

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 260/00582 OF 2016
Cuttack, this the 22nd day of June, 2017

CORAM

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

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Suresh Nag,
aged about 60 years,
S/o Kokila Nag,
At/PO - Sarasara, Dist- Baragarh,
Presently working as
Postal Assistant, Baragarh H.O.,
At/PO/Dist - Baragarh.

...Applicant

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

-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, Odisha Circle, Bhubaneswar, Dist-Khurda, 751001.
3. Post Master General, Sambalpur Region, At/PO/Dist- Sambalpur, 768001.
4. Director Postal Services, O/o Post Master General, Sambalpur Region, At/PO/Dist- Sambalpur, 768001.
5. Superintendent of Post Offices, Sambalpur Division, At/PO/Dist- Sambalpur-768001.

...Respondents

(By the Advocate - Mr. S.Behera)

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O R D E R

R. C. MISRA, MEMBER (A):

The applicant, in this O.A., is a Postal Assistant at Bargarh under the Department of Posts and he has approached the Tribunal praying for the following relief:

“8.1 That the Charge Memo dated 23.06.2016 (A/1) & order dated 12.07.2016 (A/3) and order dated 17.08.2016 (A/6) be quashed.

8.2 Further be pleased to pass any other order/orders as deemed fit and proper.”

2. The facts of this O.A., stated in brief, are that the applicant had joined as Postman on 27.04.1977 and, subsequently, was promoted as a Postal Assistant on 16.02.1985. The applicant was working as S.P.M., Bardol S.O. from 05.06.2012 to 29.07.2015 and, on 30.07.2015 he joined as Postal Assistant at Bargarh H.O. A charge sheet under Rule 16 of the CCS (CCA) Rules, 1965 dated 23.06.2016 was served upon the applicant with an allegation that during his working as S.P.M., Bardol, he did not take any action to call for the passbooks from Banda B.O. for addition of interest after receipt of interest statement from Bargarh H.O. and, because of his failure of supervision, the GDS BPM of the Branch Office, one Smt. Shabda Swain, made fraudulent withdrawal from the Savings Bank Accounts without knowledge of the depositors. The said Smt. Swain also forged the signature for withdrawal in respect of the Savings Bank Accounts. After receiving the charge sheet, the applicant submitted his reply on 02.07.2016 to Respondent No.5 stating that he after receiving the interest statement

from the Head Office at Bargarh had called for the Savings Bank passbooks but did not receive the same. He also informed the Respondent No.5 in this O.A., i.e. Superintendent of Post Offices, Sambalpur Division, regarding non-submission of the passbooks from the concerned Branch Office. He also kept the Assistant Superintendent of Post Offices, Bargarh Sub Division, informed about this matter on 18.03.2014 through a letter sent by Registered Post. In spite of the fact that the applicant took all the required actions, his case was not correctly considered by the authorities and a punishment of recovery of Rs. 90,000/- from the pay of the applicant @ 45,000/- per month commencing from the pay of July, 2016 was imposed on him by a letter dated 12.07.2016 in order to partially adjust a portion of the pecuniary loss sustained by the department because of the dishonest actions of the said Smt. Shabda Swain. The applicant challenged the order of punishment by filing O.A. No. 477/16 before this Tribunal, which was disposed of at the stage of admission on 19.07.2016 with a direction to the applicant to submit appeal before the Appellate Authority within a period of 10 days. In compliance of the direction issued by the Tribunal by the said order, the applicant preferred an appeal to the Respondent No.4 on 29.07.2016 and the Appellate Authority vide order dated 17.08.2016 confirmed the orders passed by the Disciplinary Authority. Thus, the applicant being aggrieved has filed this O.A. for quashing the charge memo and the orders of the Disciplinary Authority as well as of the Appellate Authority.

3. The Respondents have filed a counter affidavit, in which they have submitted that there was a massive case of misappropriation of the government money because of the fraudulent transactions committed by Smt. Shabda Swain, GDS BPM, and this fraud happened during the period from 27.06.2006 to 31.07.2014 during which time the applicant was the S.P.M. of Bardol S.O. from 05.06.2012 to 29.07.2015. Therefore, the department found that because of the lapses of the applicant, the misappropriation committed by the said Smt. Swain could not be detected resulting in loss for the government exchequer. In the counter affidavit it is alleged that the applicant did not take any action to call for the SB passbooks from the concerned B.O. because of which the fraud committed by the delinquent GDS BPM could not be detected earlier giving further scope to the delinquent to commit such misappropriation. The department, thus, decided that out of total pecuniary loss of Rs. 14,69,466/-, an amount of Rs. 5,69,500/- has been misappropriated due to the failure of supervision on the part of the applicant. The department further came to the conclusion that the applicant lacked in devotion to duty. It was, therefore, considered appropriate to initiate Rule 16 proceeding against the applicant. In compliance of the orders of the Tribunal passed in O.A. No. 477/16, the applicant filed the appeal petition before the Appellate Authority. The Director of Postal Services, Sambalpur, who is the Appellate Authority, considered the appeal petition and decided to confirm the punishment imposed on the applicant by the S.P.O., Sambalpur Division, who is the

Disciplinary Authority in this matter. Thus, it is submitted by the Respondents in the counter affidavit that the applicant cannot be allowed to disown his responsibility of supervision over the Branch Office since such failure of supervision has encouraged the main delinquent to commit the misappropriation. It is further submitted that the fraud committed by the main delinquent came to light in the year 2014. The case was investigated by the department as well as by the CBI authorities and since the fraud of such huge amount was involved, it was to take time for detailed inquiry into this fraud, which was committed from a number of SB Accounts.

4. Having heard Ld. Counsels for both the sides, I have perused the records as well as the written note of arguments.

5. This being a Rule 16 minor penalty proceeding, no formal inquiry was conducted in the matter. After the service of the charge sheet, the applicant submitted a reply and on consideration of the same, the Disciplinary Authority imposed the order of punishment of recovery of Rs. 90,000/- only from his pay in two installments of Rs. 45,000/- each. In the reply submitted by the applicant to the Disciplinary Authority, it is mentioned that after receiving the interest statement, he posted the interest in the ledger and called for SB passbooks from Banda B.O. for passing of interest. Since he did not receive any response from the concerned B.O., he intimated the fact to the Divisional Office. In fact, he has intimated the authorities repeatedly about this in the year 2013-2014. A perusal of the copy of the letter sent

by him on 16.11.2012 reveals that he mentioned that the said GDS BPM is not sending the SB passbooks for posting of interest in spite of his reminders. He has also requested the authorities to look into the matter and do the needful. A copy of the another letter dated 18.02.2014 is available for perusal. On perusing this, I find that the applicant had informed the ASPO, Bargarh Sub Division, that in spite of several instructions and reminders for sending of all passbooks of Banda B.O., the BPM is neither responding nor sending any passbook to the Accounts Office for verification and interest posting. By giving one or two instances, which came to his notice, the applicant informed the ASPO, Bargarh that the work of the BPM is suspicious. Again, he has requested that the matter may be looked into and all the SB passbooks of the said B.O. may be verified as early as possible. After the representation was made, the Disciplinary Authority was not satisfied with his explanation and imposed the order of punishment. The important finding of the Disciplinary Authority in this regard is quoted below:

“I have gone through the memo of charges, all connected records of the case and written representations preferred by Shri Suresh Nag in connection with the Rule-16 charge sheet against him thoroughly and seen that Shri Nag has referred to a correspondence made in 2012 for non compliance on submission of pass books by the BPM Banda BO. The fact remains that he has failed to take further follow up action to enforce compliance. No action was taken by the said Shri Nag in the year 2012-13. The said Shri Nag has made a correspondence with ASPOs I/c Bargarh Sub Division Bargarh only after the case had come

to light in 2014. The submission made by the said Shri Nag in this regard is therefore not acceptable. The said Shri Nag has misinterpreted the rule on verification of the specimen signature. As per the provisions under Rule-33 of POSB Manual Volume-I, Shri Nag is required to ensure verification of the specimen signature in case of each withdrawal made at the BO while working as SPM Bardol SO. The said Shri Nag is therefore failed to discharge his duty in accordance with the Rule-33 of POSB manual volume-I. The submissions made by the charged official are therefore not acceptable. So it is well proved that due to contributory negligence of Shri Nag the department sustained such a huge loss.

However, taking into consideration all above facts and the circumstances of the case, I Shri Biswanath Purohit Supdt. of Post Offices Sambalpur Division Sambalpur-768001 awarded Shri Suresh Nag with the punishment of recovery of Rs. 90000/- (Rupees Ninety thousand) only from his pay @ Rs. 45000/- (Rupees forty five thousand) only per month commencing from the pay of July-2016 payable in August-2016 to partially adjust a portion of the pecuniary loss.

6. The Appellate Authority has confirmed the order of the Disciplinary Authority. The order of the Disciplinary Authority was imposed without holding any formal inquiry since there is no such mandatory provision and the applicant did not make any representation to that effect to the Disciplinary Authority. However, the Disciplinary Authority while mentioning that the applicant made a correspondence with the ASPO, Bargarh in the year 2014 after the case had come to light has observed that the applicant failed to take further follow up action to enforce the compliance. However, from the documents filed, I find that the applicant had also sent a letter dated 16.11.2012 to the

S.P.O., Sambalpur Division, mentioning the fact that the concerned GDS BPM is not sending the SB passbooks for interest posting. Therefore, the observation of the SPO appears somewhat unreasonable since the records reveal that the applicant did take steps to call for the SB passbooks and kept the concerned authorities informed with a request to take appropriate action also. I also find that the applicant had made some valid submissions in the appeal petition but the Appellate Authority has not dealt with these submissions in a fair manner. It appears, on the basis of the records, that the allegation that the applicant did not take any action to call for the passbooks and to report the matter to the higher authorities does not hold water. No reasonable basis is found to be given for the order of recovery of Rs. 90,000/- to be recovered in two installments of Rs. 45,000/- each from the pay of the applicant. The authorities have alleged that the applicant is guilty of contributory negligence and his failure of supervision has made the path easier for the delinquent to commit the said misappropriation but the punishment of recovery of Rs. 90,000/-, that too in two installments on the basis of this charge, appears to be bad in law. It is not that the applicant has not taken any action to call for the passbooks and alerted the higher authorities regarding suspicious transactions of the main delinquent. It could be asked that if the applicant had informed the authorities on 16.11.2012 making a request for looking into the matter with regard to the suspicious activities of the main delinquent why the authorities did not immediately conducted an inquiry into the matter to

fix responsibility on the main delinquent. Therefore, the Respondent-authorities themselves cannot be said to be free from the charge of failure of supervision. As against the records that the applicant did take steps in the matter, the orders of Disciplinary Authority and the Appellate Authority do not appear to be based upon the facts of this case.

7. On the subject of contributory negligence and the culpability of the postal department employees with regard to failure of supervision or their role as subsidiary offenders in such matters, the Tribunal had earlier decided a few O.As. In O.A.No. 634/2009, Sukomal Bag Vs. UOI & Ors., a similar view was decided by the Tribunal by an order dated 11.11.2010 by which the case of the applicant was allowed and the orders of punishment was quashed. Similar matter had come up for adjudication before the Tribunal in O.A. No. 106/2016, which was decided on 25.04.2017. In this O.A. also, a similar order was passed following the earlier precedent. Therefore, based upon the decisions earlier given by the Tribunal in similar matters and also considering the fact that similar issues are involved in the present O.A., I am of the opinion that the charge sheet, order of punishment by the Disciplinary Authority and the order of the Appellate Authority are not sustainable under law. Therefore, the same are quashed and set aside and, thus, the O.A. is allowed with no costs to the parties.

(R.C.MISRA)
Member (Admn.)

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