

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 260/00075 OF 2012
Cuttack, this the 21st day of June, 2018

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER(J)
HON'BLE DR. M. SARANGI, MEMBER (A)

.....

Sri Pratap Chandra Patra,
aged about 53 years,
S/o. Late Madhu Patra,
permanent resident of
Vill./P.O Balarampurgarh,
Via-Gabakunda, Dist.-Puri,
Odisha PIN-752045,
Presently working as Postal Assistant,
At/PO-Puri-2, Dist-Puri,
Odisha, PIN-752002.

...Applicant

(By the Advocate-M/s- C.P.Sahani, P.K.Samal, D.P.Mohapatra)

-VERSUS-

Union of India represented through

1. Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Chief Post Master General, Odisha Circle, At/PO. Bhubaneswar, Dist- Khurda, Odisha-751001.
3. Director of Postal Services (HQ), At/PO. Bhubaneswar, Dist- Khurda (O), Odisha-751001.
4. Senior Superintendent of Post Officers, Puri Division, At/PO/Dist- Puri, Odisha, PIN-752001.

.....Respondents

(By the Advocate- Mr. A.Pradhan)

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O R D E R

S. K. PATTNAIK, MEMBER (J):

Applicant challenges the order of punishment imposed by the Disciplinary Authority dated 28.06.2010 (Annexure-A/11) wherein his pay has been reduced by two stages from Rs. 13,370/- to Rs. 12,600/- in the time scale of pay of Rs. 5200-20200/- for a period of two years w.e.f. 01.07.2010 and further directed that Sri Pratap Chandra Patra will not earn increments of pay during the period of reduction and that on the expiry of this period the reduction will not have the effect of postponing his future increment of pay. Applicant also challenges the order of the Appellate Authority dated 08.03.2011 (Annexure-A/14), which has upheld/confirmed the order of the Disciplinary Authority.

1. Applicant's case in short runs as follows:

The applicant while working as Postal Assistant in Puri Head Office had allowed one Bijay Gupta to open one SB Account bearing No. 342519 with an initial deposit of Rs. 100/- taking one Basanta Kumar Kar as introducer and had accepted a cheque of Rs. 4,04,660/- through special cheque issued by Head Postmaster of Puri, H.O. Cause of action for the present case arose on 19.05.2006 when a charge sheet was issued to the applicant under Annexure-A/1. The department alleged that one Basanta Kumar Kar, an authorized agent under the Standardized Agency System, acted as an introducer and the applicant should have insisted the depositor Bijay Gupta to get himself introduced through any witness. It is further alleged that the applicant allowed opening of two Term Deposit Accounts on 29.10.2004 on

identification of Basanta Kumar Kar, which caused loss to the department. The applicant denied the charges. However, an Inquiry Officer was appointed. It is further pleaded that the Inquiry Officer after assessing oral evidence and materials on record held the charges as not proved vide his inquiry report dated 21.03.2007 (Part of Annexure-A/9). However, the Disciplinary Authority, i.e. the Sr. Superintendent of Post Offices, gave a note of disagreement dated 17.09.2008 on the findings of the inquiry authority and held the delinquent employee as guilty as charges held proved as, according to him, the department was put to heavy loss as an unknown and un-introduced person went off with the money withdrawing the amounts. The applicant submitted his reply to the disagreement note dated 17.09.2008. However, the Disciplinary Authority vide order dated 28.06.2010 held the delinquent employee guilty of the charges and imposed the punishment of reduction by two stages for a period of two years, which was confirmed by the Appellate Authority. The main plank of argument of the Ld. Counsel for the applicant is that since there is no financial loss to the department, imposition of such punishment is disproportionate to the delinquency and further there is no impropriety in accepting the cheque or allowing the fixed depositor to withdraw his money.

3. Respondents contested the case by filing a counter. According to the Respondents, the applicant while working as Counter P.A., SB Branch, Puri Head Office on 05.10.2004 had allowed one Bijay Gupta to open one SB Account with an initial deposit of Rs. 100/-

taking one Basanta Kumar Kar the authorized agent as introducer violating the instruction contained in CPMG(O) letter dated 29.08.2003 (Annexure-R/3). Further case of the Respondents is that the applicant had accepted subsequent deposit of Rs. 4,04,660/- through cheque in the said SB Account No. 342519 of Bijay Gupta on 29.10.2004 in contravention of the instruction contained vide Gazette notification dated 28.02.2000 circulated vide CPMG(O), Bhubaneswar letter dated 15.03.2000 (Annexure-R/1) as also the provision contained in Sub Rule 6(a) of Rule 31 of POSB Manual Vol. I for not insisting the depositor to get himself introduced to the satisfaction of the post office. Further case of the Respondents is that the applicant allowed opening of two one year TD Account at Puri H.O. on 29.10.2004 for Rs. 1,00,000/- each in the name of Bijay Gupta with Basanta Kumar Kar the authorized agent under the Standard Agency System (No. 13/98) as introducer violating the instructions contained in CPMG(O) letter dated 29.08.2003. Further case of the Respondents is that opening of SB Account No. 342519 and TD Account Nos. 9772 and 9773 by Bijay Gupta at Puri, H.O., on the strength of introduction by an authorized agent in defiance of the instruction of the CPMG, Orissa, and subsequent deposit of Rs. 4,04,660/- in the SB Account on 29.10.2004 through cheque in a single SB Account is in violation of the rules. According to the Respondents, the action of the applicant enabled Sri Gupta to smoothly withdraw Rs. 4,04,000/- in two spells, i.e. Rs. 2,00,000/- and 2,04,000/- on 29.10.2004 and 06.11.2004 respectively and thereby enabled Sri Bijay Gupta to

misappropriate an amount of Rs. 4,04,660/- resulting huge loss to the department. According to the Respondents, in view of the misconduct, the Disciplinary Authority so also the Appellate Authority were right in imposing the punishment, which was passed for violation of statutory rules and guidelines.

4. Before delving into the merit of this case, it may be stated at the outset that the whole proceeding has been started under a misconception as if there has been misappropriation of public money but the ground reality is that a depositor, who had deposited the cheque issued by the Postmaster in the same Post Office has only withdrawn the same without causing any loss to the department. To understand the whole issue, we travelled through the Inquiry Report and we have no hesitation in observing that what the Inquiry Officer, Sreekanta Kar, had understood, the Disciplinary Authority so also the Appellate Authority had signally failed to understand. To appreciate the findings of the Inquiry Officer, the concluding parts of the observation of the Inquiry Report are extracted below:

“xxx xxx. Further it is stated in the memo of charges that Sri Basanta Kumar Kar is a S.A.S. Agent under Authority No. 13/98 and has signed as introducer at the time of opening of accounts. Sri Kar as Authorised Agent under Standardized Agency System has opened these two T.D. Accounts. The rulings position is silent about the introduction of account at the time of opening through Authorised Agent. In view of this, the signature of Sri Basanta Ku. Kar in the application for opening of the account as introducer matters little. The P.O. also has failed in respect of new T.D. accounts opened through Authorised Agent under Standardized Agency System. Thus, this portion of charge is not

proved.

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*It is seen from the application for opening of S.B.Account No. 342519 marked as Ext. S/1 dtd. 05.10.2004 that Sri Bijay Gupta had opened the said account at Puri H.O. on 05.10.2004 on initial deposit of Rs. 100/- and subsequently he deposited Rs. 4,04,660/- through cheque in his above account on 29.10.2004 raising balance to Rs. 4,04,760/-. Then, Sri Gupta, the depositor took withdrawal of Rs. 2,00,000/- from his account on 29.10.2004 and Rs. 2,04,000/- on 06.11.2004. It is very clear that the very depositor who had deposited Rs. 4,04,660/- in his account on 29.10.2004 has taken payment of the above two withdrawals from his own account. Thus, it can not be taken as loss to the Department. As such, **this portion of charge is not proved.***

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xxx. ”

The above finding of the Inquiry Officer is clear and cogent and there is hardly any scope for interference. Rather, mechanically, the Disciplinary Authority so also the Appellate Authority have passed orders without assigning or indicating where the Inquiry Officer went wrong. The Respondents have categorically failed to demonstrate how the action of the delinquent employee has caused financial loss to the department. The department does not say categorically about any willful gain to the delinquent employee or wrongful loss to the department. Once the Postmaster issues a cheque naturally it has to be deposited in the post office and we do not find anything irrational in the approach of the applicant in accepting the cheque and opening the fixed deposit account.

5. Further, apart from adjudicating the question of law, the

relevant portions of the Post Office Savings Bank Manual (Vol.I) need to be extracted below:

“23. xxx xxx xxx

Note 3- *With effect from 1.1.1990 at the time of opening of individual savings account (whether cheque or non-cheque accounts) the introduction of the depositor will be necessary. All such accounts should be opened after proper introduction of the depositor. The introduction of the depositor will not be necessary for accounts of other scheme i.e. RD/TD/MIS/SCSS.*

Note 4- xxx xxx xxx

(iii) Identification of the depositor by a person who holds an account in the same post office where the depositor is having his/her account.

xxx xxx xxx

31(1) *Deposits in an account may be made in any of the following forms, namely:-*

- (i) Cash*
- (ii) A cheque or a demand draft drawn in favour of the depositor or the Postmaster and crossed generally or specially in favour of the Post Office Savings Bank.*
- (iii) Indian Postal Orders*
- (iv) SB money orders received from Field Post Offices.*
- (v) Pay cheques.*
- (vi) Matured value of CTD/RD/TD/MIS/NSS/SCSS accounts.*

xxx xxx xxx

31(6) Deleted

xxx xxx xxx

31(8) Deposit by cheques, drafts etc:-

- (a) When a depositor who has not already been introduced to the post office, presents a cheque for deposit in a saving account, he should be asked to get himself introduced to the satisfaction of the post office by a respectable person known to the post office or by a account*

holder of the same post office who has already been introduced to the post office.....

Note:- From 1.1.1990 individual Saving account can be opened only when the depositor is introduced to the post Office. Further introduction of such depositors is not necessary.”

6. In view of the above rule position, the reference of Sub Rule 6(a) of Rule 31 of POSB Manual Volume-I in the Article of Charges and in the orders of the Disciplinary Authority so also Appellate Authority is misconceived as such a provision has long since been deleted and are not in operation after 1990. The only requirement of opening of Savings Bank Account is that the depositor should be introduced to the satisfaction of the Post Office and for that any previous account holder is competent to introduce a new depositor. In the instant case, under Annexure-A/3, one Basanta Kumar Kar has introduced bearing SB Account No. 339716 and there is nothing to show that he is not having an SB Account or is not competent to introduce. He may be an agent but that will not deprive him the character of an SB Account holder and no fault can be found in the action of the delinquent employee in opening an account when the depositor is introduced by a person, who is having an SB Account with the Post Office.

7. From the aforesaid analysis, it is crystal clear that mechanically the Disciplinary Authority has passed a disagreement note overlooking the ground reality. Rather, the report of the Inquiry Officer is found to be judicious and in accordance with the ground reality and official norms and procedure. Since the punishment has been imposed

without a single pie being gained by the applicant in the entire transaction or even the loss of single penny to the department, we find punishment to be arbitrary and hence liable to be quashed in the larger interest of justice. Hence ordered.

8. O.A. is allowed. The punishment imposed by the Disciplinary Authority dated 28.06.2010 (Annexure-A/11) and the order passed by the Appellate Authority dated 08.03.2011(Annexure-A/14) are hereby quashed. The applicant is exonerated from the charges as no case is made out either of dereliction of duty or misappropriation of public money. No costs.

(M. SARANGI)
Member (Admn.)

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

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