


19
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


Original Application No. 641 of 2011
Cuttack, this the 14th day of ~~September~~ 2016

Srikanta Chandra Sundar Ray Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be referred to PB for circulation? ✓


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)

20

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 641 OF 2011
Cuttack, this the 14th day of September, 2016

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (J)

HON'BLE MR. R.C. MISRA, MEMBER(A)

.....

Shri Srikanta Chandra Sundar Ray,
aged about 50 years,
Son of Antaryami Sundar Ray,
Postal Assistant in Dhenkanal HO.

.....Applicant

By the Advocate(s)-M/s. G. Rath, D.K. Mohanty, B.K. Nayak-3, S. Rath.

-Versus-

Union of India, represented through

1. Director General of Posts,
Ministry of Communications,
Department of Posts,
Dak Bhawan, New Delhi-110001.
2. The Chief Postmaster General,
Orissa Circle, Bhubaneswar,
Dist-Khurda.
3. The Postmaster General,
Sambalpur Region,
Sambalpur.
4. The Director of Postal Services,
O/o the Postmaster General,
Sambalpur Region, Sambalpur.
5. The Superintendent of Post Offices,
Dhenkanal Division,
Dhenkanal, PIN-759001.

.....Respondents

By the Advocate(s)- S. Behera, Sr. Central Govt. Panel Counsel

.....



ORDER**A.K.PATNAIK, MEMBER (J):**

The applicant Shri S.C.Sundar Ray, Postal Assistant in Dhenkanal H.O. has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 challenging the charge sheet issued to him under Rule 14 of the CCS (CCA) Rules, 1965 on 16.08.2006 by the Superintendent of Post Offices, Dhenkanal Division, the report of the Inquiry Officer communicated on 31.12.2009 so far as charge under Article II was proved, the memo dated 25.03.2010 issued by the Director of Postal Services, Sambalpur Region, Sambalpur, imposing the punishment of recovery of an amount of Rs. 15,700/- in one lump sum and also dismissal from service, and the order of the Appellate Authority dated 08.09.2010.

2. Mr. G.Rath, Ld. Sr. Counsel, assisted by Mr. D.K.Mohanty, Ld. Counsel for the applicant, placing reliance on the submission made in the pleadings and documents appended thereto submitted that the applicant after being appointed as PA on 11.12.1986 was posted to Dhenkanal HO and was entrusted the duty of Treasurer. While working as such, a memorandum of charge under Rule 16 of the CCS (CCA) Rules, 1965 was issued to him by Respondent No.5 on 21.12.2004 containing two articles of charges. It has been stated by the Ld. Counsel for the applicant that duty of the Treasurer is totally different than what has been alleged in the said charge sheet. The applicant was not directly or indirectly responsible for the alleged incident mentioned in the charge sheet. However, the applicant submitted his written statement of defence denying the allegations. Respondent No.5 on 01.02.2005 imposed the


22

punishment of recovery of an amount of Rs. 16,800/- @ Rs. 700/- per month without conducting the inquiry as per rules and without affording him any reasonable opportunity. Hence, the applicant preferred an appeal to the Respondent No.4 on 22.02.2005. The Appellate Authority being satisfied that the order of punishment was in violation of principle of natural justice, vide order dated 08.12.2005 after setting aside the order of punishment remitted the matter back to the Disciplinary Authority for de novo proceeding from the beginning. It has been alleged that the Disciplinary Authority instead of conducting the denovo inquiry, as ordered by the Appellate Authority, issued fresh charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 on the self same allegation, which was the subject matter of charge sheet under Rule 16 of the Rules, 1965. The applicant by making representation questioned the very issuance of the charge sheet afresh under Rule 14 of the Rules, 1965 but the Disciplinary Authority without considering and deciding the question on maintainability of the second charge sheet issued under Rule 14 directed to proceed with the inquiry and consequently appointed Inquiry Officer, who after conducting the inquiry submitted the report on 29.12.2009, copy of which was received by the applicant on 31.12.2009.

3. Mr. Rath by drawing our attention to the report of the Inquiry Officer dated 29.12.2009 submitted that at one hand the Inquiry Officer held the Article No.1 as not proved whereas at the concluding paragraph of the report of the Inquiry Officer it has been held that the Article I is proved. This shows the total non-application of the mind of the Inquiry Officer while preparing the report. The Inquiry Officer did

Wll

not state anything with regard to the Article II of the charge sheet whereas the Disciplinary Authority disagreed with the report of the Inquiry Officer and held the Article II as proved and imposed the punishment of dismissal as well as recovery vide order dated 25.03.2010. The applicant submitted an appeal to the Respondent No.3, who modified the order of punishment to that of recovery of Rs. 15,700/- and reduction of pay by one stage from Rs. 14680/- + GP Rs. 2800/- to Rs. 14170/- + GP Rs. 2800/- in the Pay Band of Rs. 5200-20,200/- with GP of Rs. 2800/- for a period of one year with further direction that applicant will not earn increment during the period of reduction and on expiry of such period it will have the effect of postponing his future increment of his pay. In pursuance of the said order, the applicant joined his duty on 17.09.2010. As per the rules, the Appellate Authority while ordering the reinstatement should have passed specific order as to how the period from the date of dismissal till reinstatement would be treated. The applicant submitted representation but as the order of the Appellate Authority was conspicuously silent with regard to interregnum period, the applicant submitted representation on 19.02.2011 requesting regularization and payment of his dues from the date of dismissal till his reinstatement. Since, neither the order was passed nor dues for the above period were paid, he submitted a reminder on 05.09.2011 but nothing was intimated to him. It has been contended by Mr. Rath that for the same incident charge sheet was issued to others, who were imposed either the order of punishment of Censure or recovery of small amount whereas the applicant has been settled with a heavy punishment, which is



29

not sustainable. Mr. Rath drew our attention to Rule 27 of the CCS (CCA) Rules, 1965 to contend that Rule 27(c) of CCA Rules, 1965 is the pari materia to Rule 15 of CCS (CCA) Rules 1957, in which power is vested on the Appellate Authority to consider the appeal but ordering denovo inquiry is certainly not within the domain of the Appellate Authority. In this connection, Mr. Rath placed reliance on the decision of the Hon'ble Apex Court in K.R.Deb case (reported in AIR 1971 SC 1447) in which the Hon'ble Apex Court declared the order of denovo inquiry as bad in law. Accordingly, Mr. Rath has prayed for the relief claimed in this O.A.

4. On the other hand, Mr. S.Behera, Ld. Sr. Central Govt. Panel Counsel appearing for the Respondents, placing reliance on the stand taken in the counter submitted that the allegations against the applicant are serious in nature. The fraud committed by the applicant having come to the notice, the charge sheet under Rule 16 was issued to the applicant and after giving all reasonable opportunity to the applicant to defend his case ultimately order of punishment was imposed on him. He carried the matter in appeal and the Appellate Authority after considering the appeal of the applicant **remitted the matter back to the Disciplinary Authority for denovo proceeding for oral hearing starting the process from the beginning** vide order dated 08.12.2005. After the order of the Appellate Authority, the Disciplinary Authority considering the gravity of the matter issued a charge sheet under Rule 14 and, thereafter, the matter was duly inquired into in which the applicant was allowed all reasonable opportunity to defend his case. The Inquiry

Wd


Officer held the charge no.1 as proved. The applicant submitted his defence and after consideration of the matter in entirety, the Disciplinary Authority imposed the order of punishment of dismissal from service with immediate effect. Applicant preferred an appeal and on consideration of the appeal, the Appellate Authority modified the order of punishment to the effect as under:

“In view of the discussions made above, the Article-I of the charge against the appellant is not proved while the charge under Article-II is proved. However, I find that the decision of the disciplinary authority is not commensurate with the gravity of the offence committed by the appellant. In view of the above, I am inclined to take a lenient view and I, Pradipta Kumar Bisoi, Postmaster General, Sambalpur Region, Sambalpur to hereby modify the punishment to that of recovery of Rs. 15,700/- (Rupees fifteen thousand seven Hundred) only from the pay of the official and reduction of pay of the appellant by one stage from Rs. 14,680 +G.P. Rs. 2800/- to 14,170 + GP Rs. 2800/- in the pay band of 5200-Rs. 20,200/- with Grade Pay of Rs. 2800/- for a period of one year with further direction that the appellant will not earn increment during a the period of reduction and on expiry of such period it will have the effect of postponing his future increment of his pay. The appeal is disposed off accordingly.”

In pursuance of the order of the Appellate Authority, the applicant joined his duty and submitted representation praying for regularization of the period of dismissal from service till his reinstatement and, thereafter, approached this Tribunal. By drawing our attention to the order dated 24.02.2011 at Annexure-R/1, Mr. Behera, stated that when the applicant was posted as SPM, Athamallik SO, he also committed a fraud to the tune of Rs. 78,464/- and, consequently, he

will

was awarded with the punishment of reduction to the post of Postal Assistant cadre for a period of 10 years. As regards the stand of the applicant that similarly situated employees having faced the charge sheet for the self same incident have been imposed with lesser punishment whereas he has been imposed with heavy punishment is concerned, he submitted that the official who had issued/transferred the bogus SB Passbook could not be identified and, therefore, appropriate action was taken against the official who exhibited contributory negligence in this case whereas the applicant was found to be the mastermind in issuing/transferring of bogus SB books. Hence, the allegation made by the applicant with regard to the discriminatory treatment in disciplinary proceeding is not correct. To fortify his argument laid on different aspect as stated above, Mr. Behera submitted that Sri Sudhakar was identified as one of the principal offender and was proceeded under Rule-14 under CCS(CC&A) Rules, 1965. During oral inquiry, Sri Durga Prasad Panda, PA, College Square MDG, who had effected the payment of withdrawal amount of Rs. 30,000/- on 11.01.2003 and Rs. 30,000/- on 18.01.2003 identified the applicant to whom he had paid the withdrawal amount at College Square MDG counter. The applicant was proceeded under Rule-16 of CCS(CC&A) Rules, 1965 vide Annexure A/1 for his alleged involvement in issue of bogus Advice of Transfer and SB-10(b) to different post offices and was awarded with punishment of recovery of Rs. 16800/- from the pay of the applicant @ Rs. 700/- per month in 24 installments to make good a portion of loss sustained by the Department. Being aggrieved, the applicant preferred an appeal to the Director of



27

Postal Services, Sambalpur Region, Sambalpur who is Respondent No. 4 in this OA. The Respondent No. 4 set aside the punishment order and remitted back the case to the Disciplinary Authority (Respondent No. 5) for 'De-novo' proceeding from the beginning. Accordingly, the applicant was proceeded against under Rule-14 of CCS(CC&A) Rule 1965 vide Annexure-A/7. Before initiation of Rule-14 charge sheet the applicant was promoted to "Lower Selection Grade" cadre for which Respondent No. 4 became the Disciplinary Authority of the applicant. Mr. Behera submitted that there being no injustice caused in the decision making process of the matter, this O.A. is liable to be dismissed being devoid of any merit.

5. We have considered the rival submissions made by the Ld. Counsels for the respective parties and perused the records.

6. Admittedly, a charge sheet under Rule 16 was issued to the applicant on 21.12.2004 under Annexure-A/1. The statement of imputation reads as under:

Article-I

Sri Srikanta Chandra Sundar Ray while functioning as Treasurer, Dhenkanal H.O. during the period of October, 2002 pursued Sri Sudhakar Pal, Stamp Vendor of Dhenkanal HO to prepare one manuscript application for transfer of SB pass book (SB-10(b)). Thereafter, the said Sri Ray obtained one manuscript SB-10(b) written by Sri Pal in a carbonic process in which the S.B. account number, name of the depositor, name of the post office to which the S.B. account was to be transferred and the name of the post office where the said application was to be presented were left blank. Subsequently, the said Sri Ray managed to utilize the said carbonic SB-10(b) for transfer of one bogus S.B. Pass book account No. 1011279 of Dhenkanal H.O with a bogus balance of Rs. 75,900/- standing in the name of a bogus depositor

Wd

28

Sri Kishore Mohanty to Rairakhole S.O under Sambalpur H.O vide Dhenkanal H.O bogus A.T. No. 95 dated 09.10.2002. The said Sri Ray in the capacity of Treasurer Dhenkanal H.O cum overnight custodian of all the stamps and seals of Dhenkanal H.O during October 2002, misutilised SB date stamp of Dhenkanal HO dated 03.10.2002 which resulted issue of bogus SB pass book account No. 1011279, 1008308, 1027671 & 1019216 bearing SB date stamp of Dhenkanal HO dated 03.10.2002 with fake balance of Rs. 75,900/- Rs. 70,500/- Rs. 60,500/- and Rs. 61,000/- respectively in the name of four different fake persons. The said Sri Ray also misused the M.O oblong stamp of Dhenkanal H.O dated 09.10.2002 which facilitated the transfer of the aforesaid bogus SB pass books to Rairakhole S.O Charbatia S.O, Utkal University Vanivihar S.O and College Square MDG respectively vide Dhenkanal HO bogus AT No. 95, AT No. 95, AT No. 96, AT No. 96 bearing M.O. oblong stamp of Dhenkanal HO dated 09.10.2002. The deliberate misuse of Money order oblong stamp of Dhenkanal H.O dated 09.10.2002 by the said Sri Ray caused fraudulent withdrawal of Rs. 30,000/- each time on 11.01.03 and 18.01.03 from College Square MDG S.B. account No. 461071. The S.B. account No. 461071 of college square MDG was opened on transfer vide Dhenkanal H.O bogus At No. 96 dated 09.10.2002 in respect of Dhenkanal HO bogus SB account No. 1019216 having a fake balance of Rs. 61,000/- by the above acts the said Sri Ray committed grave offence which lead to the loss of Rs. 60,000/- from the Govt. account.

It is therefore, imputed that the said Sri Ray in his aforesaid capacity of Treasurer, Dhenkanal H.O has failed to maintain absolute integrity, due devotion to duty and acted in a manner which is unbecoming on the part of a Govt. servant as enjoined in Rule-3(1)(i), Rule-3(1)(ii), Rule-3(1)(iii) of C.C.S(conduct) Rules, 1964.

Article-II

The said Sri Ray while functioning as P.A/Treasurer, Dhenkanal H.O in February, 2003 was examined by the Superintendent of Post Offices, Dhenkanal Division on 08.02.03 regarding his personal interest to encourage Sri Sudhakar Pal Stamp Vendor of Dhenkanal H.O to prepare manuscript SB-10(b) in carbonic process for transfer of Dhenkanal H. O bogus SB account No. 1011279 to Rairakhol S.O

WAB

29

having a fake balance of Rs. 75,900/- and his contribution regarding preparation of bogus AT No. 95 (both copies), bogus AT. No. 96(both copies) dated 09.10.2002 for transfer of Dhenkanal HO bogus SB account No. 1011279, 1008308, 1027671 & 1019216 to Rairakhol S.O. (under Sambalpur H.O) Charbatia S.O (Under Athagarh H.O), Utkal University S.O.(Vanivihar) (under Bhubaneswar GPO) and College Square (Cuttack-3) Mukhya Dak Ghar (Under Cuttack GPO) respectively. But Sri Ray did not disclose the truth before the Superintendent of Post Offices, Dhenkanal Division, Dhenkanal vide his written statement dated 08.02.2003. On the other hand, the said Sri Ray stated the name of Sri Chandramani Mallik, PA Dhenkanal, H.O and Sri Subrat Kumar Nayak, PA, Dhenkanal H.O for preparation of aforesaid bogus ATs and bogus SB-10(b) (in respect of transfer of bogus SB account No. 1011279) to mislead the investing officer and to hush up his own misconduct. Therefore, the said Sri Ray submitted false written statement on 08.02.2003 before the Superintendent of Post Offices, Dhenkanal Division to frustrate the investigation and thereby the said Sri Ray violated the provisions contained in Rule 204 of postal Manual Volume-III corrected up to 01.07.1986.

It is therefore imputed that the said Sri Ray in his aforesaid capacity of Treasurer, Dhenkanal H.O has failed to maintain absolute integrity, due devotion to duty and acted in a manner which is unbecoming on the part of a Govt. servant as enjoined in Rule-3(1)(i), Rule-3(1)(ii), Rule-3(1)(iii) of C.C.S(conduct) Rules, 1964.

7. The applicant submitted his reply denying the charges. The Disciplinary Authority after considering the record, imposed the following punishment under Rule 16 of the CCS (CCA) Rules, 1965 vide order dated 01.02.2005 under Annexure-A/3:

“Taking the facts and circumstances of the case into consideration I find that the charges leveled against Sri Sundar Ray are very serious indeed. The misuse of ATs, confidential stamps and preparation of bogus SB-10(b) on the part of the said Sri Sundar

Wll

Ray are quite heinous offences which puts a slur in the mind of a prudent man about the integrity of the said Sri Sundar Ray. Due to mischievous acts of the said Sri Sundar Ray not less than four bogus Savings Bank accounts were transferred to different Head Offices/Sub-Office of our Circle and in one such case there were two fraudulent withdrawals at College Square MDG on 11.01.13 and 18.01.2003 amounting to Rs. 30,000/- in each case. In fact the department sustained a pecuniary loss to the tune of Rs. 60,000/- due to execution of these two withdrawals for which the said Sri Sundar Ray is found responsible. In view of what has been narrated above I hold the charges leveled against Sri Sundar Ray proved squarely. As such I Sri S. Satpathy, Superintendent of Post Offices, Dhenkanal Division, Dhenkanal do hereby order that an amount of Rs. 16,800/- (Rupees Sixteen thousand eight hundred) only should be recovered from the pay of the official @ Rs. 700/- (Rupees seven hundred) only per month in 24 (twenty four) installments to make good a portion of loss sustained by the Department due to transfer of bogus Saving Bank account No. 1019216(reassigned as college Square MDG account No. 461071). I hope this will meet the ends of justice."

8. Applicant preferred an appeal and on consideration of the appeal, the Appellate Authority remitted the matter vide order dated 08.12.2005 under Annexure-A/6 with the following directions:

"3. Shri Srikanta Chandra Sundar Ray submitted his representation on 07.01.2005. After considering the said representation the Superintendent of Post Office Dhenkanal Division punished him with recovery of Rs. 16,800/- vide his order dated 01.02.2005. The instant appeal has been preferred against the said punishment order dated 01.02.2005.

4. I have gone through the appeal and all connected records of the case carefully and applied my mind. The charges leveled against the appellant was quite serious which impinges on his integrity. In his appeal, the appellant has pleaded innocence and prayed for exoneration from charges.

Wfll

- (a) The appellant has pleaded that he has rendered 18 years of Unblemished service.
- (b) He being the treasurer of Dhenkanal HO has no direct link with SB Branch except receiving and making over cash to SB counter Assistants.
- (c) That the work relating to preparation of SB-10(b) completely relates to Ledger Asst. which is being prepared under the direct supervision of the concerned supervisor.
- (d) Further he had no time for this type of work. As such pursuing Shri Pal to prepare manuscript application form for transfer SB-10(b) is not possible.
- (e) He has not obtained the manuscript SB-10(b) from Shri Pal Stamp Vendor to utilize for transfer of bogus SB Account No. 1011279 of Dhenkanal HO and thus he is not at all responsible for fraudulent withdrawal of Rs. 60,000/-.
- (f) Further, the MO oblong stamp and SB date stamps are kept under the joint custody of the Postmaster and the treasurer during overnight and during office hours those are kept under the personal custody of the concerned branch supervisors. As such there is no scope for misusing the oblong MO stamp and SB date stamp by the appellant.
- (g) That the name of the appellant is unnecessarily implicated by one Shri Sudhakar Pal during investigation stating his involvement in the case which has been reflected admittedly in charge sheet issued against Shri Pal.

5. Keeping in view all these aspects of this case & simultaneously the gravity of the charge it is felt necessary that the appellant should be given the opportunity for an oral hearing where he can defend his case during the inquiry.

6. Therefore, I set aside the punishment and remit back the case to the disciplinary authority for denovo proceedings for oral hearing starting the process from beginning.

Accordingly the appeal is disposed off.”

9. The Disciplinary Authority instead of acting in accordance with the order of the Appellate Authority, issued another charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 on 16.08.2006 under

Wd

Annexure-A/7. The imputation of misconduct in support of the charge sheet reads as under:

ARTICLE-I

Sri Srikanta Chandra Sundar Ray while functioning as Treasurer, Dhenkanal HO during the period October, 2002 requested Shri Sudhakar Pal, Ex-Stamp Vendor of Dehenkanal HO and now working as Postman, Talcher M.D.G to write an "application for transfer to SB accounts" (SB-10(b) in carbonic process. Shri Pal admitted in his written statement dated 07/02/2003, 10.02.2003 and his defence brief dated 14/01/2006 at page No. 5 that he prepared the SB-10(b) as per direction of Sri S.C. Sundar Ray, Ex-Treasurer of Dhenkanal H.O and handed over the carbon copy of the manuscript SB-10(b) to Shri S.C. Sundar Ray. During preparation of the said SB-10(b), Shri Sundar Ray directed Shri Sudhakar Pal to omit the following blank portion in the SB-10(b). The blank portion of the said SB-10(b) are (i) the name of Post office where the application to be tendered (ii) the account number for which he prepared the above manuscript application for transfer, (iii) the name of the Post Office to which the said S.B. account was to be transferred, and (iv) the name and address of the depositor for whom the said SB-10(b) was prepared. Therefore, the said Sri Sundar Ray deliberately left some blank portions in the said manuscript SB-10(b) to hush up the evidences of this misconduct.

The said Sri Sundar Ray after obtaining the aforesaid carbon copy of SB-10(b) (i.e. application for transfer of the S.B. account) from the said Sri Pal, used the same for transfer of one bogus S.B. pass book account No 1011279 of Dhenkanal H.O having a bogus balance of Rs. 75,900/- standing in the name of a fake depositor "Kishore Mohanty" to Rairakhole S.O under Sambalpur H.O vide Dhenkanal H.O bogus AT No. 95 dated 09/10/2002. As such, the said Sri Sundar Ray managed to succeed in the transfer of the said bogus SB account by preparing a manuscript SB-10(b) in carbonic process through Sri Pal (although sufficient SB-10(b) forms were available in the office) with obvious motive to derive pecuniary gain fraudulently. The said Sri Ray during his

WSP

examination on 08/02/2003 failed to explain about the circumstances under which he prepared the said carbonic manuscript SB-10(b) (application for transfer of SB account) through Sri Pal and also denied to have requested Sri Pal for preparation of the said carbonic manuscript SB-10(b) (application for transfer of SB account). Therefore, Sri Sundar Ray submitted a false written statement on 08/02/2003 given before the Divisional Superintendent and thereby he succeeded in his plan about the issue of the above bogus SB Pass book at Dhenkanal H.O and its transfer to Rairakhole S.O. vide Dhenkanal H.O. bogus AT No. 95 dated 09/10/2002. Therefore, Sri Sundar Ray frustrated the departmental investigation. By the above acts, Sri Sundar Ray committed grave misconduct and violated the provisions contained in Rule 204 of Postal Manual Volume-III corrected up to 1st July, 1986.

It is therefore, imputed that Sri Srikanta Chandra Ray in his aforesaid capacity of Treasurer, Dhenkanal H.O failed to maintain absolute integrity and acted in a manner which is unbecoming on the part of a Govt. Servant as enjoined in Rule-3(1)(i) and 3(1)(iii) respectively of C.C.S(Conduct) Rules, 1964.

ARTICLE-II

That the said Sundar Ray while functioning in the aforesaid capacity during the aforesaid period was well aware about the transfer of one bogus S.B. Pass book account No 1019216 of Dhenkanal H.O having bogus balance of Rs. 61,000 in the name of a fake depositor Sri Bijaya Mohanty C/O-Sri Rabinarayan Patnaik, Maa Electricals, Ranihat, Cuttack to College Square M.D.G. (Cuttack-3) vide Dhenkanal H.O bogus AT No. 96 dated 09/10/2002 along with a bogus SB-10(b) and new S.B. Account No. 461071 was allotted to College Square M.D.G. (Cuttack-3) against the said bogus SB account of Dhenkanal H.O. On 11/01/2003 (Saturday) and 18.01.2003(Saturday), Sri Srikanta Chandra Sundar Ray attended the S.B. counter of College Square M.D.G.(Cuttack-3) and has taken payment of Rs. 30,000/-(Rupees thirty thousands) each time on 11/01/2003 and 18/01/2003 from Sri Durga Prasad Panda, former SB Counter assistant of College Square M.D.G.(Cuttack-3) towards withdrawal amount from college square M.D.G. (Cuttack-3) S.B. account No 461071. Sri Durga Prasad Panda, former

Handwritten signature

34

SB counter assistant of college square M.D.G.(Cuttack-3) towards withdrawal amount from College Square M.D.G. (Cuttack -3) SB Account No. 461071. Sri Durga Prasad Panda former SB counter assistant of College Square M.D.G. (Cuttack-3) categorically mentioned the name of Sri Srikanta Chandra Sundar Ray who has taken payment of 30,000/-(Rupees thirty thousands) each time on 11/01/2003 and 18/01/2003 towards withdrawal from college square M.D.G. (Cuttack-3) S.B. Pass book account No 461071 vide his deposition dated 26/10/2005 given before Shri A.K. Rath, ASP I/C Dhenakanal who was conducting the Rule -14 inquiry against Sri Sudhakar Pal Postman Dhenkanal H.O. As such the said Sri S.C.S Ray managed to transfer the bogus SB account No. 1019216 of Dhenkanal H.O to College Square M.D.G fraudulently and thereby put the Department to a pecuniary loss of 60,000/-(Rupees Sixty thousand) only by abusing his official position. The said Sri Sundar Ray did not disclose the above fact during fact finding inquiry on 08/02/2003 and therefore Sri Ray submitted false written statement on 08/02/2003 and frustrated the departmental investigation. By the above acts, Sri Ray committed grave misconduct and violated the provisions contained in Rule 204 of Postal Manual Volume-III corrected up to 1st July, 1986.

It is therefore, imputed that Shri Srikanta Chandra Sundar Ray in his aforesaid capacity of Treasurer, Dhenkanal H.O failed to maintain absolute integrity and acted in a manner which is unbecoming on the part of a Govt. servant as enjoined in Rule 3(1)(i) and 3(1)(iii) of C.C.S.(Conduct) Rules, 1964.”

10. The applicant questioned the very issuance of the charge sheet under Rule 14 as the same was contrary to the order of the Appellate Authority. The Disciplinary Authority proceeded with the inquiry. The report of the Inquiry Officer was supplied to the applicant vide letter dated 31.12.2009 (Annexure-A/9). There were two articles of charges. With regard to Article I, the Inquiry Officer, at page 60 of the O.A., had specifically held that “charge under article-I of the

all

35


memorandum of charge is not proved” whereas at the conclusion it was held by the Inquiry Officer that “charge under article I is proved”. The Inquiry Officer also dealt into the allegation leveled in Article II but at the conclusion did not conclude whether the charges under Article-II is proved or not proved. However, the applicant submitted his reply. The Disciplinary Authority imposed the punishment of dismissal from service vide order dated 25.03.2010 (Annexure-A/11). At this stage, it is important to note that the punishment of dismissal from service ought not to have been imposed had there been Rule 16 inquiry, which was initiated against the applicant vide charge sheet dated 21.12.2004. The Appellate Authority in his order dated 08.12.2005 (Annexure-A/6) remitted the matter back to the Disciplinary Authority with specific direction for de novo proceeding for oral hearing starting the process from beginning. Therefore, prima facie, the Appellate Authority has set aside the punishment imposed on the applicant under Rule 16 yet going by the order of the Appellate Authority it cannot be concluded that the earlier charge sheet was set at rest. Therefore, the Disciplinary Authority ought not to have initiated another Rule 14 proceeding for the selfsame incident and allegation without deciding the fate of the earlier charge sheet. Hence, we are in agreement with the arguments advanced by the Ld. Counsel for the applicant that initiation of another Rule 14 inquiry while the Rule 16 inquiry was on, is bad in law.

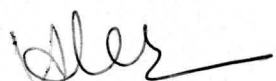
11. Hence, on the above ground, we quash the very charge sheet initiated under Rule 14 under Annexure-A/7 and, consequently, declare the orders passed basing on such Rule 14 proceedings as nonest in the



36
eyes of law and remand the matter back to the Disciplinary Authority to strictly act in accordance with the order of the Appellate Authority dated 08.12.2005 (Annexure-A/6) in the proceeding initiated under Rule 16 of the Rules, 1965.

12. In the result, this O.A. stands allowed to the extent stated above.


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)

RK