

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 634 of 2009
Cuttack, this the 11th November, 2010

Sukomal Bag Applicants
Versus
Union of India & Others Respondents
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THE HON'BLE MR. C.R. MOHAPATRA, ADMN. MEMBER

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Applicant is a retired Head Postmaster of Jeypore (K) Head Post Office. He retired from service on 30.9.2008. While he was continuing as Postmaster, Jeypore (K) Head Post Office he was served with a charge sheet dated 14.11.2007 (Annexure-A/4) under Rule 16 of CCS (CC&A) Rules, 1965 on the allegation of lack of supervision in his duty leading to failure to maintain absolute integrity and devotion to duty as required under Rule 3 (1) (i) (ii) of CCS (Conduct) Rules, 1964. The substance of the allegation is that for the failure of supervisory duty by the applicant, one Shri Dillip Kumar Dash, SPM of Mirganiguda SO in account with Jeypore (K) Division misappropriated Government money to the tune of Rs.2,92,944.15 who subsequently died. Applicant furnished his reply to the said charge sheet and on consideration of the reply, the Senior Superintendent of Post Offices, Koraput Division, Jeypore (K) after taking into consideration all the points raised by the applicant in his reply vis-à-vis the materials available on record, in his order under Annexure-A/5 dated 11.12.2007/13.12.2007, held that the applicant is fully guilty of the charges levelled against him and responsible for the pecuniary loss caused by Late Dillip Kumar Dash and consequently ordered recovery of an amount of Rs.60,000/- from the Pay and Allowance of the Applicant on monthly installment of Rs.6000/- starting from his salary for the month of December, 2007 onwards till September, 2008. Appeal preferred



by the Applicant having been rejected for the reasons recorded in the order under Annexure-A/7 dated 7th July, 2008 and communicated to the Applicant, he has approached this Tribunal in the present Original Application filed under section 19 of the A.T. Act, 1985 seeking to quash the order of punishment under Annexure-A/5 and the order of appellate authority under Annexure-A/7 with direction to the Respondents to refund the recovered amount of Rs.60,000/- with 12% compound interest to the Applicant.

2 The stand taken by the Respondents in their counter is that one Dillip Kumar Dash the then Sub Postmaster, Mirganiguda SO in account with Jeypore (K) HO was keeping excess cash in hand without any genuine liability starting from 11-08-2006 to 23.10.2006. The cash retention was in excess of the authorized cash balance prescribed for the office i.e. minimum of Rs. 2500/- and maximum of Rs.5000/-. Late Shri Dash gradually increased the retention of cash in hand by showing fake liabilities. The applicant being the Postmaster Jeypore (K) Head Post Office received the Sub office daily accounts of Mirganiguda SO on different dates. In the said daily accounts the ex-SPM Mirganiguda SO has shown excess cash in hand without genuine liability. The applicant being the Supervisor of the Sub account branch of the Jeypore (K) Head Post Office did not sign and check the SO daily accounts received and also failed to properly scrutinize the SO daily accounts of Mirganiguda SO. The Applicant did not take proper follow up action and did not issue any instruction to the SPM Mirganiguda SO for clearance of the excess cash accumulated with him. Further more the applicant placed additional cash to Mirganiguda SO without proper scrutiny of the SO daily accounts on the mere requisition of the late Sub Postmaster. Being encouraged by the leniency of the applicant, Late Dillip Kumar Dash, ex-SPM, Mirganiguda SO gradually increased the retention of cash more and more in

hand by showing fake liabilities. Thus Late Dash gradually accumulated heavy cash in his hand amounting to Rs.2,92,944.15 and misappropriated the said amount. Such huge misappropriation could have been averted had the applicant performed his duties properly by scrutinizing the daily accounts received from the Sub Postmaster and taken timely action in the matter. Shri Dash died on 26.10.2006 night by committing suicide. For the lapses in duty and being subsidiary offender, the applicant was proceeded against under Rule 16 of CCS (CC & A) Rules, 1965 by the Sr. Superintendent of Post Offices, Koraput Division, Jeypore (K) (Respondent No.3) and he was awarded with the punishment of recovery of Rs.60,000/- from the pay and allowance vide Memo dated 13.12.2007. The Applicant preferred an appeal to the Director of Postal Services, Berhampur/Respondent No.2 against the order of the Disciplinary Authority. The Appellate Authority considered the matter with reference to the points raised by the applicant in his appeal and records and found no merit in the appeal. Hence rejected the Appeal. The Applicant was provided with all reasonable opportunity to defend his case properly and taking into consideration of the defence representation his contributory lapses and loss sustained to the department for the negligence in duty by the applicant Respondent No.3 imposed the penalty of recovery of Rs.60,000/- in ten installments. The amount of recovery per month was so fixed keeping in view the residuary service of the applicant. Accordingly, Respondents have prayed for dismissal of this OA.

3. Learned Counsel for the Applicant supported his submission that the order of punishment confirmed by the Appellate Authority is not sustainable especially in absence of any loss to the Government or any pecuniary loss caused to the Government by the direct culpable negligence of the Applicant by citing the decision of the co-ordinate Benches of the

Tribunal, Madras in the case of **C.N.Harihara Nandan v Presidency Post Master, Madras, GPO and another** [1988] 8 Administrative Tribunals Cases 673 & Ahmedabad in the case of **J.M.Makwana v Union of India and others**, 2002 (1) ATJ 283 and has prayed for quashing of the impugned orders in this OA. By referring to the contentions raised in the counter, Learned Counsel appearing for the Respondents has submitted that the cases relied on by the Applicant has no application to the present case as each case has its own fragrance and accordingly prayed for dismissal of this OA.

4. Considered the rival submission of the parties with reference to the respective pleadings of the parties and reference to the materials placed on record. It is not the case of the Respondents that the applicant had misappropriated the Government money nor was it the case of the Respondents that for the direct culpable negligence pecuniary loss was caused to the Government. It is the positive case of the Respondents that due to failure in supervisory duty of the Applicant another employee misappropriated the Government money and subsequently he died by committing suicide. Although I do not find any merit in any of the submissions made by the Learned Counsel for the Applicant so as to render the orders of the Disciplinary Authority or the order of the Appellate Authority as not sustainable, I find no basis on apportionment of the amount of Rs.60,000/- ordered to be recovered from the Applicant. On being asked the learned Counsel appearing for the Respondents as to on what basis this apportionment proportion was arrived at by the DA, he was not able to furnish any satisfactory answer to the same. Fact of the matter is that the employee who committed such embezzlement of the Government money is no more as he committed suicide soon after the offence was noticed. However, I find substantial force on the contention of the Applicant that law of precedence has

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to be followed by the Tribunal and the Madras Bench and Ahmedabad Bench having declared the punishment imposed on the employee for the negligence in supervisory duty when another employee committed the fraud as illegal, by application of the law laid down by Their Lordship of the Hon'ble Apex Court in the case of **SI Rooplal and others vrs. Lt. Governor through Chief Secretary Delhi and others**, (2000) 1 SCC 644 the present impugned orders are liable to be set aside. I have gone through the decisions relied on by Learned Counsel for the Applicant. I find that those cases are also of the P&T Department in which punishment was imposed for their negligence the fraud was committed by other employees. They have brought the matter to the judicial scrutiny before the Ahmedabad and Madras Benches of the Tribunal in which the Tribunal held that as there is no charge that any pecuniary loss was caused to the Government by the Applicants. As such for the pecuniary loss caused by fraud of another employee, the Applicants should not have been punished. Accordingly, in both the cases the Tribunal quashed the order of punishment imposed on them. I find that the factual aspects and issues involved in the cases before the Madras and Ahmedabad Benches as also in the present case are more or less the same and similar. Hence by applying the law laid down in the case of C.N.Harihara Nandanan (surpa) & J.M.Makwana (sura), the order of punishment of recovery of the amount imposed by the Disciplinary Authority on the Applicant in order under Annexure-A/5 and confirmed by the Appellate Authority in order under Annexure-A/7 are not sustainable in the eyes of law. Hence both the impugned orders in the present case are hereby quashed/set aside. The Respondents are hereby directed to refund the recovered amount to the Applicant within a period of thirty days

from the date of receipt of copy of this order. But in the peculiar facts and

circumstances of the matter I refrain from passing any order for payment of interest as prayed for by the Applicant.

5. With the aforesaid observations and directions this OA stands allowed to the extent indicated above. There shall be no order as to costs.

Chakrabarty
(C.R.MOHAPATRA)
MEMBER (ADMN.)