

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 81 & 83 OF 2008
CUTTACK, THIS THE 30th DAY OF April, 2009

Abhaya Kumar Mallick & another Applicants

Vs

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches of the Central *Yes*
Administrative Tribunal or not ?

K. Thankappan
(K. THANKAPPAN)
MEMBER (JUDL.)

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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 81 & 83 OF 2008
CUTTACK, THIS THE 30th DAY OF March, 2009

CORAM :

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

1. Abhaya Kumar Mallick, aged about 54 years, Son of Late K.C.Mallick, At-Banarasa, PO-Gobardhanpur, Via- Rahama, Dist. Jagatsinghpur, at present working as PA, Jharsuguda HO.
(Applicant in O.A.No. 81/08)
2. Rudrakshya Bhoi, aged about 50 years, S/o Biharilal Bhoi, At-Pudapali, PO-IB, Via Brajrajnagar, Dist. Jharsuguda, Dist. Jharsuguda PIN 768216, at present working as PA (BCR), Jharsuguda HO.
(Applicant in O.A.No. 83/08)

Advocate(s) for the Applicants- M/s. D.P.Dhalsamant, P.K.Behera

VERSUS

1. Union of India represented through its Director General of Posts, Government of India, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi –110001.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, Khurda, PIN- 751001.
3. Director of Postal Services, Sambalpur Region, Sambalpur-768001.
4. Superintendent of Post Offices, Sambalpur Division, Sambalpur, PIN- 768001.

..... Respondents

Advocates for the Respondents – Mr. U.B.Mohapatra.

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ORDER

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

Since in both the O.As. the point to be decided arises out of similar facts and circumstances and the applicants are aggrieved by the same nature of impugned orders issued by the common Respondents, these two O.As. are disposed of by common order.

2. For the purpose of deciding the O.As., the facts of O.A.No. 81/08 are considered as the leading and guiding one to be read along with the sequence of events in O.A. 83/08.

Applicant, Abhaya Kumar Mallick, while working as Postal Assistant, Jharsuguda Head Office, was issued with a Memo No. F1/4-6/90-91/Disc-III (Annexure-A/1) informing him of the proposed action to be taken against him under Rule 16 of CCS(CC&A) Rules, 1965 based on the imputation of misconduct or misbehaviour, which reads as under:

"That Shri Abhaya Kumar Mallick now PA Jharsuguda HO while functioning as Ledger Asst. Jharsuguda HO during the period from 15.02.1985 to 14.02.1989 did not take any action to obtain SB Pass Books from Ramella BO for addition of interest and verification of balance of SB Accounts as envisaged in Rule-74 and Rule-75 of PO SB Manual Volume-I. The failure of Shri

Mallick to obtain the passbooks gave scope to Shri Prafulla Kumar Pradhan BPM Ramella BO to commit fraud to the tune of Rs. 27,368.97 causing a substantial loss to the Govt.

By his above acts the said Shri Mallick failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. Servant thereby violating the provisions of Rule-3(1)(ii) and Rule-3(1)(iii) of CCS (Conduct) Rules, 1964."

On receipt of the above memo, the applicant, in order to submit his defence as per Annexure-A/2 dated 28.04.2007 preferred a representation to Resp. No.4 praying therein to exhibit some documents to facilitate him for making proper defence as after a lapse of about 20 years he was not in a position to reveal from his memory. The applicant on being intimated attended the Divisional Office on 05.11.2007 and as evidenced from Annexure-A/3 dated 5.11.2007 was allowed to peruse some documents and inclined to submit his defence without any demour. Accordingly, the applicant submitted his defence statement as per Annexure-A/4 dated 16.11.2007, which reads as under:

"I was preceded under Rule-16 vide SPOs Sambalpur Memo No. F1/4-6/90-91/Disc-III dated 17.04.2007 in connection of Ramella BO fraud case committed by the concern BPM after a period of 20 years As regard this, I have nothing in my mind to memorize the fact. As a result I had

requested my Divisional Head to show the listed document vide my application-dated 28.04.2007, but the required documents were not exhibited to me fully. The machinery which supposed to discharge overall control on operative official after knowing the fact charge sheeted me after a period of 20 years, which is beyond natural justice and I think my SPOs Sambalpur is predetermined to penalize me. The point is in the above noted case my authority has not taken any statement from me to establish the fact of my involvement in the case. As such the charge sheet framed against me may kindly be dropped.”

3. The Superintendent of Post Offices, Sambalpur Division, (Resp.No.4), after considering the defence statement of the applicant, imposed the punishment of recovery of Rs. 2000/- to be effected in four installments from the pay of January, 2008 payable in February, 2008, as per the order dated 14.01.2008 (Annexure-A/5), which is sought to be quashed in the O.A.

4. These matters came up for admission on 14.02.2008 when this Tribunal while directing notice to the Respondents, issued the interim direction as under:

“Prima facie case having been made out, the Respondents are directed not to give effect the penalty order dated 14.01.2008.”

5. The Respondents, in response to notices of this Tribunal, have filed their counter opposing the prayer of the applicant.

6. The applicants have filed these O.As. without exhausting the statutory remedy by way of filing appeals before the Appellate Authority, if so, this Tribunal would not have admitted these O.As. or issued any stay order. However, on considering the merit of the case, this Tribunal is of the view that non-exhausting of all statutory remedies is not a bar for consideration of these cases by this Tribunal, if the first order itself is without any material and is illegal. That apart, at this distance of time, it will not be proper for this Tribunal to dismiss the O.As. on this ground, which will amount to abuse of the process of law. Hence, this Tribunal is considering these matters on merit, as aforesaid.

7. This Tribunal heard Mr. D.P.Dhalsamant, Ld. Counsel appearing for the applicants and Mr. U.B.Mohapatra, Ld. Sr. Standing Counsel for the Respondents. This Tribunal also perused all the documents produced in the O.A. as well as the provisions of law on which the Respondents placed their reliance finding the applicants guilty of misconduct as alleged against them.



8. The Ld. Counsel appearing for the applicants in both the cases, submitted that all his arguments may be considered commonly in both the cases. The Ld. Counsel for the applicant challenges the impugned order mainly on three grounds. Firstly, it is contended that as per the imputations and allegations revealed through Annexure-A/1(common) charge, the incident of violation of Rule-74 and 75 of the Post Office Savings Banks Manual, Volume-I occurred during the period from 15.02.1985 to 14.02.1989 and the charge memos have been issued only on 17.04.2007. Hence, after a lapse of more than 18 years, the charges should not have been issued against the applicants, and that by itself, the proceedings initiated against the applicants are vitiated and thus cannot be acted upon. Hence this Tribunal may interfere in the matter. To substantiate this point, the Ld. Counsel appearing for the applicant placed reliance on the judgment of the Apex Court reported in AIR 1990 SC 1308 in the case of State of M.P. vs Bani Singh and another and in AIR 1994 SC 1074 in the matter of Managing Director, ECIL Hyderabad vs B.Karnakar. Ld. Counsel also relies on the orders of this Tribunal passed in O.A.No. 755/05 in Jeevan Kr. Behera vs U.O.I & Ors.

9. The second ground urged by the Ld. Counsel for the applicants is that the charge memos filed against the

applicants are vague and thus would not establish any misconducts against the applicants and the applicants have not been afforded sufficient opportunity to explain their case also. To substantiate this contention, the counsel relies on a judgment of the Apex Court reported in AIR 1986 SC 995 in Sawai Singh vs State of Rajasthan.

10. The third argument of the Ld. Counsel for the applicants is that the penalty or the punishment now imposed against the applicants is under Clause (iii) of Rule 11 of CCS (CCA) Rules and as per Clause (iii), the penalty of recovery of any amount from the salary of an employee can be justified only on a clear finding that due to the negligence or due to the supervisory lapse of the employee, Government has sustained a loss and that loss should be quantified before ordering such a recovery from salary of the employee. Further explaining this contention, the Ld. Counsel submits that regarding the loss sustained by the Government due to the negligence or supervisory lapse, as alleged in the charges, is to the tune of Rs. 27,368.97, but there is no evidence or material before the Inquiry or Disciplinary Authority to find that such a loss has been sustained by the Government due to the action or inaction of the applicants. Simply saying in the charge that somebody, namely, one Prafulla Kr. Pradhan has committed fraud of

certain amount, that cannot be considered as a loss sustained due to the negligence of the applicants.

11. Resisting the above contention, the Ld. Counsel for the Respondents, submits that as per the charge memo, it is clearly stated that during the period from 1985-1989, while the applicants were functioning as Ledger Assistants in the Post Office of Jharsuguda, due to the negligence of the applicants, as they have not complied with Rules 74 and 75 by taking passbooks in question in time to add interest and verify the balance, one Prafulla Kr. Pradhan has committed a fraud of Rs. 27,368.97. If so, the loss sustained by the Government is already quantified and it is not necessary to produce any other materials by the Disciplinary Authority to impose a penalty under Clause (iii) of Rule 11 of the CCS (CCA) Rules. Ld. Counsel further submits that since the applicants have not denied that they were working as Ledger Assistants in the concerned office at the relevant time, they are responsible for the loss sustained by the Government. Further, Ld. Counsel submits that they have stated in their written statement that they could not remember whether they had taken the passbook as stipulated in Rule 73, 74 and 75 of the Post Office Savings Manual or not, and they were given sufficient opportunity to prove their case, if any. In the above circumstances, this

Tribunal may not be justified in interfering with the orders impugned.

12. On anxious consideration of the facts and circumstances coming before this Tribunal and also considering the contentions of the Ld. Counsel appearing for the parties, the question to be decided in this O.A. is whether the applicants are entitled for the relief claimed in the O.As or not?

13. As per the charge memo dated 17.04.2007, it is alleged that the applicants while working as Ledger Assistants, Jharsuguda, HPO, during the period from 15.02.1985 to 14.02.1989, did not take action to obtain the SB passbooks from Ramella B.O. for addition of interest and verification of balance of the SB accounts. As per Rule 74 and 75 of the Post Office Savings Manual, Vol.I, the applicants are duty bound to take the pass books from the Branch Office and to add and verify the balance of SB accounts, but because of the negligence or the supervisory lapse of the applicants, one Prafulla Kumar Pradhan, BPM, Ramella BO, committed fraud to the tune of Rs. 27368.97, which is calculated as a loss sustained by the Government.

14. The first contention of the Ld. Counsel appearing for the applicants is that due to the inordinate delay occurred in finding out the supervisory lapse, the very initiation of the

disciplinary proceedings against the applicants is vitiated and unsustainable in the eye of law. To substantiate this argument, the counsel for the applicant further submits that in their written statements given to the Superintendent of Post Offices, Sambalpur, they have categorically stated that they had no knowledge about the supervisory lapse pointed out after 20 years. However, the applicants required certain documents to verify the allegations. Admittedly, the applicants were working in the concerned office as Postal Assistants during the relevant time and they were transferred from one place to another and even when the disciplinary proceedings were initiated as per the charge dated 17.04.2007, it was not possible for the applicants to locate any file relating to the charge, and hence it is a matter to be considered by this Tribunal whether the delay by itself would vitiate the initiation of the proceedings against the applicant or not. Even if the applicants were not transferred to any other place and the delay occurred in pointing out any error, such allegation could not be met by the applicants. In this context, the counsel for the applicants relies on the judgment of the Apex Court in Bani Singh & Ors (cited supra). In the above judgment, identical situations were considered by the Apex Court and it was held that the delay and latches occurred in initiation of disciplinary proceedings against an officer after a

lapse of more than 12 years is liable to be quashed. It was further held in the above judgment that unexplained delay would vitiate any disciplinary proceedings started against a Govt. employee. Taking such view, the Hon'ble Apex Court confirmed the order passed by the Tribunal by which the proceeding was quashed by the Tribunal. It has to be noted that even in the written statement, the applicants have stated that long delay occurred in filing the charge sheet is not justifiable. But inspite of that, there is no attempt on the part of Respondents to say that delay is due to administrative reasons or any other reason not attributable to the Department. It is also to be noted that for any such delay, even if some yardstick is applicable, the officers who initiated the proceedings against the applicants, are also liable to be proceeded against for their supervisory lapse or negligence. On this ground alone, this Tribunal feels that the impugned orders have to be quashed.

15. To the second limb of the argument of the Ld. Counsel for the applicants is that even if the charge memos are taken as legal, it could be seen that the allegations therein do not establish the misconduct of the applicants. In this context, it is to be noted that in the statement of imputations and allegations leveled against the applicants, it is only stated that because of the non-observance of Rules 74 and 75 of the Post



office Savings Account Manual, Vol.I, one P.K.Pradhan, the then BPM, Ramella B O committed fraud to the tune of Rs.27368.97. But the charge, or the imputation or allegation does not show as to how and when Shri P.K.Pradhan committed fraud and how loss of Rs. 27,368.97 was caused to the Government. Hence, the charges being vague could not establish any misconduct of the applicants. In this context, the judgment of the Apex Court reported in AIR 1986 SC 995 (cited supra) is very relevant. In the above judgment, the Hon'ble Supreme Court has considered how a charge to be termed as vague charge and if a vague charge is framed against an employee, the enquiry itself will be vitiated. The Hon'ble Apex Court held in paragraph 15 of the above judgment as under:

"no allegations have been made before the enquiry officer or before the High Court, that the charges were vague. In fact the appellant had participated in the enquiry. That does not by itself exonerate the department to bring home the charges."

16. The allegation of the applicants that they were not given sufficient opportunity is also a point to be considered in these O.As. There is no material before this Tribunal to show that the applicants were given sufficient opportunity by providing all the listed documents which they had requested to

the Disciplinary Authority to give answer to the charge. If so, this also can be considered as an additional ground to interfere with the impugned orders. In this context, it is to be noted that as per the judgment of the Apex Court reported in 2002 SCC (L&S) 188 in O.K.Bhardwaj vs U.O.I & Ors, the Apex Court has held as follows:

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

17. If the charges or the imputations and allegations leveled against an employee are not clear and understandable, that charge itself is wrong and on that charge, no finding could be entered against any employee. In the case in hand, it is only held that because of supervisory lapse, one P.K.Pradhan committed fraud of Rs. 27368.97 and that fraud caused substantial loss to the Government, and hence the applicants are responsible for that. But these ambiguous charges cannot be considered as sufficient charges against the applicant.

This ground also can be considered as a reasonable ground to interfere with the impugned orders.

18. The 3rd point argued by the Ld. Counsel for the applicants is that the Department or the Disciplinary Authority has not established that due to the supervisory lapse or negligence, the Government sustained a loss of certain amount while calculating on pecuniary basis. In this context, the allegations against the applicants are that because of the negligence and supervisory lapse of the applicants, one P.K.Pradhan committed fraud to the tune of Rs. 27368.97 and thereby a substantial loss was sustained by the Government. But this Tribunal is not in a position to understand how and on what basis the Department quantified the amount of pecuniary loss sustained by the Government and that apart, it is also not based on any material before the Disciplinary Authority. Even in the counter affidavit filed on behalf of the Respondents, it is not explained how the loss has been sustained by the Govt. due to the negligence of the applicants. That apart, even if the Govt. sustained a loss of Rs 27368.97, the penalty now imposed against the applicants is to recover only an amount of Rs.2000/- each in four equal installments. Clause (i) to (iv) of Rule 11 of CCS (CCA) Rules would clearly indicate that the Disciplinary Authority can impose any of the penalties or a single penalty

including recovery of any amount from the pay of any delinquent officer. Sub-clause (iii) of the CCS (CCA) Rules reads as follows:

“(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach or orders.”

A reading of the above rule would show that a penalty of recovery from pay of an employee can be ordered only to make good the loss sustained by the Government. Even if, the loss sustained by the Government as per allegation is Rs.27368.97, the amount ordered to be recovered from each of the applicants is only 2000/- in four equal installments. If so, such a penalty is not in accordance with the rules. Apart from that, unless the person concerned is directly responsible for misappropriation of any amount or for causing any pecuniary loss to the Govt., no recovery can be ordered under Rule 11(iii).

To impose such a penalty, it shall be the duty of the authorities to find that the said rule can be attracted only when any pecuniary loss is caused to the Govt. by negligence or breach of orders directly contributable to the employee concerned. In this context, this Tribunal is impressed with the judgment of the Central Administrative Tribunal, Ahmedabad Bench, given in O.A.No. 504/96 decided on 26.03.2001 in the case of

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S.K.Choudhury vs Union of India & Ors. In the above order, the Ahmedabad Bench of CAT held as under:

“The reasoning of the disciplinary authority proceeds on the grounds that if the applicant had carried out these duties no fraud would have been committed but this is a mere surmise, as even after carrying out these duties, the Sub Post Master being in possession of the cash was in a position to misappropriate the amount. Further more such negligence even if there is one, cannot be a cause for punishing the applicant with the recovery of loss sustained by the department. The applicant obviously was not directly responsible for the misappropriation of this amount and therefore, the recovery if any was to be made for the loss of the amount ought to have been made from the person directly responsible for the misappropriation merely because the department found that it was not possible to recover the amount from the main culprit some other scapegoat cannot be found out and cannot be leveled with the punishment of recovery of the loss.”

19. In view of what has been discussed above, this Tribunal finds that the orders impugned in these O.As. are liable to be quashed. Consequently, the O.As. are allowed. Anexure-A/5 order dated 14.01.2008 is hereby quashed. Further, it is directed that any amount already recovered from the applicants shall be returned forthwith.

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20. The O.As. are allowed to the extant indicated above. No order for costs.

Kappan

(K. THANKAPPAN)
MEMBER (JUDL.)

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