

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.07 of 2012

Cuttack this the 13th day of December, 2017

Sri Bibhuti Bhusan Sahoo...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? ✓

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

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CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Sri Bibhuti Bhusan Sahoo, aged about 53 years, S/o. late Jogi Sahoo of Village/PO-Benirampur, PO-Salipur, Via-Tyandakura, Dist-Cuttack, Ex-GDS/BPM, Benirampur Branch Post Office in account with Tyndakura Sub Post Office under Cuttack South Postal Division, Cuttack

...Applicant

By the Advocate(s)-M/s.H.K.Mohanty
D.K.Pradhan
B.M.Biswal

-VERSUS-

Union of India represented through:

1. The Secretary, Department of Posts, Dak Bhawan, New Delhi-110 001.
2. The Chief Post Master General, Orissa Circle, PMG Square, At/PO-Bhubaneswar, Dist-Khurda
3. Asst. Director (Recruitment), O/o. the Chief Post Master General, Orissa Circle, Bhubaneswar
4. The Superintendent of Post Offices, Cuttack South Division, Cuttack-1

...Respondents

By the Advocate(s)-Mr.S.K.Patra

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant has challenged his removal from service on 28.3.2005 when he was working as GDSBPM at Benirampur Branch Post Office in account with Tyandakura S.O. in Cuttack District. He had joined as GDSBPM at Benirampur B.O. on 12.8.1986. On 1.1.2002, he had accepted Rs.10,000/- from a

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customer Sri Sridhar Nandi for opening an Account in Benirampur Branch Office. He had issued a plain receipt with the initial and date stamp of the Post Office and also given a prescribed form to the depositor, Sri Sridhar Nandi asking him to fill up the form and get an introducer's signature as required for opening an Account. Shri Nandi however did not submit the form till 22.01.2002 and filed a complaint on that day at the Tyandakura S.O. and submitted written statement before the Sub Post Master, Tyandakura S.O. On 23.02.2002, the customer Sri Sridhar Nandi submitted the required form and the S.B. Account No.722213 was opened in his name. On 18.02.2002, the applicant was put under off duty. On 21.5.2002, a Memorandum of Charge under Rule-10 of the GDS(C&E) Rules, 2001 was issued to the applicant by the Superintendent of Post Offices, Cuttack South Division (Respondent No.4). On review, the order of put off duty was revoked on 13.12.2002 and the applicant was allowed to join the duties. The Inquiry Officer submitted his report on 29.4.2004. The Superintendent of Post Offices, Cuttack South Division (Res.No.4) in his capacity as the Disciplinary Authority passed an order imposing the penalty of removal from service on 28.3.2005. The applicant preferred an appeal against this order and the Director of Postal Services (HQ) in the O/o. CPMG, Orissa Circle Bhubaneswar, who as the Appellate Authority vide his order dated 26.2.2007 upheld the order passed by the Disciplinary Authority. The revision

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petition of the applicant was also rejected by the CPMG, Orissa Circle on 10.09.2009. Aggrieved by this, applicant has filed the present O.A. praying for the following reliefs:

- i) direction/directions may be issued quashing Annexures-5, 7 and 9.
- ii) direction/directions may be issued as deemed fit and proper so as to give complete relief to the applicant.

2. The grounds on which the applicant has based his prayer are at Paragraph-5 of the O.A. are reproduced herein below:

- i) For that, the humble applicant without prejudice to the above most respectfully begs to further say and submit that the decision taken by the Disciplinary Authority (Resp. 4) was based on surmises with wrong interpretation of facts and circumstances which led to such omission on part of the innocent applicant.
- ii) For that, most respectfully the humble applicant begs to further say and submit for the interest of justice that as per clean observations of the Hon'ble Apex Court, the departmental major proceeding with suspension in the career of an employee is like a bolt from the blue. It keeps employees under great depression and mental stress with humiliation and the punishment of removal or dismissal from service is like a capital punishment/death sentence in the present days of financial crisis and unemployment. It's consequence would be devastation and also against the principle of law unless it is fairly considered by the authorities while deciding the appeal/revision petition having judicial thinking keeping in mind, the nature of disciplinary action and the quantum of punishment to be commensurate weighing the gravity of offence so committed and the loss of public fund if any with evidence on records in a perfect balance. But in the instant case, the offence being of trivial in

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nature without any loss to the Govt., the above mandatory settled legal position of law has not been taken in to consideration either by the appellate authority or the Revisional authority in true sense of the cause. Hence it requires interference of the Hon'ble Tribunal for the interest of justice.

3. The respondents in their counter-reply filed on 27.7.2012 have submitted that the applicant is not entitled to any of the reliefs prayed for by him since he had temporarily misappropriated the amount of Rs.10,000/- given by the customer Sri Sridhar Nandi on 1.1.2002 for the opening of a T.D. Account at Benirampur Branch Office. The applicant had deliberately given wrong receipt to the depositor showing a fake T.D. Account No.59456. Instead of taking the amount into Branch Office Account on 1.1.2002, the applicant kept the amount with him till 22.02.2002. When the matter came to light, the applicant issued SB-26 receipt No.29 for Rs.10,000/- on 23.1.2002 and took the amount into Branch office Account after which the Accounts Office at Tyandakura S.O. issued the Savings Bank Passbook Account No.722213 in favour of the depositor. Therefore, major penalty proceedings were initiated against him and due inquiry was conducted as per the procedure prescribed under the rules. The I.O. in his report dated 1.6.2004 had held the charge against the applicant as proved. The Respondent no.4 had forwarded copy of the inquiry report to the applicant on 10.6.2004 for submission of his defence representation, if any. The representation dated

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5.7.2004 filed by the applicant was considered by Respondent No.4 who as Disciplinary Authority passed the order dated 28.4.2005 imposing the penalty of removal from service on the applicant. Similarly, the orders of the Appellate Authority and the Revisional Authority have been passed after due application of mind and after careful consideration of the points raised by the applicant. The public of rural areas keep faith in the GDSBPM for their transactions made through GDSBPM and any breach of trust is viewed severely by the Department. Therefore, the penalty of removal from service imposed on the applicant should not be interfered with. The applicant had issued a fake receipt to the despositor Shri Sridhar Nandi along with a fake Account Number and this showed his intention to misappropriate the amount. Therefore, the O.A. deserves no consideration and should be dismissed.

4. The matter was heard on 27.11.2017 and reserved for orders. The applicant has filed written notes of submission with a list of citations. He has relied on the judgments in Panchunath Samal vs. Union of India & Ors. reported in 2015 (Sup.1) OLR 1022, Sanatan Jena vs. CESU reported in 2017 (12) OLR 825 and order in Sachindra Kumar Mandal vs. Union of India & Ors. in O.A.No.1132 of 2012 disposed of on 24.4.2017 to put forth the argument that punishment should be commensurate with the gravity of the offence committed.

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Applicant has also cited the judgment of the Hon'ble Supreme Court in Union of India vs. Tulsiram Patel (AIR 1985 SC 1416) in which it has been observed that the Disciplinary Authorities are expected to act justly and fairly after taking into account all the facts and circumstances of the case and if they act arbitrarily and impose a penalty which is unduly excessive, capricious or vindictive, it can be set aside in a departmental appeal and the remedy by way of judicial review is always open to a Government servant.

5. From a perusal of the documents submitted by both the sides, it is quite clear that the amount of Rs.10,000/- deposited by the customer Sri Sridhar Nandi was kept by the applicant for a period of 22 days without being deposited in the official account of the Branch office. During the inquiry the applicant had admitted that it was a mistake on his part. He has also admitted that he had spent a part of that amount for his personal use due to medical expenses. However, he returned the amount on 23.1.2002 when the matter was taken up at the Tyandakura S.O. In the defence statement submitted, he had prayed for forgiveness since he had committed a mistake for the first time and had assured that he will not commit the same mistake in future. He had also admitted that giving a hand receipt to the depositor Sri Sridhar Nandi without giving him an official receipt was a mistake committed by him. We also find from the records that the disciplinary inquiry against the

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applicant has been conducted by following the due procedure. The applicant had been given an opportunity to file his defence representation. The orders of the Disciplinary Authority, Appellate Authority and the Revisional Authority are reasoned orders passed with due application of mind and taken all the points raised by the applicant.

6. The power of judicial review in disciplinary proceedings exercised by this Tribunal is also quite limited. In a catena of judgments, the Hon'ble Apex Court has held that unless there is a violation of rules, the decision of the Disciplinary Authority should not be interfered with. [Surendra Kumar vs. Union of India & Ors. (1020) 1 SCC 158, Union of India & Ors. Vs. Flight Cadet Ashish Rai (2006) 2 SCC 364, Home Gowda Educational Trust vs. Union of India (1995) 6 SCC 749 and Union of India & Ors. vs. G. Ganayutham (1997) 7 SCC 463].

7. The Hon'ble Apex Court has on many occasions castigated the tendency of Government officers for misappropriation of Government funds and violation of trust. It is a settled position of law that the officials who are entrusted with Government money holding them in trust should under no circumstances breach the confidence of depositors of such funds. In Vijay Kr. Singh vs. Union of India & Ors. 2011 (Suppl.) OLR 601, the Hon'ble High Court of Orissa had upheld the punishment imposed on a GDSBPM under similar circumstances for not crediting the accepted

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money of Rs.20/- and Rs.200/- respectively into the official Account. The observation made by the Hon'ble High Court is quite pertinent, which reads as under.

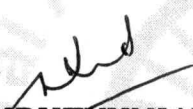
"8.While judging whether a punishment is disproportionate to the charges alleged, the Court has to keep in view the various factors like the nature of the job the standard of honesty and integrity required of the employees and various other aspects. The Supreme Court in State Bank of India and another v. Bela Bagchi and Others (2005) 7 SCC 435 has observed that a Bank Officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interest s of the Bank and to discharge his duties with utmost integrity honesty, devotion and diligence and to do nothing which is unbecoming of a bank Officer. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted spheres. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. Therefore, so observing the Supreme Court set aside the orders passed by the High Court wherein the punishment was set aside on the ground of it being disproportionate to the charges established.

In this case, the petitioner is not an employee of the Bank but he is an employee of a Post Office. It is well known that the post offices act as banker to the people residing in rural areas when there is no other alternative. The employees of the bank are entrusted with the small savings of the people residing in rural areas and, therefore, an employee of post office is required to exercise highest standard of honesty and integrity. The post office deposit schemes are in fact an alternative to the Banking system, which is available in almost all urban areas. The very discipline of the post offices is dependent on the

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personnel who discharge the duties and on whom the people have trust. Such being the case, we are of the opinion that charges being very serious in nature, the punishment awarded is not shockingly disproportionate and hence, there is little scope of interference with the findings recorded by the Tribunal. The writ application is without any merit. The same is dismissed. No costs".

8. In view of the above, we find no reasons to interfere with the orders passed by the Disciplinary Authority, Appellate Authority and the Revisional Authority. The O.A. is therefore dismissed as devoid of merit. No costs.


(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

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(S.K.PATTNAIK)
MEMBER(J)