

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 260/00241 of 2014
Cuttack, this the 13th day of October, 2017

CORAM
HON'BLE MR. S.K.PATTNAIK, MEMBER (J)

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Pradeep Kumar Satpathy,
aged about 42 years,
S/o Kapileswar Satpathy,
Basant Vihar, Jyoti Vihar, Burla, Sambalpur,
presently working as SPM, Jyoti Vihar S.O.,
Burla, Sambalpur.

...Applicant

By the Advocate-M/s. D.P.Dhalsamant, N.M.Rout

-VERSUS-

Union of India Represented through

1. Director General of Posts, Govt. of India, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist- Khurda-751001.
3. Director Postal Services, O/o- the PMG, Sambalpur Region, Sambalpur-768001.
4. Superintendent of Post Offices, Sambalpur Division, Sambalpur- 768001.

...Respondents

By the Advocate- (Mr. S. Behera)

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ORDER

S.K.PATTNAIK, MEMBER (JUDL.):

The applicant has challenged the charge memo dated 02.09.2013(Annexure A/1) and order of punishment dated 20.12.2013(Annexure-A/3) passed by the Disciplinary Authority and order of Appellate Authority dated 25.03.2014(Annexure A/6). The applicant also seeks stay of recovery order passed on 20.12.2013.

2. The applicant's case, in short runs as follows:

*see attached
13/10/17*

The applicant while working as Postal Assistant, Jyoti Vihar, Burla was charge sheeted under Rule 16 of CCS(CCA) Rule, 1965 vide charge memo dated 02.09.2013(Annexure A/1) on the allegations that the applicant while working as Postal Assistant, Sambalpur Head Office, during the period from 18.12.1995 to 19.01.2002, was entrusted the work of SB counter PA Sambalpur H.O. The applicant, on 25.09.2002, received an amount of Rs.50/- from one Shri Dillip Kumar Sahu, Nandapara with incomplete documents and without proper identification, which led to commission of minus balance to the tune of Rs.2,54,000/-. The other allegation against the applicant is that while working as Ledger Assistant, Sambalpur H.O, he had not raised any objection regarding balance in the account during withdrawal of Rs.20,000/- each on 23.12.2000 and 06.02.2001 and also handled the subsequent deposits of Rs. 200/- on 31.10.2000 and Rs.250/- on 06.02.2001 which led to fraudulent withdrawal resulting minus balance from the very first withdrawal and ultimately to the tune of Rs. 2,54,000/- for which Shri Satpathy(Applicant) is responsible.

In response to the charge memo dated 02.09.2013, the applicant submitted a representation on 12.09.2013 requesting to provide Xerox copy of the original documents on the basis of which the charges have been framed. The applicant submitted a representation on 27.09.2013 to Respondent No.4 (Annexure A/2) since he was not supplied with the documents as asked for by him.

The grievance of the applicant is that Respondent No.4 without affording adequate opportunities imposed the punishment of recovery of Rs. 1, 27,000/- vide order dated 20.12.2013 (Annexure A/3). Being aggrieved by the said order, the applicant preferred an appeal before the Respondent No. 3. Since there was recovery of Rs.4000/- from the salary of the applicant, without awaiting decision of the Appellate Authority, the applicant approached this Tribunal in O. A. No. 20/2014 for appropriate relief. This Tribunal vide order dated 24.01.2014 directed the Respondent No. 3 to consider the appeal and communicate the result by way of a reasoned order within a period of 60 days. In spite of the order of this Tribunal dated 24.01.2014 passed in presence of both the Counsel, Respondent No.3 vide its order dated 25.03.2014 disposed of the appeal rejecting the claim of the applicant and confirmed the order passed by the Disciplinary Authority.

The grounds raised by the applicant in this O. A are manifolds.

Signature
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- (a) Firstly, even though the alleged offence took place during the year 2000-2001 the departmental proceeding was initiated after a decade, i.e. only on 02.09.2013 and on this ground of inordinate delay the entire proceedings are liable to be quashed.
- (b) Secondly, even though there is an allegation of loss to the tune of Rs. 2,54,000/- the department did not initiate any major penalty proceedings only to avoid proving of the charges by substantial documents and resorted to minor penalty proceedings to pave way for passing an arbitrary order without referring to any document.
- (c) Thirdly, even though the applicant asked for copy of connected documents the same was not provided to him.
- (d) Fourthly, since there is no finding of any wrongful gain to the applicant and as no criminal action was initiated against the person getting wrong payment the conduct of department becomes mala-fide.
- (e) Fifthly since the charge is vague no punishment could have been imposed as there is no document to show that the applicant had not objected to any withdrawal or had passed the same without proper verification of savings ledger.

3. Respondents contested the case by filing a counter. According to respondents there was lapses during opening of account in the name of Shri Dilip Kumar Sahu which resulted in fraudulent withdrawals and minus balance to the tune of Rs. 2,54,000/- in the Sambalpur Head Office SB Account No. 248413. The other allegations against the applicant is that while working as SB Counter Postal Assistant in Sambalpur HO received a cash opening of the new SB Pass Book in the name of Dilip Kumar Sahu, Nandapada for Rs.50/- on 25.09.2000 with incomplete documents, which was not properly filled up and without identification, thereby violating Rule-23 and 25 of POSB Manual Volume-1. According to respondents the applicant was responsible for opening of account No. 248413 in the name of a fictitious person, leading to fraudulent withdrawal and minus balance to the tune of Rs. 2,54,000/-. The other allegations against the delinquent employee was that while entrusted with the work of Ledger Assistant, Sambalpur Head Office, he failed to raise any objection regarding balance in Sambalpur Head Office SB Account No. 248413 during withdrawal of Rs. 20,000/- each on 23.12.2000 and 06.02.2001 and thereby violated the provision of Rule-33 of POSB Manual Volume-I. According to respondents the applicant failed to verify the balance shown as a result of which there was fraudulent withdrawal resulting

8/6/2017
12/1/17

15
minus balance to the tune of Rs.2, 54,000/-. According to respondents the disciplinary action was delayed due to critical nature and time taken for the inquiry to pinpoint the offenders with respect to their lapses and the delay in initiation of the Disciplinary proceedings can not dilute the nature and gravity of the offence. Even though the department sustained a loss of Rs. 2,54,000/- the recovery of Rs. 1,27,000/- is only a portion of the pecuniary loss sustained by the department.

4. Before delving into the merit of the case, it may be stated at the outset, that the charge is vague as there is no specific imputation against the delinquent employee and the mala-fide in initiating minor penalty proceedings even though there was a loss of Rs. 2,54,000/- as claimed by the Respondents cannot be underestimated. When there was loss by way of wrong payment, the delinquent employee should have been dealt with a major penalty proceeding. The department does not say about misappropriation by the delinquent employee by way of wrongful gain. The arguments of the Id. Counsel for the applicant is that even though in respect of charge memo the applicant asked for copies of the documents/vouchers on which payments have been made, the same was neither reflected in the charge memo nor copies of the same were supplied to the delinquent employee. There was no bifurcation of the amount of Rs. 2, 54,000/- i.e. on which date what amount was withdrawn and if the Postal Assistant lapses resulted in withdrawal without deposit in the SB Account. At no point of time, even a show cause notice was issued to the applicant calling for explanation for such lapses, before initiating a formal departmental proceeding.

There is no dispute about the fact that this is a fit case for initiating a major penalty proceedings and I do not understand the fancy of the department in initiating a minor penalty proceedings when it knows very well that by initiating proceedings under Rule 16 removal or dismissal order cannot be passed even though there is an allegation of fraudulent withdrawal of Rs. 20,000/- on two occasions, the department could not show what was the balance and if there was no balance how and under what circumstances payment was made to whom and by whom. The charge should be specific. Applicant should have been charge sheeted for making illegal payment of Rs. 40,000/- instead of Rs. 2,54,000/-. The department has not given any backup how the department sustained a loss of Rs. 2,54,000/- with date wise details of withdrawals. Opening of account without necessary documents is a misconduct and it is certainly the responsibility of the higher authority to scan and verify all connected

8/6/2017
12/1/17

documents before opening of account but it has nothing to do with wrong payment and moreover no specific charge was framed in that light. The orders of Disciplinary Authority and the Appellate Authority do not disclose how the department sustained a loss of Rs. 2, 54,000/- as they do not show the details of date wise transaction and withdrawal. If the applicant, without any balance, in the SB Account has made the payment, FIR should have been lodged for investigation by the Police as it amounts breach of trust besides criminal misappropriation. But the department did not initiate any criminal action for the reasons best known to it. Even no departmental action was taken for 12 years for such gross misconduct and at last as an eyewash a minor penalty proceeding was initiated instead of a major penalty proceeding, only to avoid proof of assertions by documentary evidence.

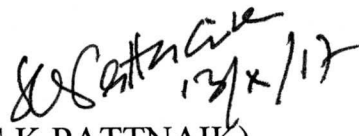
5. Ld. Counsel for the applicant placed reliance on a decision reported in **2005 SCC(L&S) 861 P. V. Mahadevan Vs. MD. T. N. Housing Board** wherein Their Lordship's have quashed departmental proceedings on the ground on inordinate delay of 10 years in initiating departmental inquiry against appellant as no convincing explanation given by respondent employer in respect of the delay. While passing the said judgments Their Lordship's of the Hon'ble Apex Court have also taken into consideration two earlier judgments relating to such inordinate delay reported in **State of Madhya Pradesh -Vs- Bani Singh 1991 SCC(L&S) 638 & State of Andhra Pradesh -Vs- N. Radhakrishnan reported in 1998 SCC (L&S) 1044**. There is absolutely no explanation from the respondents what the department was doing from 2001 to 2013 when there was alleged loss of public money to the tune of Rs. 2,54,000/-. Even before initiation of departmental proceeding the department has never called for an explanation from the concerned employee as to how the department sustained loss by his actions, indicating what money was withdrawn at whose instance and on which date. Since the charge memo is vague and unspecific and as the department failed to demonstrate specific action of delinquent employee, and who was the ultimate beneficiary in those transactions, on this ground alone the charge is liable to be quashed being vague.

That apart if there was loss of Rs. 2,54,000/- to the Government I do not understand the reasoning of the department in ordering the recovery of Rs. 1,27,000/- and showing laxity in respect of other portion of loss of Rs. 1,27,000/-. From the charge memo and order of the disciplinary authority it reveals that entire amount of Rs. 2,54,000/- has been paid to Dilip Kumar Sahu. If there were fraudulent transactions, FIR should have been lodged against Shri Dilip Kumar

8/8/2017
17/7/17

Sahu alongwith the present applicant for such alleged misappropriation and illegal withdrawal of Government money, but for the reasons best known, the department did not resort to that method. Since the department did not furnish the relevant documents to the delinquent employee the entire proceeding is liable to be quashed, as prejudice caused to the employee cannot be under estimated. To sum up, charges leveled on the delinquent employee both under Articles 1 & 2 have not been proved by way of documentary or cogent evidence and rather the department in order to avoid collection of primary evidence resorted to a backdrop method by initiating a minor penalty proceedings in respect of such huge financial irregularity, even without showing what was the exact degree of culpability on the part of the delinquent employee in all those transactions. Since initiation of the departmental proceedings under vague charge memo is illegal and not tenable, the same is liable to be quashed in the larger interest of justice, equity and good conscience. Since the orders have been passed without legal evidence and proof of the documents, the same are liable to be quashed. In a departmental proceeding, based on documents, nothing can be assumed and has to be proved with reference to relevant documents of transaction including production of deposit ledger and withdrawal slips, which was grossly missing in this case.

6. Hence the O. A is allowed. The orders of Disciplinary Authority dated 20.12.2013(Annexure-A/3) and Appellate Authority dated 25.03.2014(Annexure A/6) being arbitrary and illegal the same are hereby quashed. The charge memo of 2013 has been issued for the misconduct taking place in between 2000 and 2001 and that too without specification of the misconduct and hence, the same is also quashed on the ground of inordinate delay and laches as also being vague and unspecific. No costs.


(S.K.PATTNAIK)
Member (Judl.)