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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.972 of 2013 July,
Cuttack this the 25th day of July 2017

Srinibas Sahu ...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?


(A.K.PATNAIK)
MEMBER(J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.972 of 2013
Cuttack this the 25th day of July, 2017

CORAM:
HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

Srinibas Sahu, aged about 58 years, S/o. Banamali Sahu, working as Sub Post Master, Pratappur S.O. under Jaleswar H.O., Dist: Balasore presently residing at Mainsa Munda, PO-Srirampur Road, Via: Singla, Dist-Balasore

...Applicant

By the Advocate(s)-Mr.D.K.Mohanty

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Ministry of Telecommunication, Dept. of Post, Dak Bhawan, Sansad Marg, New Delhi-1.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist-Khurda-751 001
3. Director of Postal Services (HQ), O/o. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda-751 001
4. The Superintendent of Post Offices, Balasore Division, Balasore

...Respondents

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

ORDER

A.K.PATNAIK, MEMBER(J)

The Applicant, while working as Postmaster, Pratappur S.O. was issued with a Memo dated 16.8.2012(A/2) under Rule-16 of CCS(CCA) Rules, 1965. In the said Memo, the allegations were that during the period from 19.05.2001 to 29.2.2008, he did not ensure to

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call for the S.B. Pass Books of Badasimulia B.O. in account with Baliapal S.O. under Jaleswar H.O. for posting of annual interest for the year 2006-07 and that he failed to get prepared and send the list of 58 accounts to the Inspector of Posts, Jalaseswar(West) for verification of their balances. Due to such inaction, neither the annual interest could be posted nor the balances of those Pass Books in which the fraud was committed by the GDSBPM, Badasimulia B.O. could be verified and thereby not only the fraud committed by the GDS BPM, Badasimulia B.O. prior to 19.05.2007 could be detected but also fraud committed after 19.05.2007 could come to light till 21.03.2007. Thus, by this, the applicant contributed to the loss of Rs.23,466/- due to fraud committed by the GDSBPM, Badasimulia B.O. by adopting the modus operandi of making entry of deposits/withdrawals etc. in the Pass Books without crediting/debiting the amount to B.O. account

2. In response to the above Memo, the applicant submitted his reply dated 30.08.2012(A/2) and in consideration of the same, the Superintendent of Post Offices, Balasore Division, vide Memo dated 29.10.2012(A/3) held the applicant guilty of the charge and directed for recovery of Rs.12,000/- from the salary of the applicant towards the contribution of loss sustained by the Department due to fraud committed by the GDSBM, Badasimulia B.O. The applicant submitted an appeal dated 17.11.2012(A/4) against such proposed

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punishment which was rejected by the appellate authority. Hence, by filing this O.A, the applicant has sought for the following relief.

- i) To quash the charge sheet dated 16.8.2012 under Annexure-A/1.
- ii) To quash the order of punishment passed by Disciplinary Authority dated 29.10.2012 under Annexure-A/3.
- iii) To quash the order of Appellate Authority dated 7.1.2013 under Annexure-A/5.
- iv) To direct the Respondents to refund the recovery amount to the applicant with 12% interest.
- v) To pass any other order/orders as deemed fit and proper in this case.

3. It is the case of the applicant that the disciplinary authority without considering the reply in its proper perspective imposed the punishment of recovery from his salary. Similar is also the case with the appellate authority while rejecting the appeal preferred by the applicant against the orders of punishment. It is the further case of the applicant that the charges being factual and having been denied by him, the disciplinary authority should have ordered an inquiry into the matter. The penalty imposed is not commensurate with the gravity of offence. Besides, the applicant has also submitted that before imposition of punishment, he having not been issued with any notice, there has been sheer violation of the principles of natural justice necessitating interference by this Tribunal.

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4. Per contra, respondents, by filing a detailed reply have opposed the prayer of the applicant. The main thrust of the reply is that since the applicant did not ensure to call for the SB pass books of Badasimulia B.O. for posting of annual interests for the year 2006-07, neither the balance of those pass books could be verified nor fraud committed by the BPM Badasimulia B.O. could be detected. According to the respondents, had there been timely intervention by the applicant, the fraud committed by the BPM, Badasimulia BO. could have been detected and further fraud in RD/TD/RPLI could have been averted. Respondents have stated that the disciplinary authority having gone through the charge vis-à-vis the reply submitted by the applicant thereto, has imposed the punishment, which is commensurate with the gravity of the offence. The applicant, being the subsidiary offender to the fraud, has rightly been awarded with such a punishment by the disciplinary authority. Appellate Authority having dealt with the matter in its proper perspective, has rightly upheld the punishment as imposed by the disciplinary authority, respondents have added. In the end, it has been submitted by the respondents that the O.A. being devoid of merit is liable to be dismissed.

5. Applicant has not filed any rejoinder to the counter.

6. Heard learned counsel for both the sides and perused the records and the written notes of submissions filed by the applicant. It has been pointed out by the learned counsel that in the instant case

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the applicant has not misappropriated any Government money arising out of contributory negligence. To fortify his stand, he has brought to the notice of this Tribunal the decisions rendered in O.A.No.634/2009 disposed of on 11.11.2010 (Sukomal Bag vs. Union of India &Ors.) as upheld by the Hon'ble High Court of Orissa vide judgment dated 22.8.2011 in WPC No.4343/2011 as well as in A.K.Singh vs. Union of India &Ors. in O.A.No.1077/2012 disposed of by this Tribunal on 09.09.2015, in which the Tribunal after quashing the impugned order of recovery directed the respondents refund the amount to the applicant therein already deducted.

7. We have gone through the decisions relied upon by the applicant. It is to be noted that this Tribunal, while deciding O.A.No.1077/2012, had relied on an earlier decision rendered in O.A.No.397/2014 disposed of on 18.6.2015, in which it was held as under.

"Contributory negligence, in its common parlance, refers to convergence of interest with an intention to commit certain misconduct or delinquency of common phenomenon. In the instant case, convergence of interests is inconspicuous. However, it is a case where notwithstanding supervisory lapse on the part of the applicant having been detected already, a fraud has been committed by other co-employee by the reasons that such lapse was not rectified/removed soon after its detection and it is outlandish to notice that there is nothing on record to prove bona fide of the Department that any action has, indeed been taken against the incumbent who really perpetrated fraud of Rs.49,103.05. All these attributions cast a doubt in our mind that the action of the authorities in the Department is not above board".



8. This Tribunal, while deciding O.A.No.1077 of 2012 had also taken note of the decisions of CAT, Madras Bench in *C.N.HariharaNandan vs. Presidency Post Master, Madras, GPO* and another [1988]8 Administrative Tribunals Cases 673 & CAT, Ahmedabad in *J.M.Makwana vs. Union of India &Ors. 2002(1) AT*] 283, which declared the punishment imposed on the employee for the negligence in supervisory duty when another employee committed fraud as illegal, by application of the law laid down by the Hon'ble Supreme Court in *SI Rooplal&Ors. Vs. Lt.Governor through Chief Secretary, Delhi &Ors. (2009) 1 SCC 644* and accordingly, quash the impugned orders of the disciplinary authority as well as the appellate authority and directed the respondents to refund the recovered amount to the applicant.

9. At the cost of repetition, it is to be stated that the applicant has been imposed with the punishment of recovery on account of contributory negligence notwithstanding the fact that he had brought out the irregularities of the GDSBPM, Badasimulia B.O. through the error extract. It is also not on the record that for perpetration of fraud, the GDSBPM, Badasimulia B.O. had been proceeded against and punished suitably. Be that as it may, the punishment imposed on the applicant for the negligence in supervisory duty when GDSBPM, Badasimulia B.O. committed fraud is not tenable in view of the settled position of law as discussed above and therefore the same is liable to be quashed. Accordingly,





Charge Memo dated 16.08.2012(Annexure-A/1) and the further consequential orders as passed by the disciplinary authority as well as the appellate authority vide A/3 dated 29.10.2012 and A/5 dated 7.1.2013 are quashed and set aside. Consequently, it is directed that the respondents shall refund the amount already recovered, to the applicant forthwith.

10. In the result, the O.A. is thus allowed. No costs.



(A.K.PATNAIK)
MEMBER(J)