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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O.A.No.260/00103 of 2015**

Date of Order :28<sup>th</sup> June, 2017

CORAM

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

Khageswar Mohanta aged about 60 years, S/o Late Shri Nolumbar Mohanta,  
At Godikansa, PO Purujoda, Via Sirigida, PS Telkoi, District Keonjhar, retired  
Superintendent of Post Offices

...Applicant

By the Advocate-**Mr.S.K.Ojha**

-V E R S U S-

1- Union of India represented through its Director General, Department of  
Posts, Government of India, Dak Bhawan, New Delh

2- Chief Post Master General, Odisha Circle, Bhubaneswar, District Khurda,  
Odisha.

...Respondents

By the Advocate-**Mr. S.K.Singh**

**ORDER**

**R.C.MISRA, MEMBER(A):**

The applicant in this O.A. is a retired Postal Department employee  
and has approached this Tribunal making the following prayer :

*"(i) To admit the O.A.;*

*(ii) To quash the Charge memo dated 06.08.2012 (Annex.A/3);*

*(iii) To quash the order dated 02.01.2014 (Annex.A/5) and order dated 08.01.2015  
(Annex.A/10) passed by the Disciplinary Authority and Appellate Authority  
respectively.*

*(iv) To direct the Respondents to refund the recovered amount with 9% interest per  
annum from the date of realization to till the payment is made.*

*(v) To pass any other order/orders as deem fit and proper for the ends of justice."*

2. The brief facts of the case are that applicant while he was working as  
Superintendent of Post Offices, Kalahandi Division, was issued a  
Memorandum of Charges dated 6<sup>th</sup> August, 2012 under Rule 16 of the CCS  
(CCA) Rules, 1965 pertaining to imposition of minor penalty. Applicant  
submitted a show cause on 2<sup>nd</sup> May, 2013 to the disciplinary authority. The  
disciplinary authority did not conduct any inquiry in the matter but, after  
considering his explanation to the charges, passed a detailed order dated  
2.1.2014. After discussing the facts of the case, respondent No. 2 i.e. the Chief  
Post Master General, Odisha Circle, imposed a punishment of recovery of Rs.  
1 Lakh on applicant to be recovered in six equal instalments of Rs. 15000/-.  
Aggrieved by this order, applicant filed an appeal before the appellate  
authority on 14.2.2014 which was disposed of on 8<sup>th</sup> January, 2015 by which,  
the appeal petition was rejected and orders passed by disciplinary authority  
was confirmed. Thus, being aggrieved applicant has filed this O.A.



challenging the Chargesheet, the orders of the disciplinary authority and the order of the appellate authority.

3. The respondent authorities have filed a counter affidavit wherein they have submitted that applicant while working as ASP (In-charge), Puri Sub Division during the period 6<sup>th</sup> April, 2006 to 7<sup>th</sup> May, 2010, carried out annual inspection of Markandeswar Sahi GDS SO in account with Puri H.O. for various years. During inspection, he did not verify balances of required number of pass books and, he also did not issue notice in Form SB-46 to the depositors for obtaining confirmation of balances of their pass books. He did not ensure quarterly visits of the Overseer of Mails of his Sub Division at least once in each quarter, therefore, it was alleged that had the applicant verified the required number of TD accounts and also supervised the work of the Overseer of Mails properly, the fraud committed by the then GDS SPM at Markandeswar Sahi could have been prevented. Taking advantage of lapses on the part of applicant for supervision, the delinquent i.e. GDS SBM committed fraud in several SB, RD and TD accounts. Thus, the applicant proceeded against and, he submitted his reply and on consideration of the same, the competent authority imposed a penalty of recovery of Rs. 1 Lakh which was considered proportionate to the contributory negligence on the part of the applicant. Applicant also preferred an appeal to competent authority and the appellate authority with a reasoned order, has rejected his appeal. The respondents have pleaded that since applicant is proved to be a subsidiary offender and, his supervisory negligence has facilitated a fraud committed by the principal delinquent, the orders of the disciplinary and the appellate authorities are justified under the law.

4. Having heard the learned counsel for both sides, I have perused the records and also the written notes of submissions filed by respondents.

5. The learned counsel for applicant has argued that it has been settled in various cases by this Tribunal that for contributory negligence, any order of recovery is not justified under the law. There is no evidence available with the department that because of his certain supervisory lapses, the principle offender could get a chance to commit financial irregularities. He also submitted that no regular inquiry was conducted by the respondents. He also

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pleads that although, applicant did not verify the TD accounts on 19<sup>th</sup> December, 2006 and 31<sup>st</sup> December, 2007, he verified the TD Pass Books in the year 2008 and 2009 where, there was no fraud in any of TD accounts. With regard to the failure to ensure that the Mail Overseer should have made quarterly visits, no such quarterly visits are prescribed. The applicant also did not find any scope to suspect the principle<sup>al</sup> offender and after he was relieved from his earlier post, fraudulent transactions came to light.

6. Learned ACGSC arguing for respondents has further submitted that there were clear instances of supervisory negligence on the part of applicant which allowed the main offender to commit fraud. In written note of arguments, he has mentioned that in another case applicant also has been charged with contributory negligence in respect of a fraud committed to the tune of Rs. 1,80,082/- committed by one Shri Akhila Chandra Mahanta, GDS BPM, Kuliposi BO under Mayurbhanj Division, who happens to be near relative of applicant. This applicant has been punished with recovery of Rs. 21,946/- in four instalments. This order has been challenged in the Tribunal in OA No. 744/2014 which is pending before this Tribunal. The learned ACGSC has further mentioned that although during hearing, he prayed for tagging that OA with present O.A., however, his prayer was struck down. However, that is a different O.A. which will be heard separately. There is no justification of tagging that O.A. to the present O.A.

7. Coming back to merits of present O.A., I have noted that applicant has submitted in his reply to the chargesheet that a huge fraud was committed by one Shri Srinibas Misra, GDS SPM, Markandeswar Sahi and, he has no contribution to commission of such fraud. Applicant has further submitted that the chargesheet should have indicated clearly what was the modus operandi through which applicant contributed to the commission of fraud by the main offender. The supervisory lapse as pointed out by respondents, cannot by itself, be construed to be a contributory negligence to the commission of fraud and since this connection has not been established in the chargesheet, the charges are not sustainable. This explanation submitted by applicant required some deliberation. For supervisory lapses of the employees, the department is at liberty to initiate suitable disciplinary action. This Tribunal cannot make an observation that the authorities should

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ignore supervisory lapses since it will erode the discipline of the Department. But, the question here is different and, it is, whether a logical link can be established between supervisory lapses and commission of fraud or mis-appropriation by the main offender. On perusal of the order, I find that the disciplinary authority has taken a view that applicant cannot absolve himself of lapses which caused a pecuniary loss of Rs. 1013200.13 so far assessed and, the Department sustained loss due to omission of applicant in discharge of his official duties thereby facilitating fraud by the delinquent official. Based upon this argument, the disciplinary authority directed for recovery of Rs. 1 Lakh from the applicant in six monthly instalments of Rs. 15000/-. It is not logically argued as to how an amount of Rs. 1 Lakh, out of total loss of more than Rs. 10 Lakhs, has to be attributed to the applicant and, rather, on what basis, this apportionment has been made. Therefore, recovery of any particular amount from applicant to make up a part of the total loss sustained by the department does not appear to be sustainable. There are various kinds of penalties provided for imposing minor penalties and recovery is one of them. The Tribunal would not advocate that the Department should ignore supervisory lapses or should not impose any penalty for such lapses, if they are proved but, order of recovery of a specific amount, is not found to be either rational or logical. It is also not proved in the case that applicant was in complicity with the main delinquent who committed fraud and mis-appropriation. The exact amount to be recovered from applicant, as decided by the disciplinary authority, appears to be on the basis of subjective decision because no rational basis of apportioning the amount could be found in such matters. I find that the appellate authority also has not dealt with this question nor has come to any definite finding on the ~~only~~ issue.

8. Similar matters were decided by this Tribunal earlier also, wherein, learned counsel for applicant was a party. It has been brought to my notice that this Tribunal in OA No. 958/2012 wherein, minor penalty of recovery of certain amount for applicant's contributory negligence was challenged, had set aside the orders of punishment vide order dated 24.6.2014. On perusal of order, it is found that the Tribunal had relied on earlier decisions of this Tribunal rendered in OA No. 634/2009 filed by one Shri **Sukomal Bag** and, the Tribunal further placed reliance therein, on the decisions of Co-ordinate



Benches in the case of *C.N. Harihara Nandan* Vs. *presidency Post Master, Madras and Anr.* [(1988) 8 ATC 673] and in the case of *J.M. Makwana Vs. UOI & Ors.* [2002 (1) ATJ 283]. It is thus very clear that several decisions have been rendered by this Bench as well as other Co-ordinate Benches, holding that for contributory negligence, orders of recovery would not be considered to be sustainable under the law. The facts of the present O.A. being similar, I would not like to take a divergent view. However, at the cost of repetition I would like to observe that the departmental authorities are always within their power to proceed against employees who have failed in supervisory duties and impose appropriate punishment after following the due procedure. However, punishment of recovery is not found to be justified as per law enunciated in several cases and the same should be equally followed in the instant case.

9. In the result, the Original Application is allowed and the impugned Chargesheet dated 6<sup>th</sup> August, 2012 (Annex.3), the orders of disciplinary and appellate authorities dated 2<sup>nd</sup> January, 2014 & 8<sup>th</sup> January, 2015 filed as Annex. A/5 & Annex.A/10, are quashed and set aside. Further, respondents are directed that, if already an amount has been recovered, the same should be refunded to applicant within four weeks from date of this order. However, the parties shall bear their own costs.

  
(R.C.Misra)  
Member (A)