

9

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 275 of 2007

Monday, this the 21st day of April, 2008

CORAM:

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MR. C.R. MOHAPATRA, ADMINISTRATIVE MEMBER**

Sri Chandro Majhi,
S/o. Late Pandru Majhi,
At /PO: Korango,
Via/P.S.: Kutra, Dist. Sundargarh
Pin: 770 016

.... Applicant.

(By Advocate Mr. P.K. Padhi)

v e r s u s

1. Union of India, represented through
Chief Postmaster General, Orissa Circle,
At/P.O. Bhubaneswar, Dist. Khurda : 751 001
2. Postmaster General, Sambalpur Region,
At/P.O./Dist. Sambalpur : 751 001
3. Director of Postal Services, Sambalpur Region,
At/P.O./Dist. Sambalpur : 751 001
4. Sr. Superintendent of Post Offices,
Sundargarh Division,
At/P.O./Dist. Sundargarh : 770 001
5. Sri Khageswar Mallick, SDI (P)/IPOs,
O/o. C.P.M.G, At/P.O. Bhubaneswar : 751 001

... Respondents.

(By Advocate Mr. S. Mishra)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant, while working as Postal Assistant, Rourkela 11 S.O. was proceeded against under Rule 14 of the CCS(CC&A) Rules 1965 vide charge memo dated 5/14-03-2002. Meanwhile, he was placed under suspension from 17-10-2000. The articles of Charge are as under:-

43309311

" Article I

That the said Shri Chandro Majhi while functioning as Sub Postmaster Kalunga S.O. During the period from 1.7.98 to 17.10.2000 retained excess cash from 12.10.2000 to 16.10.2000 beyond the maximum authorised balance and without liabilities and without submitting E.C.B. Memo violating Rule-31, 102(B) of Postal Manual Volume VI Part III and the order of D.G. (Posts) letter No. 20-2/88-C dtd. 26.6.89.

It is therefore alleged that the said Sri Chandro Majhi by his above acts failed to maintain absolute integrity and devotion to duty in contravention of Rule-3 (1)(i) & (ii) of CCS (Conduct) Rules, 1964.

Article II


That during the aforesaid period and while functioning in the aforesaid office the said Shri Chandro Majhi kept shortage of Govt. cash balance amounting to Rs. 2,13,851.90 (Rs. Two lakhs thirteen thousand eight hundred fifty one and paise ninety) only in cash and stamp balance of Kalunga SO on 16.10.2000 violating Rule 84 of Postal Manual, Vol. VI Part-III.

It is therefore alleged that the said Sri Chandro Majhi by his above acts failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming on the part of a Govt. servant in contravention of Rule-3 (1) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

Article III

That during the aforesaid period and while functioning in the aforesaid office the said Sri Chandro Majhi placed requisition of Rs. 2,00,000/- (Rupees two lakhs) only on 14.10.2000 to the Postmaster, Rourkela HO personally for IVP discharge and received remittance of Rs. 1,50,000/- (Rs. One lakh fifty thousand) only on 14.10.2000 and kept cash balance of Rs. 2,25,182.10 without any liability and did not submit E.C.B. Memo to Rourkela HO violating Rule-31 of Postal Manual, Volume VI Part III and order of D.G. (Posts) letter No. 20-2/88-C dtd. 26.6.89."

It is therefore alleged that the said Sri Chandro Majhi by his above acts failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming on the part of a Govt. servant in contravention of Rule-3 (1) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964."



2. As the applicant denied the charges, regular inquiry took place and the Inquiry Officer rendered his findings that all the three charges were 'proved', and a copy of the inquiry report was forwarded to the applicant through letter dated 18-10-2002 (Annexure A-12). The applicant submitted his representation on 29-11-2002. The Disciplinary authority, after considering the Inquiry Report and the representation of the applicant against the report, agreed with the findings of the Inquiry Authority and awarded the penalty of dismissal from service, vide order dated 29-01-2003 at Annexure A-13. The applicant filed an appeal against the said order of dismissal and the Post Master General, Sambalpur, the Appellate Authority, confirmed the said penalty vide order dated 03.07.2003 (Annexure A-14). The applicant had filed his revision petition before the Chief Post Master General, who had, after considering the same rejected it, vide Annexure A-15 order dated 30-01-2006. The applicant has challenged the aforesaid orders of the Disciplinary Authority, the Appellate Authority and the Revisional Authority.

3. Respondents have contested the OA and they have justified the orders passed by the Disciplinary Authority, the appellate authority and the Revisional Authority. They have also added copy of the judgment of the Asst. Sessions Judge, Rourkela in Cr Case No. 2061/2000 whereby the applicant has been convicted and sentenced for three years with fine of Rs 10,000/-.

4. The applicant filed his rejoinder, annexing a copy of the judgment of the appellate court, whereby the criminal case stood remanded to the Additional Sessions Court for fresh trial. He has also furnished a copy of the High Court's order, granting bail, staying the payment of fine and also staying the trial.


12

5. Counsel for the applicant argued that this is a case where the applicant has been a victim of circumstances. The applicant had been robbed of Rs 2.14 lakhs during mid day on 14-10-2000 and he had undergone an ordeal before he could lodge complaint with the police. His exertion, efforts and mental agony were not appreciated by the authorities. The counsel also referred to the sub office daily account to show the difference in handwriting and said that these were written by a substitute by the department and the applicant had been asked only to sign, which he did. Again, it has been submitted that there has been no system of ECB which stood terminated as early as 1989. The counsel also argued that the inquiry is vitiated on account of various legal lacuna, right from the supply of documents called for by the applicant. The counsel also pleaded that the penalty is shockingly disproportionate and the case deserves full sympathy.

6. Counsel for the respondents relied upon the counter and the lucid orders themselves and submitted that the applicant does not deserve any sympathy.

7. Arguments were heard and documents also perused. At the very outset, it is to be stated that as held in the case of *Union of India v. Dwarka Prasad Tiwari, (2006) 10 SCC 388*, *the scope of judicial review is limited to the deficiency in decision-making process and not the decision*. Thus, it is to be seen whether there is any legal lacuna either in the procedure followed by the I.O. or that by the Disciplinary Authority or Appellate/Revisional Authority.

8. As regards the inquiry conducted, the main grievance of the applicant is that he had not been supplied with the documents demanded. Annexure A-9 is the list of documents that the applicant demanded and Annexure A-10 is the



response to the same by the Inquiry Officer. The inquiry officer has clearly held that some of the documents/witnesses which the defence wanted to rely have no relevance. It was these documents that were not made available. The applicant has not alleged any bias or malafide against the Inquiry Officer. How such non supply of documents prejudiced had not also been spelt out, though in the ground the general contention was that non supply caused serious prejudice. The D.A. has specifically dealt with this aspect when he stated that it is open to the Inquiry Authority to deny access to such record or deny examination of such witnesses, if in his opinion such records and witnesses were not relevant to the case and in this case that is what the Inquiring Authority has done and there is no ground to allege on this count that the charged official was not provided with reasonable opportunity to defend the case. 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 Corpn. Ltd. v. P.C. Chaturvedi***, (2005) 8 SCC 211, "*It has not been shown as to how the non-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.*"

9. The Disciplinary Authority's order has been thoroughly comprehensive, dexterous and meeting all the points raised. No flaw could therefore be discerned from the same. In fact, when the Inquiry Officer's report is endorsed, no elaborate discussion is needed in passing the penalty order as spelt out in the

case of *National Fertilizers Ltd. v. P.K. Khanna*, (2005) 7 SCC 597 wherein the Apex Court has held, "The various decisions referred to in the impugned judgment make it clear that the disciplinary authority is required to give reasons only when the disciplinary authority does not agree with finding of the enquiry officer."

10. As regards the appellate order, the same too is equally 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. (*Ram Chander vs Union of India* (1986(3) SCC 103), *R.P. Bhatt vs Union of India* (1986 (2) SCC 651 and *Narendra Mohan Arya vs United India Assurance Co.* (2006) 4 SCC 713). The appellate order fulfills this requirement.

11. In fact, even the revision order is very elaborate. Each of the order, i.e. Disciplinary Authority's order, Appellate Order and Revisional Order is vying with each other in comprehension and analysis of the entire case.

12. Thus, we are not in a position to discern any legal lacuna in the proceedings.

13. 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. Any case of misappropriation or embezzlement of public money should 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


15

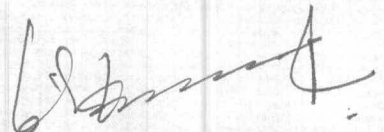
7

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 the four squares to the fact of this case. Hence, no leniency would be justified in this case.

14. In view of the above, *the OA lacks merit and is therefore, dismissed.*

No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER