

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00/397/2014

Cuttack this the 18th day of June, 2015

Guru Prasad Mohapatra...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

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


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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

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

Guru Prasad Mohapatra
Aged about 40 years
S/o. late Bidyanath Mohapatra
At-South Mundamuhan, PO-Janla
Dist-Khurda-752 054
-now working as SPM, Begunia SO
At/PO-Begunia
Dist-Khurda

...Applicant

By the Advocate(s)-M/s.P.K.Padhi
Smt.J.Mishra

-VERSUS-

Union of India represented through

1. The Secretary-cum-Director General of Posts
Dak Bhawan,
Sansad Marg
New Delhi-110 116
2. Chief Post Master General
Odisha Circle
Bhubaneswar-751 001
3. Director of Postal Services (Hqrs.),
O/o. Chief Post Master General
Odisha Circle
Bhubaneswar-751 001
4. Sr. Superintendent of Post Offices
Puri Division,
At/PO/Dist-Puri-752 001

...Respondents

By the Advocate(s)-Mr.S.Barik



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

Applicant, while working as Postal Assistant(PA), Khurda H.O. was issued with a Memo of Charge dated 15.07.2010(A/1) by the Senior Superintendent of Post Offices,(in short SSPOs) Puri Division(Res.No.4) in contemplation of initiation of disciplinary proceedings against him under Rule-16 of CCS(CCA) Rules, 1965, asking him to put up his written statement, within a specified time frame. In response to this, applicant submitted a representation dated 28.7.2010 to the said SSPOs, Puri Division vide A/2 for supplying some documents to enable him to submit his defence and accordingly, the latter instructed the former vide communication dated 10.8.2010(A/3) to attend Divisional Office on 16.08.2010 for the perusal of records in connection with the disciplinary proceedings. However, applicant submitted his defence vide A/4 dated 23.08.2010 and in consideration of the same and other materials, the Senior Superintendent of Post Offices, Puri Division (Res.No.4), as a measure of punishment, ordered recovery of Rs.5000/- (Rupees five thousand only) from the salary of the applicant in five installments @ Rs.1000/- per month commencing from September, 2010. This order dated 30.08.2010 is annexed to the O.A. as A/5. Thereafter, applicant preferred an appeal dated 12.10.2010 to the Director of Postal Services(Res.No.3) against the order of punishment and the said appeal was rejected vide order dated 17.06.2011(A/6) of the Appellate Authority.



Against the appellate order, a petition dated 26.12.2011(A.3)⁷² addressed to the Chief Post Master General (Res.No.2) having been rejected, applicant, in the present O.A. has invoked the jurisdiction of this Tribunal under section 19 of the A.T.Act, 1985 for quashing Annexure-A/1, 5, 6 & 8 and for direction to be issued to respondents to refund Rs.5000/- with 18% interest or interest at least applicable to GPF.

2. Applicant has urged the following grounds in support of his claims.

- i) Charge is neither specific nor clear.
- ii) Charge sheet issued after 15 years of the alleged incident.
- iii) Relevant documents asked by the applicant were not supplied.
- iv) No inquiry was conducted nor the opinion of GEQD supplied.
- iv) There is no mention either in the charge memo or in the order of the Disciplinary Authority as to how applicant is responsible for the fraud of Rs.49,103.05 by posting Rs.2500/- without maintaining half-margin verification.
- v) While the principal offender who has committed fraud has been left ~~scot~~ free, applicant, who has not committed any fraud has been punished.
- vi) Ratio of the decision in Sukamal Bag vs. Union of India in WPC No.4343 of 2010 has not been applied to the case of the applicant.

3. Senior Superintendent of Post Offices, Puri Division (Respondent No.4) though has filed counter on behalf of all the Respondents, yet, there is no mention in the verification that he

has been duly authorized by the other respondents to sign the verification of the counter. Be that as it may, it has been pointed out in the counter reply that due to laxity on the part of the applicant in following the due procedures under Rule 85(i) of Postal Office Saving Bank Manual Volume-I(Published in the year 1988) and not maintaining the half margin verification memo nor entering the alleged withdrawal of Rs.2500/- in respect of Harirajpur B.O. in account with Jatni BO SB Account No.265259 on 31.05.1995, it ~~gave~~ ^{was given} ample scope, to the delinquent Branch Post Master, Harirajpur BO to commit fraud and thereby the Department sustained a loss to the tune of Rs.49,103.05. This is the background, why the applicant was charge-sheeted under Rule 16 of CCS(CCA) Rules, 1965.

4. As regards supply of documents, it has been submitted that the applicant was allowed to peruse the documents having relevancy with the case and submitted his defence. Proceedings under Rule-16 of CCS(CCA) Rules, 1965, does not call for any enquiry to be conducted on the allegations levelled. It has been further submitted that the contributory negligence of the applicant has been correctly evaluated by Respondent No.4 in terms of imposing penalty of recovery of Rs.5000/- from his salary and that the appeal and petition preferred by the applicant have been considered and rejected by the Respondent No.3 and 2 respectively. Therefore, it has been submitted in the

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counter reply that applicant is not entitled to any relief sought for and accordingly, the O.A. should be dismissed.

5. Upon perusal of the pleadings of the parties, we have heard the arguments advanced by the learned counsel for both the sides. We have also gone through the written notes of submission filed by both the sides.

6. In the impugned order dated 30.08.2010(A/5), as it appears, Senior Superintendent of Post Offices, Puri Division, has reduced to writing various points raised by the applicant in his representation dated 23.08.2010 to the Memo of Charge dated 15.07.2010, which reads as under.

- i) Out of 8(eight) numbers of requisitioned documents for his perusal only two documents supplied to the charged official and thereby no reasonable opportunity was given.
- ii) The article of charge framed against him is not clear, specific and particular as the posting of the alleged transaction at Khurda HO ledger in respect of Harirajpur BO SB withdrawal for Rs.2500/- dated 31.05.95 should be 03.06.95 instead of 01.06.95 as there is transit of two days between Jatni SO and Khurda HO.
- iii) He has been unnecessary^{ily} dragged into the case as the fraud case has been lingered though the case came into light 15 years ago and as such any disciplinary action should be decided within 3 months of time.
- iv) The outstanding loss if any sustained to the department should be realized/recouped from the delinquent BPM by indemnification of FG-Bond issued in favour of the BPM by Hony.Secretary, P.C.M.Society of Burdwan, West Bengal without pulling him unnecessary^{ily} into the fraud case".

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7. In this connection, it is relevant to quote hereunder as to what has been observed, discussed and ordered by the Senior Superintendent of Post Offices, Puri Division, being the Disciplinary Authority.

"I have gone through the memo of charges dated 15.07.2010; defence representation dated 23.08.2010 and other connected records of the case very carefully and applied my own mind. The arguments of the said Sri Mohapatra that he was not supplied all the documents asked for and thereby reasonable opportunity was denied to him to submit his defence representation is not at all correct as the documents having relevancy with the case have already been perused by the charged official at Divisional Office on 16.08.2010. The alleged transaction in respect of Harirajpur BO SB withdrawal for Rs.2500/- dated 31.05.95 has been posted by Sri Mohapatra at Khurda HO ledger on 01.06.1995 by his own hand writing which is evident from the seized ledger card bearing account No.265259 maintained at Khurda HO. The plea of the charged official Sri Mohapatra at Para-iii and Para-iv of the representation (as above) is not tenable as it is not his look out for the manner of adjustment of outstanding loss sustained to the department and the administration is well versed with the procedure for recovery/realization of the pecuniary outstanding loss from the officials at fault due to their contributory negligence while discharging their duties. Had Sri Mohapatra reported the visible difference between the signature appearing in the warrant side of SB-7 and the signature in the application side to notice of the higher authority, the fraud committed by the EDBPM,

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Harirajpur BO could have been prevented and further fraud could have been averted and thus, I found Sri Mohapatra as guilty of the case and the lapses are grave in nature. However, I, Sri Jeeban Sahu, Sr. Supdt. of Post Offices, Puri Division, Puri inclined to take a lenient view considering the aspect of the case and past service rendered by the said Sri Guru Prasad Mohapatra and orders recovery of an amount of Rs.5000.00(Rupees Five Thousand) only from the salary of the said Sri Mohapatra in 05 installments @ Rs.1000.00 in each month starting from the salary from Sept.'2010".

8. We have carefully perused the above orders of the Disciplinary Authority. Applicant, inter alia, had made a very vital point (iii) as quoted above that he has been unnecessarily dragged to the proceedings in respect of a fraud case which came to light 15 years ago and as such any disciplinary action could have been taken and decided soon after its detection.

9. However, the Disciplinary Authority, while issuing the order of punishment of recovery dated 30.08.2010(A/5) has not at all considered this vital aspect of the matter. On similar considerations also, appeal as well as the petition filed by the applicant were rejected by the Director of Postal Services and the Chief Post Master General vide order dated 17.06.2011 and 22/26.01.2013 (A/6) and (A/8), respectively.

10. In a disciplinary proceedings under Rule-16 of CCS(CCA) Rules, statute does not provide for conducting an enquiry as in case of proceedings under Rule-14. From this the corollary is that the disciplinary authority acts for himself as an enquiring



officer. Therefore, it is imperative on the part of the disciplinary authority to consider and record his findings on each and every point raised by a delinquent in support of his defence to the Memorandum of Charge and after doing so, it is his onerous duty, having regard to the materials before him, to come a positive finding regarding the guilt or otherwise. ^{On} ^l Perusal of the order dated ^l 30.08.2010(A/5) of the disciplinary authority, it occurs to our mind that no such instance has ever occasioned therein. The disciplinary authority, without even holding the charges leveled against proved, has jumped to a conclusion holding the applicant guilty and imposed punishment of recovery. He has also not considered all the points raised by the applicant in support of his defence.

11. In addition to the above, it is not in dispute that the shortcomings on the part of the applicant in the year, 1995 were detected in the same year. One striking feature which is worth-mentioning is that Respondents, nowhere in the counter reply have made a categorical submission as to when the alleged lapse on the part of the applicant facilitated the then EDBPM, Harirajpur BO to commit fraud of Rs.49,103.05. In other words, what we mean to say is that if at all fraud had been committed after detection of the alleged negligence of the applicant, were the authorities who had noticed such negligence ^l not responsible in preventing the fraud? If that be so what restrained the authorities from proceeding against

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the delinquents who actually had committed fraud and the applicant for whose negligence a fraud could be committed in the nick of the time ?

12. Admittedly, applicant has been proceeded against under Rule-16 of CCS(CCA) Rules, 1965, and punished in the year 2010 in respect of an allegation of supervisory lapse and/or contributory negligence that had taken place way back in the year 1995 and the peculiarity involved is that although the authorities in the Department had detected such lapse on the part of the applicant soon after its occurrence, they remained silent over the matter. Had they removed the infirmities and set right the matter instantly, perhaps, commission of fraud by another employee taking advantage of the supervisory lapse on the part of the applicant could have been curbed. Therefore, non-removal of apparent omission and commission on the part of the applicant cannot exculpate the authorities of their contribution of helping perpetration of fraud, who, despite their due acknowledgement, failed to prevent so.

13. 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



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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.

14. In the written notes of submission, applicant has relied on the decision of this Tribunal in O.A.No.634 of 2009 (Sukomal Bag vs. Union of India & Ors.) disposed of on 11.11.2009²⁰¹⁰. On a reference being made to the facts of the case, it is noticed that applicant therein had neither misappropriated the Government money nor was it the case of the Respondents that for the direct culpable negligence, pecuniary loss was caused to the Government. That was a case where due to failure in supervisory duty of the applicant another employee misappropriated the Government money. In that matter, this Tribunal, placed reliance on the decisions of CAT, Madras Bench in *C.N.Harihara Nandan 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) ATJ 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



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in *SI Rooplal & Ors. vs.Lt. Governor through Chief Secretary, Delhi & Ors. (2009) 1 SCC 644* and accordingly, quashed 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. It is stated by the applicant that on being challenged, the Hon'ble High Court of Orissa in WPC No.4343/11 has upheld the above orders of the Tribunal.

15. Having regard to the facts of O.A.No.634 of 2009, we do have no iota of doubt that the facts of the present O.A. are quite akin to the same. But, a very significant and important point which stares at us is that whether without quashing the Memo of Charge, the Tribunal can grant relief to the applicant. According to Respondents, applicant has been proceeded against on account of contributory negligence. In a contributory negligence, all the delinquents should ^{be} proceeded against concurrently in a common and parallel proceedings. This point though agitated by the applicant has not been replied to either by the Disciplinary Authority or the Appellate Authority, or the authority disposing of the petition. We have also noted the failure of the authorities concerned to prevent perpetration of fraud after the lapse on the part of the applicant was detected. This apart, the proceedings initiated under Rule-16 of CCS(CCA) Rules, 1965, after a lapse of 15 years without taking cognizance



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of the employee who in fact had perpetrated a fraud of Rs.49,103.05 and thereby the Department sustained loss, in our considered opinion, is nothing but stretching of authority. Therefore, it is a fit case, where we are inclined to quash the impugned Memo of Charge dated 15.07.2010(A/1) and consequently, the orders of the disciplinary authority, appellate authority and the authority rejecting petition of the applicant vide A/5, A/6 and A/8 dated 30.08.2010, 17.06.2011 and 22/26.1.2013, respectively and accordingly, the same are quashed. Resultantly, Respondents are directed to refund the amount already recovered, to the applicant within a period of sixty days from the date of receipt of this order. However, we are not inclined to grant any interest on the amount so recovered from the applicant.

With the observations and directions, the O.A. is allowed.

No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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