

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260003642016
Cuttack, this the 23rd day of February, 2018

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

.....

Abhaya Kumar Jena,
Aged about 54 years,
Son of Jatadhari Jena,
Permanent resident of Vill/Post-Arjunpur,
Via/PS-Khaira,
Dist- Balasore,
At present working as PA, Bahanaga SO.

...Applicant

(By the Advocate-M/s. T. Rath, A. K. Rout)

-VERSUS-

Union of India Represented through

1. Secretary-cum- Director General(Posts), Dak Bhawan, New Delhi-110001.
2. Chief PMG, Odisha Circle, At- Bhubaneswar, PO- Bhubaneswar GPO-751001, Dist-Khurda.
3. Director of Postal Services, (HQ), O/o CPMG, Odisha Circle, At/PO- Bhubaneswar-751001, Dist- Khurda.
4. Supdt. Of Post Offices, Balasore Division, At/PO/Dist-Balasore-756001.

...Respondents

(By the Advocate- Mr. G. R. Verma)

ORDER

Mr. S. K. Pattnaik, MEMBER (J):

The applicant has filed this O.A for quashing of the punishment order dated 21.08.2015 (Annexure-A/9) passed by the Superintendent of Post Offices, wherein order has been passed for recovery of Rs. 50,000/- only from the pay of the applicant @ Rs. 5,000/- per month commencing from August 2015. The applicant has also challenged the order of the Appellate Authority dated 15.02.2016 (Annexure-A/13) by which Director of Postal Service (HQ), Bhubaneswar, has upheld the order of the Disciplinary Authority. The applicant has also sought quashing of the charge memo dated 23.06.2015 (Annexure-A/4) by which by

Disciplinary Proceeding under Rule-16 CCS(CCA)Rules 1965 was initiated against the applicant for imputation of misconduct of negligence in duty which contributed loss of Rs. 3,41,487/-.

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

The applicant was working as Postal Assistant, Turigaria Sub-Post Office during period 15.07.2002 to 04.06.2006. Inspector of Post Offices, Soro Sub-Division on 09.03.2007 detected misappropriation and Savings Bank fraud to the tune of Rs. 4,31,000/- committed by Shri Purna Chandra Jena, Sub-Postmaster, Turigaria during the period 27.05.2006 to 09.03.2007. Further, case of the applicant is that the office of the Balasore Division, vide letter dated 11.09.2007 informed to Chief Post Master General, Bhubaneswar regarding the fraud committed by one P. C. Jena, Sub-Postmaster, Turigaria, who, according to him, is the principal offender. Subsequently, FIR was lodged against said P.C. Jena before the CBI, Bhubaneswar which resulted in submission of charge sheet dated 30.03.2009 and ended in conviction of said P. C. Jena by the Special Judge, CBI. Vide judgment dated 17.12.2013, (Annexure-A/3), said P.C.Jena was convicted by the CBI court and sentenced to undergo R.I. for one year on each count and to pay fine of Rs. 5,000/- on each count, in default further R.I. for three months under section 409, 461 and 471 of IPC and further directed to undergo R.I. for one year and to pay fine of Rs. 5000/- in default to undergo R.I. for three months U/S 13(2) read with Sec. 13(1) (c) & (d) of the P.C. Act, 1988 and that the substantive sentences to run concurrently. As per the judgment of the CBI Court, said P. C. Jena was found solely responsible for the said fraud. Further, Shri Jena was departmentally charge sheeted and on the other hand much after the conviction by the CBI Court, on 23.06.2015 a proceeding was initiated against the present applicant for fraudulent withdrawal from Savings Bank account to the tune of Rs. 3,41, 487/-, which is illegal and against the own stand of department before the CBI Court.

3. Respondents contested the case by filing a counter. According, to the respondents, the applicant while working as Postal Assistant at Turigaria Sub Post Office from 15.07.2002 to 04.06.2006 failed to verify the specimen signature of the depositor in SB-7 forms against SB Account No. 378015, 378870 and 379034 and neither posted the interest in SB Pass Books nor on the respective ledger. Positive case of the respondents is that due to such negligence on the part of the applicant, the specimen signature of the depositor as well as closing balance in daily account dated 27.05.2006 could not be verified and thereby Shri P. C. Jena, Sub-Post Master, Turigaria got scope to commit fraud to the tune of Rs. 3,41,487/- . However, while finalizing the case it was found that the applicant is liable for recovery of Rs. 50,000/- for his negligence.

4. This is a peculiar case where fraud was committed in 2007 and the Sub-Post Office vide its letter dated 11.09.2007 had informed Chief Post Master General, Bhubaneswar regarding fraud committed by Shri P. C. Jena for which department sustained permanent loss of Rs. 3,36, 000/- and temporary loss of Rs. 5, 99, 000/- . Said report categorically discloses that Shri P. C. Jena, Sub-Post Master Turigaria had committed misappropriation to the tune of Rs. 4,11,000/- but nowhere there was any whisper of involvement of any other employee much less about involvement of the present applicant. Even the FIR was lodged only against Shri P. C. Jena. He was made the sole accused in the CBI Court. Had the present applicant being one of the principal offender in the CBI case, the matter would have been different. There is considerable force in the submission of the Ld. Counsel for the applicant that CBI Court has emphatically held the Sub-Postmaster Turigaria to be solely responsible for the fraudulent withdrawal forging the signature of the account holders and withdrawing a huge amount of money. So, in this backdrop, once the CBI Court held Sub-Postmaster guilty and convicted him, the disciplinary proceedings initiated against the applicant in 2015 under Annexure-A/4 in respect of incident of 2006 is malafide and not legally tenable.

5. It is seen that in the year 2007 a disciplinary proceeding was initiated against the then Sub-Postmaster, Mr. P. C. Jena, under Annexure-A/3 wherein there was categorical imputation of fraud and embezzlement. There is absolutely no evidence on record to show that the present applicant as Postal Assistant had committed any independent misconduct, and in such backdrop recovery of Rs. 50,000/- from the applicant becomes illegal. The said recovery is permissible only when it can be held that the applicant by his conduct had made wrongful or loss to the department.

6. Initiation of charge sheet in 2015 in respect of a misconduct committed in 2007 is hopelessly bared by limitation. Had there been any negligence or specific charge against the applicant, he could have been liable for misconduct but recovery is not permissible when there is no direct liaison of misappropriation of money by the delinquent employee.

7. Since the impugned orders were passed by the Disciplinary Authority and Appellate Authority the same are liable to be quashed.

8. The O.A is allowed. The order of the Disciplinary Authority dated 21.08.2015 (A/9) and Appellate Authority dated 15.02.2016 (A/13) being not legally tenable are quashed. Recovery, if any made in the meantime, be refunded to the applicant forthwith. No costs.

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

