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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 958 of 2012

Cuttack this the 24th day of June, 2014

CORAM

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

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Shri Nityananda Jena, aged about 63 years, Son of Late Sitala Prasad Jena retired Postmaster (HSGI), Balasore, Head Post Office, At/Po.Nuasahi (Baliala), Dist. Balasore.

...Applicant

(Advocates: M/s.S.Mohanty, S.C.Mohanty, B.Biswal)

VERSUS

Union of India represented through

1. Its Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Orissa Circle, PMG Square, BBSR, Dist. Khurda-751001.
3. The Director of Postal Service (Head Qrs), Office of CPMG Orissa, Bhubaneswar-751001.
4. Superintendent of Post Office, Balasore Division, At/Po/Ps/Dist. Balasore, PIN-756001.

... Respondents

(Advocate: Mr.D.K.Behera)

ORDER

A.K. PATNAIK, MEMBER (JUDICIAL):

By filing this OA, the applicant a retired employee of the postal department challenged the order dated 21.07.2009 imposing punishment of recovery of Rs.20, 000/- in disciplinary proceedings under Rule 16 of the CCS (CC&A) Rules, 1965 for his contributory negligence due to which fraud to the tune of huge amount was committed by another employee. Appeal preferred by him having been rejected vide order dated 08.03.2010,



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the applicant has approached this Tribunal in the instant OA with prayer to quash the order of punishment dated 21.7.2009 and the order of rejection dated 08.03.2010 with further prayer to direct the Respondents to refund the recovered amount to him.

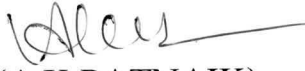
2. Respondents have filed their counter in which it has been stated that due to laxity in supervision of the applicant Shri Purna Chandra Jena, Ex-Sub Postmaster, Turigaria SO got scope to commit SB fraud to the tune of Rs.3,32,000/- in 12 SB Accounts. The applicant was issued memorandum of charge under Rule 16 and after considering the reply submitted by him, the disciplinary authority imposed the punishment on the applicant due to his contributory negligence. Appeal preferred by the applicant was duly considered with reference to the rules and the appellate authority after due application of mind did not find any merit to interfere in the order of punishment and accordingly in a well reasoned order rejected the appeal of the applicant. Accordingly, Respondents have prayed for dismissal of this OA.

3. Heard Ms.C.Sethi, Leaned Counsel appearing for the applicant on behalf of the arguing counsel Mr.S.Mohanty and Mr.D.K.Behera, Learned Additional CGSC appearing for the Respondents and perused the records. Though learned counsel for both sides, argued the matter at great length, in support of their stand point, I do not see any reason to make the order lengthy as I find that recovery by way of punishment in Rule 16

Alley

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proceedings for contributory negligence came up for consideration before this Tribunal in OA No. 634 of 2009 filed by Sukomal Bag Vrs UOI & Ors and this Tribunal by placing reliance on the orders of the co ordinate Benches of the Tribunal rendered in the cases of C.N.Harihara Nandan Vrs Presidency Post Master, Madras and another, reported in (1988) 8 Administrative Tribunal Cases page 673 and J.M.Makwana Vrs UOI and others reported in 2002 (1) ATJ 283 disposed of the aforesaid OA vide order dated 11th November 2010 holding imposition of punishment of recovery due to contributory negligence is not sustainable in the eyes of law which was upheld by the Hon'ble High Court of Orissa vide order dated 22.8.2011 in WP (C) No.4343 of 2011. This being a case where the imposition of punishment of recovery was due to contributory negligence by applying earlier decision of this Tribunal, the order of punishment imposed by the disciplinary authority dated 21.7.2009 and the order of the appellate authority dated 08.03.2010 are hereby quashed. The Respondents are directed to refund the recovered amount within a period of 60 (sixty) days from the date of receipt of copy of this order. In the result, with the aforesaid observation and direction this OA stands allowed. There shall be no order as to costs.


(A.K.PATNAIK)
Member (Judicial)