

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK  
O.A.NO.328 OF 2013  
CUTTACK THIS THE 12<sup>th</sup> DECEMBER, 2014

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

Sri Rabinarayan Behera  
Aged about 39 years  
S/o. Sri Baishnab Charan Behera  
Vill-Garispur  
PO/Dist-Jajpur-755001  
Now working as P.A., Dharmasala S.O.

...Applicant  
By the Advocate(s)-Mr.P.K.Padhi

-VERSUS-

Union of India represented through

1. The Secretary cum Director General of Posts  
Dak Bhawan  
Sansad Marg  
New Delhi-110 116
2. The Chief Post Master General  
Odisha Circle  
At/PO-Bhubaneswar  
Dist-Khurda-751 001
3. The Superintendent of Post Offices  
Cuttack North Division  
P.K.Parija Marg  
Cuttack, Odisha-753 001

...Respondents  
By the Advocate(s)-Mr.P.R.J.Dash

**ORDER**

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

Applicant in this Original Application is a Postal Assistant at Dharmasala S.O. under the Department of Posts and has approached the Tribunal with a prayer that the order issued by the Superintendent of Post Offices, Cuttack (N) Division, (Respondent No.3) dated 17.12.2012, in which he has been asked to



22

credit the amount of loss of Rs.62,734/- sustained by the Department due to theft with the Department may be quashed. He has also challenged the orders issued by the Chief Post Master General, Orissa (Respondent No.2) dated 7/9.5.2013 by which Respondent No.2 has disposed of the representation of the applicant in compliance of the earlier orders of the Tribunal and directed the applicant to credit the same amount.

2. Short facts of the case are that the applicant being a Postal Assistant was allowed to hold the charge of the post of Sub Post Master (SPM), Dharmasala S.O. in the absence of the regular incumbent. Since he was not holding the regular post of SPM, he did not reside in the post quarters at Dharmasala. His <sup>t o R</sup> plea is that since he was legally not entitled hold the quarters, he never stayed in that quarters. This temporary arrangement had continued for a period of two years. Further, the Superintendent of Post Offices, Cuttack (N) Division had also abolished the post of Night-Watcher at Dharmasala S.O. Keeping in mind the possibility of theft in the office, applicant allowed the ex-GDS Night Watcher to guard the office in the absence of the applicant at night. However, on the night of 4/5.01.2011 some criminals broke open the Post Office door and attacked the Night Watcher and took away the entire cash of Rs.62,734/-.

Applicant, on coming to know about this incident lodged an FIR on 5.1.2011 at Dharmasala Police Station and also informed his higher authorities. The Police took up the investigation which is still in progress and no final report has been submitted in the Court. The departmental authorities are also pursuing this matter with the Police and they are very much aware that the officials of Dharmasala S.O. are innocent in this matter and that this was the work of some criminals. In the meantime, the regular S.P.M. of Dharmasala S.O. has also been posted and the applicant is working as P.A. in the same S.O.

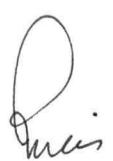
27

Respondent No.3 without waiting for the completion of the investigation by the Police asked the applicant to credit the entire stolen amount of Rs.62,734/- immediately and to intimate the credit particulars to his office. Before passing this instruction, the Respondent No.3 did not issue any notice to the applicant nor did he conduct any enquiry into the matter. When the applicant received the order dated 17.12.2012 in this regard, being aggrieved, he approached this Tribunal in an earlier O.A.No.1065 of 2012. The Tribunal disposed of this matter vide order dated 11.1.2013 by making a direction to the applicant to make an exhaustive representation to Respondent No.2 within a period of 15 days and the Respondent No.2, i.e., CPMG, Orissa Circle was asked to consider the representation and pass a reasoned and speaking order within a period of two months from the date of receipt of the order and till the representation was disposed of, it was directed that the order dated 17.12.2012 would not be acted upon. The applicant made a representation dated 23.1.2013 to Respondent No.2, who passed the final orders on the representation on 7/9.05.2013(A/5). It is the case of the applicant that Respondent No.2 did not consider the vital submission that he had made in his representation, viz., the fact that regular SPM was not posted for years together, applicant made arrangement of security by engaging ex-Night Watcher without any payment from the exchequer and also the fact that he was not given any notice to show cause before the issue of direction by Respondent No.3. By assailing the order dated 7/9.05.2013 of Respondent No.2 which is enclosed at Annexure-A/5, applicant has moved the Tribunal once again. Applicant in this O.A. has submitted that the principle of natural justice has been violated by Respondent No.3 by issuing this order of recovery without giving him an opportunity of being heard. Further, applicant



was asked to work as SPM for a long period of two years and by making him work against this post without making a regular posting, the Department have saved a lot of money. Instead of giving recommendations to the applicant for this work, Respondent No.3 has preferred to direct him to make good the loss of Rs.62,734/- stolen by the criminals for which the Police investigation is still going on. Based on these grounds, applicant has urged that the Tribunal should quash the orders of recovery issued by the Respondents.

3. Respondent-Department have filed their counter reply in which they have submitted that the applicant was identified as subsidiary offender in Dharmasala theft case in which the Department has sustained a permanent loss of Rs.62,734/-. The SPOs, Cuttack(N) Division, i.e., Respondent No.3 noticed several lapses on the part of the applicant being SPM, Dharmasala S.O. and on that basis, he has asked the applicant to credit the loss of amount of Rs.62,734/-. The CPMG, Orissa Circle, Respondent No.2 was directed by this Tribunal in the earlier O.A. to consider the representation made by the applicant and pass a reasoned and speaking order. Respondent No.2 in due compliance of the direction of the Tribunal has also passed an order dated 7/9.5.2013 in which he has dealt with all the detail facts of the case and has upheld the orders of the SPOs, Cuttack(N) Division. Soon after the issue of this reasoned and speaking order, Respondent No.3 being the Disciplinary Authority for the applicant initiated the disciplinary proceedings against the applicant under Rule-16 of CCS(CCA) Rules, 1965, vide Memo dated 24.5.2013. After admitting the O.A., this Tribunal has stayed the operation of the order dated 7/9.5.2013, passed by Respondent No.2 and on account of this stay order, Respondent No.3 is not able to proceed further with the disciplinary proceedings initiated against the applicant. Respondents, while



admitting the fact that the applicant was asked to manage the work of SPM, being the senior-most Postal Assistant of that office as a stop gap arrangement, have, however, submitted that it was mandatory on the part of the applicant to stay in the attached quarters even if he was posted on a temporary basis and that there are clear instructions of the Department of Posts in this regard. Applicant had also allowed an unauthorized person to remain in the Post Office overnight on 04.01.2011, i.e., in the night of theft violating the statutory provisions of Rule-20 of the P&T Manual.

4. With regard to the Police investigation, it is submitted that no final report has been received from Dharmasala Police station with regard to this theft. However, the Respondents have further emphasized that besides the incident of theft, the departmental investigation has revealed lapses on the part of the applicant being SPM of Dharmasala SO and in view of that he was asked to credit the entire amount of loss sustained by the Department. There is no question of any arbitrary action by Respondent No.3 and he has taken into consideration the lapses on the part of the applicant while passing an order of recovery of the amount of loss from the applicant. Respondents, therefore, have completely denied the allegations of the applicant that there was a violation of the principles of natural justice. They have further submitted that in pursuance of the speaking order dated 7/9.5.2013 of Respondent No.2, Respondent No.3 had initiated the departmental proceedings against the applicant, but could not finalize the same in view of the interim order passed by the Tribunal on 29.5.2013. Finally, the Respondents have forcefully pleaded that the O.A. is not maintainable and should be disallowed being devoid of merit.



26

5. Having heard the learned counsel for both the sides, I have perused the records. Learned counsel for the applicant has submitted a written note of argument in which he has reiterated some of the important points that he has made in this O.A. In the background of the facts which have already been enumerated, the SPOs(Res.No.3) passed an order dated 17.12.2012(Annexure-A/2). This order was very cryptic and it was mentioned in the order that "*on review of the case, it is seen that there is(sic) several lapses on your part being Sub Post Master. Hence, you are requested to credit the amount of loss of Rs.62734/- sustained by the department due to theft immediately & intimate the credit particulars to this office*".

6. Therefore, it is very clear that the order does not mention the details of lapses committed by the applicant nor does it seek any explanation in respect of that from the applicant. There was a direction to immediately deposit this amount of loss. This order was challenged by the applicant in O.A.No.1065/12.

The Tribunal at the stage of admission considered the matter and directed the applicant to make an exhaustive representation reflecting his grievances to Respondent No.2 within a stipulated time and Respondent No.2 was directed to consider the representation and pass a reasoned and speaking order within a period of two months. Thereafter, on receipt of representation from the applicant, Respondent No.2, viz., CPMG, made a detailed order dated 7/9.05.2013. The CPMG has discussed some of the points raised by the applicant in his representation dated 23.1.2013. He had found three lapses as under.

- i) Firstly, the applicant had allowed an unauthorized person to remain inside the Post Office overnight on 4.1.2011. This was a decision that he had taken on his own without any authority from the higher officers.



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- ii) Secondly, even though the Police investigation has not been completed, the Department can proceed against the official for whose contributory negligence, the loss was caused to the Department.
- iii) Thirdly, the major lapse that has been pointed out is that the applicant himself created a situation of retention of overnight cash of Rs.62739.50 at the end of day's work on 4.1.2011 and thus the miscreants got opportunity to steal such huge amount of cash.

7. Finally, in his order the CPMG has upheld the direction of respondent No.3 issued to the applicant to deposit this amount of cash in the Department. He has further stated that if the applicant does not credit this amount on the basis of the administrative order, the concerned Disciplinary Authority, i.e., Res.No.3 may issue a charge sheet under Rule-16 of CCS(CCA) Rules, 1965 and take further action as necessary.

8. The basic fact of the matter reveals a situation where an order of recovery was passed based on the ground of contributory negligence without initiating any disciplinary proceedings and without affording an opportunity to the applicant to put forth his case. It is the basic principle of natural justice that before any order adversely affecting the interest is issued by the departmental authorities, the Government servant concerned should be asked to show cause and to put up his defence against the proposed action. Therefore, on this count, the respondents' action cannot be supported. The other issue involved in this matter is that the departmental authorities had decided to impose the order of recovery on the ground of contributory negligence against the loss caused to the Department which has been mentioned specifically by the CPMG in his order. He has also mentioned the details how the applicant created a situation of retention of overnight cash of such a big amount in the Post Office. This conclusion, however, is one sided

26

since no departmental proceeding was initiated to verify the alleged negligence of the applicant to fix specific responsibility on him in this regard. No fact finding inquiry was also conducted. In this view of the matter, orders dated 7/9.5.2013 issued by Respondent No.2 does not meet the requirements of law and therefore, is liable to be quashed. However, nothing prevents the Respondent-Department from taking such action as deemed fit and proper against the applicant only after following the due procedure of law.

9. For the reasons aforesaid, the impugned orders dated 17.12.2012 and dated 7/9.5.2013 vide A/2 and A/5 respectively, are quashed and set aside. In the result, the O.A. is allowed to the extent indicated above. No costs.

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

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