdrawal and see that it does not bear any erasures, overwriting or other suspicious corrections or alterations, that the Counter Assistant/Ledger Assistant has/have signed below the signature of the depositor on the withdrawal from in token of having compared it with the specimen signature on record in case of withdrawals exceeding Rs.300/- and that the receipt for the money below the warrant of payment has not already been signed. He will, then satisfy himself by a reference to the pass book, the ledger card and the application for withdrawal that the amount to be withdrawn is at the credit of the depositor, compare the entries in the pass book and the ledger card, sign the warrant and initial in the pass book and the ledger card. He will then make the entry of withdrawal in the Long Book. The pass book and the warrant of payment will be transferred to the Counter Assistant and the binder to the Ledger Assistant.

Rule-42(2) of POSB Manual, Vol.I –

If the depositor produces an order from the pledge authorizing him to withdraw the deposit or part of it, stating that (the pledgee) does not claim the deposit or the portion sought to be withdrawn, the amount should be paid to the depositor. The written authority of the pledgee should be forwarded to the Control Organization attached to the warrant of payment with the remark on it "Written authority of the pledge attached". If the whole of the principle is to be withdrawn, the account shall be closed in the usual manner. A note regarding the pledgee's authority shall be made on the pledger card.

D.G.Posts letter No.35-38/90-SB dated 21.1.1991 –

IX. Security Deposit Accounts(1) Security Deposit accounts can be opened by employees, contractors etc. and by a cooperative society or a cooperative bank and by any person who is required to deposit security in connection with the purchase of a motor vehicle or tractor under the provisions of the Post Offices Savings Accounts, 1981

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(2) The depositor cannot claim the repayment of the amount pledged or any part of it without the written sanction of the pledgee. He may, however, withdraw the amount in excess of the amount pledged without reference to the pledge.

Note:-No amount in excess of the amount pledged should be paid to the pledgee without the consent of the pledger.

(3) Interest on security deposit accounts ceases to accrue after three months from the first day of the month in which the orders of the release of the security is issued by the pledge. On receipt of the release authority, following remarks in red ink should be made under the dated signature of the Postmaster in the ledger card below the last entry :-

“Pledge released vide Letter No..... dated Interest is to be calculated only upto or the date of closure whichever is earlier”.

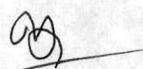
This will ensure that no excess interest is paid. If the release order is issued on 22nd May, interest is payable upto July, when the account is closed on or after the 1st August.....”

8. We have considered the pleadings of the parties having regard to the provisions of rules relating to withdrawal/closure of Security Deposit Accounts. The main allegation against the applicant is that before the copy of release authority could be received by the Senior Postmaster, GPO, Cuttack, the applicant on the basis of the copy meant for the pledger, allowed closure of the Security Deposit Account without having regard to D.G.Posts instructions dated 21.1.1991(supra). It is the case of the applicant that having regard to Rule-33(iii) of POSB Manual, Vol.I he allowed closure of S.D.Accounts. However, he has stated that had he followed the instructions issued by the DG Posts, the fraudulent withdrawal count not have been avoided. He has also based his claim on Rule-15(a) of POSB General Rules, 1981 (supra) in so far as responsibility of Post Office Savings Bank is concerned. Although the



applicant has relied upon other Rules as enshrined in Post Office Savings Bank Manual, Vol.I regarding the duties cast on Ledger Assistant, Counter Assistant, PM(Counter), etc., we are not inclined to go into all those rules since the applicant has nowhere denied to have acted in contravention of those Rules, or rather he has pleaded that had those Rules been adhered to, the fraudulent withdrawal could not have been avoided. He has also stated that since he being a supervisory official is expected to scrutinize and ensure that there has been no alteration, eraser, correction and over-writing on the withdrawal application form(SB-7), besides the warrant of payment, release order of the pledgee, etc. He has also submitted that the duties of comparison and detection of specimen signature with that the specimen signature on the ledger card are cast on the Counter Assistant/Ledger Assistant under Rule-33(2)(iii) and therefore, for the lapse on their part, he should not be responsible.

9. We have given our anxious thoughts to the submissions made by the learned counsel for the applicant. Admittedly, the applicant allowed closure of the Security Deposit Account, without receipt of the letter meant for the Senior Postmaster, GPO, Cuttack. His submission that the Post Office Savings Bank should not be responsible for fraudulent withdrawal by application of Rule-15(a) of POSB, General Rules, 1981 is a bland assertion. On a plain reading of the relevant rules,



it reveals that the Security Deposit Account is not akin to the Savings Deposit Account, because in case of Security Deposit Account, the Post Office Savings Bank acts as an intermediary between the pledger and the pledgee and that for a limited period of three months only, whereafter no interest is due on the amount pledged. Secondly, the withdrawal/closure of Savings Bank Account is between the depositor or his agent and the Post Office Savings Bank, but here is a case where the closure of Security Deposit Account is solely based on the release order of the pledgee. We are conscious that the applicant by application of Rule-42(2) of Post Office Savings Bank Manual, Vol. (supra) on production of copy of the release order of the pledgee by the depositor has allowed closure of the Security Deposit Account by making a remark "Written authority of the pledgee attached". But the fact remains, the D.G.Posts instructions dated 21.1.1991 has to be read into the Rule-42(2) of POSB Manual, Vol.I while allowing closure and/or withdrawal in case of Security Deposit Account. As quoted above, the D.G.Posts instructions (3) state that "on receipt of the release authority, following remarks in red ink should be made under the dated signature of the Postmaster in the ledger card below the last entry :-

"Pledge released vide Letter No.....dated
Interest is to be calculated only uptoor the date of
closure whichever is earlier".

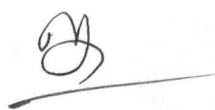


It is the case of the applicant in this context that the above instructions are only meant for calculation of interest and to see that no excess payment of interest is made beyond the stipulated period. We are not discarding the argument of the applicant wholly. But at the same time, we cannot brush aside the specific remarks "Pledge released vide Letter No.....Dated.....". In this connection, it is to be noted that the calculation of interest is latter and the former is "Pledge released vide Letter No.....dated.....", which give out two distinct and different requirements standing in juxtaposition. In other words, the former does not qualify the latter. Thus, the former implicitly makes it clear that the Letter bearing No. and date addressed to the Sr.Postmaster, GPO by the pledgee ought to have been entered while allowing withdrawal/closure of the S.D.Account and releasing the pledge in favour of the pledger. The applicant has admitted that he had allowed closure of the account before the letter/release order meant for the Senior Postmaster, GPO, Cuttack, could be received. Further, he has stated to have not mentioned the letter No. with date addressed to the Sr.Postmaster, GPO, Cuttack, on the ledger card. He has also not precisely replied to the imputation of misconduct that both the copies of the release order meant for the Senior Postmaster, GPO Cuttack and pledger were not kept on record. If according to the applicant he has



made the said remarks, it is only based on the copy of the release order meant for the pledger, which is not the import of D.G.Posts instructions. This action of the applicant, in our considered view, is against the D.G.Posts instructions governing the closure of S.D.Account.

10. As regards the appeal preferred by the applicant, we do not find anything therefrom that the applicant has made a grievance therein of any rules or instructions to have been violated by the Disciplinary Authority while ordering recovery of the partial loss sustained by the Department nor has he anywhere in the appeal stated that the order so passed by the Disciplinary Authority is not in accordance with the Rules or instructions or is against any rules or instructions. By adducing some new points which were not urged before the Disciplinary Authority the applicant has filed appeal more or less reiterating the same plea as in his representation against the imputation of misconduct. We find that the Appellate Authority has duly considered all the points raised by the applicant in his appeal and has upheld the order passed by the Disciplinary Authority. In the circumstances, we are unable to find any flaw with the order passed by the Appellate Authority. In this view of the matter, the findings of the Disciplinary Authority as well as the Appellate Authority remain unassailable and therefore, the applicant cannot be said to have acted in accordance with the Rules and instructions of the



Department while allowing closure of the Security Deposit Account. Had the applicant acted in a manner as is required of Rules and instructions while allowing closure of S.D.Account, certainly he could have been entitled to protection under Post Office Savings Bank General Rules, 1981 or at least under the protection of action taken in good faith. Since at the very threshold there has been irremediable breach of D.G.Posts instructions dated 21.1.1991 committed by the applicant as APM (Counter) while allowing closure of Security Deposit Account, we are not inclined to look into other imputations proved or disproved and accordingly, we hold that the applicant is not entitled to any relief sought for.

11. In the result, the O.A. fails. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(JUSTICE K.THANKAPPAN)
JUDICIAL MEMBER