

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 260/00779 OF 2011
Cuttack, this the 21st day of February, 2018

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

.....

Sri Bhagirathi Samal, GDSBPM.

...Applicant

(By the Advocate-M/s. A. Routray, U.R. Bastia, B. Swarnakar)

-VERSUS-

Union of India Represented through

1. Chief Post Master General, Orissa, Bhubaneswar, Dist- Khurda.
2. The Director of Postal Services, Orissa, Bhubaneswar, Dist-Khurda.
3. The Superintendent of Post Offices, Mayurbhanj Division, Mayurbhanj at Baripada.

...Respondents

(By the Advocate- Mr. S. K. Singh)

....

O R D E R

S. K. PATTNAIK, MEMBER (J):

The applicant challenges the order of removal dated 06.02.2007 (Annexure-11) passed by the Disciplinary Authority and the order of confirmation passed by the Appellate Authority vide order dated 05.01.2009 (Annexure-13).

2. The case of the applicant, in short, runs as follows:

The applicant, while working as GDSBPM, Tamalbandh Branch Office, was served with a charge memo dated 07.02.2006 (Annexure-1) for the

following misconduct.

“(a) During the period from 11.5.04 to 7.9.04, the applicant accepted Rs. 14,700/- and made entries in the S.B. Account No. 256945 standing at Tamalbandh B.O. but the same was not taken to account on the same day.

(b) On 4.9.03 and 10.12.03 the applicant accepted two R.D. deposits of Rs. 300/- from the father of Kumari Rupali Giri R.D. Account No. 3706444 but the amounts were not taken into account on the same day.

(c) The applicant on 23.8.03 accepted a sum of Rs. 1000/- from Sri Lohit Kumar Giri, holder of S.B. Account No. 252117 and did not account for on the same day.”

The applicant denied the charges, however, an inquiry was conducted and the Inquiring Officer submitted his report on 26.10.2006 (Annexure-9) and the applicant submitted his reply on 08.12.2006 (Annexure-10). Finally, the Superintendent of Post Offices without considering the ground reality passed an order for removal from service on 06.02.2007 (Annexure-11). The applicant preferred an appeal but without any success. Positive, case of the applicant is that being pressurized by the department he had deposited Rs. 27,000/- on 03.09.2004 towards defrauded amount in respect of three S.B. Accounts along with interest and penal interest but, subsequently, the depositors confirmed before Notary, Rairangpur that there was no loss in their account and during pendency of the appeal, the Superintendent of Post Offices, Mayurbhanj Division, Baripada, refunded the said 27,000/- to the applicant vide memo dated 27.03.2008. Further case of the applicant is that subsequently vide order dated 15.01.2007, the Chief Post Master

General, Orissa Circle, Bhubaneswar had passed an order for recovery of Rs. 23,031/-, i.e. Rs. 21,700/- towards defrauded amount and Rs. 1331 towards interest up to 31.03.2006, from the applicant on account of committing fraud on SB accounts. Subsequently, the Vigilance Officer of the Chief Post Master General, Bhubaneswar, vide order dated 05.04.2007 cancelled the order dated 15.01.2007 regarding restoration of Rs. 23,031/- from the applicant. Ld. Counsel for the applicant argued that since there was no loss to the department and there was no misappropriation, the whole case was conducted under a misconception of defrauding money, which is not a fact. Ld. Counsel further submitted that since the delinquent employee had put his signature and seal on the connected passbooks without any deposit at best it may be a case of negligence in duty and not a case of misappropriation.

3. Respondents contested the case by filing a counter. According to the Respondents, since the applicant while working as GDS BPM, Tamalbandh Branch Office, for various defalcation of public money was served with a charge memo which ultimately resulted in passing of a removal order by Disciplinary Authority, which was upheld by the Appellate Authority. The cause of action for the present disciplinary proceeding arose on 11.09.2004 when the Inspector of Posts, Rairangpur Sub Division made a surprise visit of Tamalbandh B.O. and found filled in pay-in-slips (deposit forms) on the table of the applicant and suspecting foul play made detailed investigation and found misappropriation in three SB Accounts to the tune of Rs. 24,200/-. The

applicant had accepted the deposits from one Bhabesh Ch. Giri, elder brother of the account holder, Rajesh Giri, along with pay-in-slips and passbooks for deposit in SB account No. 256945, as under.

<u>Date</u>	<u>Amount of Deposit</u>
11.05.2004	Rs. 3000/-
11.06.2004	Rs. 200/-
16.06.2004	Rs. 10000/-
05.07.2004	Rs. 500/-
07.09.2004	Rs. 1000/-

The applicant had made necessary entries of the deposits in the passbook and had authenticated the entries with Branch Office date stamp impressions on the concerned date with his initials but had not reflected the transaction in the Branch Office accounts (copy of the passbook filed under Annexure-R/1). Further, the applicant accepted two R.D. deposits of Rs. 300/- on 04.09.2003 and on 10.12.2003 from one Asim Kr. Giri, father of Kumar Rupali Giri depositor of RD Account No. 3706444 (Annexure-R/4). Though the applicant had made necessary entries of the deposits in the passbook and had authenticated the entries with Branch Office date stamp impression with his initials but had not incorporated the said transaction in the Post Office Ledger Account. In the same manner, the applicant had accepted deposits of Rs. 1000/- on 23.08.2003 from one Lalit Kumar Giri, depositor of SB Account No. 252117 (Annexure-R/5) but had not reflected the same in the Post Office account. So also, on 27.04.2002, the applicant had accepted Rs. 1200/- and on 17.01.2012 had accepted Rs. 1700/- from the depositor Smt. Sarda Giri under Annexure-R/6 but had not reflected the transactions.

Further case of the Respondents is that the applicant confessed the above fact before the Inspector of Post Offices and his written statement dated 11.09.2004 is annexed under Annexure-R/8. According to the Respondents, in view of the clear misconduct, the applicant was imposed with the punishment of removal as his continuance in the Post Office would have affected the very functioning of the Post Office in the area.

4. Before delving into the merit of this case, the legal principle concerning the judicial power of review of administrative decision may be kept in mind in the backdrop of legal principles enunciated by the Hon'ble Supreme Court in the case of **Damoh Panna Sagar Rural Regional Bank Vs. Munna Lal Jain reported in 2005 SCC (L&S) 567**. Relevant portion of observation of Their Lordships are extracted below:

"The court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. The court should not interfere with the administrator's decision unless it is illogical or suffers from procedural impropriety or is shocking to the conscience of the court, in the sense that it is in defiance of logic or moral standards. Unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope of interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. When a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary

authority or the appellate authority to reconsider the penalty imposed."

5. In the instant case, since the acceptance of deposits by way of authentication by Branch Office date stamp impression is not in dispute, the misappropriation stands proved and the inquiry was only a formal procedure. The confessional statement of the delinquent employee as recorded under Annexure-R/10 further testifies the misconduct of the applicant, which he had admitted in unequivocal tone.

6. Ld. Counsel for the applicant argued that since the depositors did not support the department and stated that they had not made any deposit, the delinquent employee should have been exonerated from the charges. Even if, for the sake of argument, this state of affair is believed, still the delinquent employee is guilty of misconduct for making initials and fixing the Branch Office date stamp impression and reflecting the amount in the pass book. On the contrary, had the delinquent employee reflected the deposits in the Post Office ledger and had taken into account the deposits but had not entered the same in the relevant passbooks, it would have been a case of omission or negligence in duty. But, once the deposits are entered in the relevant passbook no plea of non-deposit can be accepted as there is absolutely no explanation from the mouth of the applicant under what circumstances he had reflected the amount and also had fixed the Branch Office date stamp impression with his initial without any deposit. A person may lie but not the circumstances. The very deposit of Rs. 27,000/- on 03.09.2004 towards defrauded amount by the applicant emphatically proves the

guilt of the delinquent employee and it serves as a valuable admission of misappropriation.

7. We have every reason to believe that the depositors have been gained over at the subsequent stage but that does not absolve the liability or gravity of the delinquency. In the aforesaid decision of **Damoh Panna Sagar Rural Regional Bank Vs. Munna Lal Jain**, Their Lordships of the Hon'ble Apex Court have taken strong exception of a misconduct of a Bank employee, which is equally applicable to a postal employee involved in the deposit and withdrawal of depositor's money. By such misconduct, the delinquent employee not only brings defame to himself but does so at the cost of reputation of the Postal Department. If the depositors shall be defrauded, we are afraid common people of the rural area will think thrice before approaching the Post Office for deposit.

8. In a nutshell, we did not notice anything irrational or illogical in the order of the Disciplinary Authority or the Appellate Authority calling for interference and even the punishment is not found to be disproportionate calling for our interference. Hence Ordered.

9. O.A. being devoid of merit is dismissed. No costs.

(M. SARANGI)
Member (Admn.)

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