

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.662 of 2016

Cuttack this the 3rd day of May, 2018

CORAM:

THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Sri Sapan Kumar Panigrahi, aged about 46 years, S/o. late Umesh Chandra Panigrahi, permanent resident of At/PO-Jayrampur, PS-Bhograi, Dist-Balasore and presently working as Inspector of Posts, Udala Sub Division under Mayurbhanj Postal Division.

...Applicant

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

-VERSUS-

Union of India represented through:

1. The Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi.
2. Chief Post Master General, Odisha Circle, Bhubaneswar-751 001.
3. Director of Postal Services (Hqrs.), O/o. the CPMG, Odisha Circle, Bhubaneswar-751 001.
4. Superintendent of Post Offices, Mayurbhanj Division, Baripada-757 001.

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as Inspector of Posts, Udala Sub Division under Mayurbhanj Postal Division at the time of filing of the O.A. In this O.A. he has prayed for the following reliefs:

- i) To admit the O.A.
- ii) To quash the charge memo dated 17.11.2015.
- iii) To quash the punishment order No.F/Misc.S.K.Panigrahi/Disc. Dated 30.05.2016.

- iv) To quash the Appellate order No.ST/51-05/2016 dated 16.08.2016.
- v) To direct the respondents to extend the consequential benefit by refunding the amount recovered from the applicant.
- vi) To pass any other order as deem fit and proper to meet the ends of justice.

2. The facts of the case, as they appear from the O.A., are as follows:

The applicant was issued with a charge sheet on 17.11.2015 in which the statement of imputation of misconduct reads as follows:

“Sri Sapan Kumar Panigrahi, IPs Udala Sub Division while working as IPs Jaleswar (E) Sub Division during the period from 06.08.2007 to 04.04.2010 had failed to ensure quarterly visit of his O/S Mails at regular interval to Chormara BO in account with Jeleswar RS S.O. under Jaleswar H.O. The O/s Mails submitted his visit remarks without reflecting verified balance of required number of pass books which were not scrutinized strictly according to the questionnaire. No remark has been recorded on his subsequent visit to the said BO on 18.11.2008 and that was approved by the said Sri Panigrahi without adverse comments too on 08.12.2008, when the diaries of the O/S mails were scrutinized by him and also did not supervise the work of O/S mails as required under Rules 355(2) of Postal Manual Volume-VII. Due to such laxity in supervision by the O/S mails the Ex-BPM of the said BO Sri Biswajit Panda took advantage to commit fraud to the extent of Rs.4,58,389.90 in 104 number of different SB/RD/RPLI accounts. Failure to ensure quarterly visit of his O/S mails to Chormara BO at regular intervals and also supervise the work of O/S mail by Shri Panigrahi the fraud committed by Sri Panda, Ex.I/C BPM Chormara BO couldn't be averted and the Department sustained such a huge loss. Thus by the above act the said Sri Panigrahi not only exhibited gross negligence in duty but also contributed total loss due to fraud to the tune of Rs.4,31,553/-“.

After the conduct of the disciplinary inquiry, the Disciplinary Authority i.e., Superintendent of Post Offices, Mayurbhanj Division (Res.No.4) imposed punishment of recovery of Rs.40,000/- on the applicant vide Annexure-3 dated 30.5.2016 to be recovered @ Rs.5000/- per month with immediate effect. The applicant preferred an appeal against this order to the Director of Postal Services(Hqs.), Bhubaneswar (Res.No.3), who vide Memo No.ST/51-05/2016 dated 16.08.2016 upheld the order as passed by the Disciplinary Authority thereby rejecting the appeal, Aggrieved by these orders, the applicant has filed the present O.A. praying for the reliefs as mentioned in Para-1 above.

3. The applicant has based his prayer mainly on the ground that he was engaged to work on officiating Inspector of Posts, Jaleswar vide Memo No.B/G-12/Ch.IV dated 28.07.2008 for 120 days without his willingness . This was further extended by one year vide Memo dated 01.11.2008. He was not sufficiently aware of the management of Sub-division and how to supervise the works of O/s.Mails. Since February, 2009, the Sub-division was running without O/S. Mail and the applicant had to face a lot of problems to carry out his work without O/S Mail. He was carrying out the work of the Jaleswar East Sub-division as an additional charge and did not have much time to supervise the work of the subordinate officers. There has been no negligence

in his duty and the fraud of Rs.4,58,389.90 in Chormara B.O. had been detected by him on 12.06.2009 and he had no direct connection with the loss of Rs.4, 31,553/-. On the other hand, he had caused recovery of Rs.1,85,000/- from the principal offender. He was the person who had handed over the case to CBI and obviously, he had no role in the fraud. The orders of the Disciplinary Authority and the Appellate Authority have not covered all the aspects and are therefore flawed and illegal. The applicant has cited the DG Posts letter No.15-/74-INV dated 10.02.1975 by which it has been directed that in fraud cases the default or lapses of each official should be judged carefully to see if his offence merits recovery and/or any other punishment. Pecuniary responsibility need not be fixed for mere routine and petty lapses. For effecting recovery negligence should be such as has been the direct or prominent cause of the loss to the Govt. and loss sustained was a probable consequence of that lapse. Similarly in D.G. Posts Letter No.114/176/78-Disc.II dated 13.02.1981, it has been stated that it should be clearly understood by all the disciplinary authorities that while an official can be punished for good and sufficient reasons, the penalty of recovery can be awarded only if the lapses on his part have either led to the commission of the fraud or misappropriate or frustrated the enquiries as a result of which it has not been possible to locate the real culprit. Similarly, Rule-106 of the Postal Manual Vol.III relating to

Central Civil Services (Classification, Control and Appeal) Rules, 1965 prescribes that in the case of proceedings relating to recovery of pecuniary losses caused to the Government by negligence, or breach of orders of a Government servant, the penalty of recovery can be imposed only when it is established that the Government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that negligence or breach caused the loss. The applicant has also cited the General Financial Rules, 2005 which states that “while the competent authority may, in special cases, condone an officer’s honest error of judgment involving financial loss if the officer can show that he has acted in good faith and done his best upto the limits of his ability and experience, personal liability shall be strictly enforced against all officers who are dishonest, careless or negligent in the duties entrusted to them”.

4. The respondents in their counter-reply filed on 15.11.2016 have vehemently pleaded for dismissing the O.A. on the ground of lack of merit and submitted that the punishment has been imposed after going through the relevant records of the case, defence representation of the applicant and due consideration of the total case. The punishment of recovery imposed on the applicant is only a proportionate amount and not the full loss incurred by the Department. The Respondents have argued that the applicant has been guilty of gross

negligence of duty. He was offered to officiate in the vacant post of Inspector of Posts, Jaleswar East Sub-division to which he had expressed his willingness vide his application dated 13.7.2007. Hence the question of unwillingness does not arise. The applicant has rendered more than 13 years of continuous service in the Department and cannot feign ignorance of his supervisory work. During the period he was charge sheeted for his lapses i.e., November and December, 2008, he had already completed 18 months as an officiating Inspector of Posts. Although the total fraud committed was to the tune of Rs.4,31,553/-, only recovery of Rs.40,000/- has been ordered from the applicant @ Rs.5000/- per month. The applicant could have declined the officiating arrangement in the cadre of Inspector of Posts, but he had not done so. He had grossly neglected his duties due to which Shri Biswajit Panda, Ex.I/C.GSSBPM, Chormara B.O. committed fraud. Therefore, the applicant cannot escape his responsibility. The orders passed by the Disciplinary Authority and the Appellate Authority are reasoned and speaking orders and cannot be faulted. The respondents have annexed willingness letter signed by the applicant to officiate in the post of Inspector of Posts dated 13.7.2007. They have also submitted a copy of letter dated 23.12.2015 to the applicant permitting him to peruse the records and documents in connection with the disciplinary case. As per Rule-355(2) of Postal Manual, Volume-VII, the duty

of an Overseer enjoins upon the applicant to properly verify the accounts of the Branch being Inspector and make entry in the diary for the purpose. He has failed to do so. The O.A. filed by him, therefore, lacks merit and deserves to be dismissed.

5. I have heard the learned counsels from both the sides and perused the documents submitted by them. The applicant has cited the orders of this Tribunal in O.A.Nos.106 of 2016 disposed off on 25.04.2017 in which this Tribunal relying on an earlier judgment in O.A.No.634 of 2009 [Sukomal Bag vs. Union of India & Ors.- decided on 11.11.2010] had stated that for the pecuniary loss caused by fraud of another employee the applicant should not have been punished. Based on this Tribunal's order in Sukomal Bag case(supra), which was subsequently upheld in the Hon'ble High Court of Orissa vide judgment dated 11.10.2013 in W.P. (C) No.4343 of 2011, this Tribunal had granted similar relief to the applicant in O.A.No.106/2016. Recently in another case also in O.A.No.364 of 2016 decided on 23.02.2018, this Tribunal had held that recovery is not permissible when there is no direct liaison of misappropriation of money by the delinquent employee. The applicant has relied upon a number of mitigating facts such as he was put in charge of Jaleswar East Sub-division in addition to his normal duties. Significantly, it appears from the records that he himself had reported fraud and sought inquiry against the delinquent employee who had committed the fraud. He has

also cited the rules which are quite clear that recovery should not be ordered as a matter of routine. I am also guided by the judgment of this Tribunal in O.A.No.106 of 2016 which relied on the earlier order of this Tribunal in Sukomal Bag case (supra). In a matter very recently decided in O.A.No.364/2016 on 23.2.2018, this Tribunal followed the principle that recovery is not permissible when there is no direct liaison of misappropriation of money by the delinquent employee. In the present case, the lapse on the part of the applicant is only supervisory in nature and there does not appear to be any direct connection between the action of the applicant and the fraud committed. More importantly there is no evidence of the applicant's direct involvement in the loss incurred. That being so, the respondents should have perhaps imposed some other form of minor punishment for the lapse in supervisory work. But the financial recovery from the applicant is certainly not called for. The orders of the Disciplinary Authority and the Appellate Authority are prima facie unjust, arbitrary and illegal. Accordingly, the same are quashed and set aside. Recovery, if any, made from the applicant should be refunded to him within four weeks from the date of receipt of this order.

6. The O.A. is thus allowed, with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

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