

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.260006592012

Cuttack, this the 3rd March , 2017

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (J)

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

Bichitrananda Majhi aged 58 years, S/o Late Pati Majhi, At/PO Nuapatna, PS Narasinghpur, District Cuttack, presently residing at Near Nuasahi Souchalaya, PO CDA, Market Nagar, District Cuttack-753014.....**Applicant**

By the Advocate : Mr. M.P.J. Ray with , M/s N.R.Routray, T.K. Choudhury, S.K. Mohanty, Smt. J. Pradhan

-VERSUS-

Union of India represented through

1. The Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. Chief Post Master General, Odisha Circle, At/PO Bhubaneswar-751001.
3. Director of Postal Services (Hqrs.), O/o C.P.M.G., At/PO Bhubaneswar, District Khurda-751001.
4. Sr.Superintendent of Post Offices, Cuttack City Division, At-P.K.Parija Marg, P.O. Cuttack GPO, District Cuttack – 753001.

...Respondents

By the Advocate : Mr. S. Behera

ORDER

R.C.MISRA, MEMBER(A):

The applicant was an employee of the Department of Posts and has approached this Tribunal seeking to challenge the order of dismissal passed by the Respondents-Authorities. He has prayed for a direction to quash the orders of the Respondents placed at Annexure-A/4, A/23, A/25 & A/27 and to reinstate him in service with all consequential benefits.

2. The facts of the present O.A. are that the applicant joined as a Postal Assistant in Cuttack G.P.O on 08.11.1985. He was posted as Sub Postmaster (SPM) of Rajabagicha Sub Post Office in Cuttack on 02.06.2001 and worked in this position till 27.11.2003. It was alleged that during his period of working as

SPM of Rajabagicha Sub Post Office applicant committed fraud in several Savings Bank, Recurring Deposit, Time Deposit and Monthly Income Scheme Accounts. On investigation into the allegations, and a prima facie case being established, he was placed under suspension by the Sr. Superintendent of Post Offices, Cuttack City Division (Respondent No.4). After detailed investigation into the allegations, it was found by the Department that a fraud in 48 numbers of different SB/RD/TD/MIS accounts amounting to the tune of Rs.12,40,731/- had been committed by the applicant. The Respondents thereafter lodged F.I.R. against the applicant at Purighat Police Station on 08.12.2003. Due to anticipatory bail granted by the Hon'ble High Court of Orissa, the applicant was not arrested. In the meantime, the Police had already issued charge sheet against the applicant in GR Case No.1839/2003, which is now under trial. The Respondents initiated a departmental proceeding against the applicant under Rule-14 of CCS(CCA) Rules, 1965 and a charge sheet dated 25.01.2006 was issued against the applicant. The articles of charges as issued to the applicant are mentioned below:-

“Article-1

Sri Bichitrananda Majhi while working as SPM, Rajabagichha SO under Chandinichowk HO during the period from 03.06.2001 to 27.11.2003 accepted an amount of Rs.2,00,000/- (Rupees two lakh only) in cash on 08.10.2003 from Sri Ramachandra Mohanty for opening of a Joint-B SB Account in the name of Sri Ramachandra Mohanty and Sri Aurobindo Mohanty at Rajabagicha SO. The said Sri Majhi issued a Joint-B SB pass book account no. 504215 for Rs.2,00,000/-(Rupees two lakh only) to the depositor on 08.10.2003 duly authenticated with his initial and impressed with Rajabagicha SO date stamp. But Sri Majhi credited an amount of Rs. 20,000/-(Rupees twenty thousand only) into post office account instead of actual amount of Rs.2,00,000/- (Rupees two lakh only). Thus SO Majhi short-credited an amount of Rs.1,80,000/- in post account on 08.10.2003 towards opening of Rajabagicha joint-B SB account No. 504215 and thereby, the said Sri Majhi violated Rule 27 of Post Office Savings Bank Manual Vol.I;

Thus, by his above acts, Sri Bichitrananda Majhi failed to maintain absolute integrity, due devotion to duty and acted in a manner which is unbecoming of a Government Servant as required of him under provisions of Rule3(1)(i),(ii) and (iii) of CCS(Conduct) Rules, 1964.

Article-II

The said Sri Majhi while working as such accepted an amount of Rs.1,500/-(Rupees one thousand five hundred only) on 25.04.2003 from Sri Rajkishore Moharana, depositor of Rajabagicha 5 year RD account no 2027241 of denomination of Rs.1500/- for depositing the amount in Rajabagicha SO 5 yearRD account no. 2027241 towards monthly instalment for the month of April, 2003. Sri Majhi made entry of the said deposit in the RD pass book No. 2027241 duly authenticated with his initial and impressed with post office date stamp dated 25.04.2003. But said Sri Majhi did not account for the said amount in the post office account and thereby violated the provisions of Rule 106 of Post office savings Bank Manual Vol. I.

Thus, by his above acts, Sri Bichitrananda Majhi failed to maintain absolute integrity, due devotion to duty and acted in a manner which is unbecoming of a Government servant as required of him under provisions of Rule3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

Article-III

The said Sri Majhi while working as such accepted an amount of RS. 1,010/-(Rupees One thousand ten only) on 30.07.2003 from Sri Bibekananda Chhatoi depositor of Rajabagicha 5 yr. RD account No. 2027328 of denomination of Rs.500/- for depositing in RD account No. 2027328 towards instalments for the months of June and July, 2003. Sri Majhi made entries of the said deposits in the said RD pass book duly authenticated by his initial and impressed with post office date stamp dated 30.07.2003. But said sri Majhi did not account for the said amount in the post office account and thereby violated the provisions of Rule 106 of Post Office Savings Bank Manual Vol. I.

Thus, by his above acts, Sri Bichitrananda Majhi failed to maintain absolute integrity, due devotion to duty and acted in a manner which is unbecoming of a Government Servant as required of him under provisions of Rule-3(1)(i),(ii) and (iii) of CCS (Conduct), Rules, 1964.

Article-IV

The said Sri Majhi while working as such accepted an amount of Rs.500/-(Rupees five hundred only) on 25.04.2003 from Lova Moharana, depositor of Rajabagichha 5 year. RD account No. 2027210 of denomination of Rs.500/- for depositing in RajabagichaSO RD account No. 2027210

towards instalments for the month of April, 2003. Sri Majhi made entry of the said deposit in the said RD pass book duly authenticated by his initial and impressed with post office dated stamp dated 25.04.2003. But said Sri Majhi did not account for the said amount in the post office account and thereby violated the provisions of Rule 106 of Post Office Savings Bank Manual Vol. I.

Thus, by his above, acts, Sri Bihitrananda Majhi failed to maintain absolute integrity, due devotion to duty and acted in a manner which is unbecoming of a Government servant as required of him under provisions of Rule-3(1)(i),(ii) and (iii) of CCS(Conduct) Rules, 1964.”

To inquire into the charges, the Respondents appointed one Daitari Patra, Retd. Senior Superintendent of Post Offices, Puri Division as Inquiring Authority (IA). The IA after conducting inquiry submitted his final inquiry report dated 27.02.2006. The Disciplinary Authority on the basis of the inquiry report and other records of the disciplinary proceeding, awarded the penalty of dismissal from service vide Memo dated 17.04.2006 on the applicant. The applicant filed O.A. No.967/2005 in the CAT which was disposed of vide order dated 20.11.2008 with a direction that the competent authority shall dispose of the applicant's appeal in accordance with the rules by a reasoned and speaking order. The applicant preferred an appeal dated 22.11.2008 to the Director Postal Services(Hqrs), Bhubaneswar. In compliance of the direction of this Tribunal, the Appellate Authority after considering the appeal petition confirmed the punishment/penalty awarded by the Disciplinary Authority. In this regard, the order of Appellate Authority dated 18.02.2009 was delivered to the applicant on 03.04.2009. Being aggrieved by the order of the Appellate Authority, the applicant preferred a revision petition dated 16.10.2009 to the CPMG, Orissa Circle, Bhubaneswar. During pendency of the Revision Petition the applicant filed O.A. No.856/2010 before this Tribunal which was disposed of by the Tribunal by an order dated 29.12.2010 with a direction to the CPMG, Orissa Circle to consider the pending

Revision Petition and dispose of the same by a reasoned and speaking order. In compliance of the direction of the Tribunal, the Revision Petition was considered by the CPMG, Orissa Circle and through a reasoned and speaking order dated 08.02.2011 the Revision Petition was rejected. In spite of attempts made by the Respondents- Department the applicant avoided to receive the order of the CPMG, Orissa Circle rejecting his Revision Petition. Finally on 28.03.2011 the same was delivered to him through Registered Post. Thereafter, the applicant has approached this Tribunal by filing this O.A. making a prayer for quashing of the charge sheet dated 25.01.2005 (Annexure-A/4), the orders of the Disciplinary Authority dated 17.04.2006 (Annexure-A/23), the orders of the Appellate Authority dated 18.02.2009 (Annexure-A/25) and the orders of the Regional Authority dated 08.02.2011 (Annexure-A/27).

3. The main ground on which the applicant is making his prayer in this O.A. is that the Inquiry Officer appointed by the competent authority was biased and was unfit to become an Inquiry Officer and that the applicant was not given the relevant listed and additional documents to put up his effective defence against the serious charges levelled against him in the disciplinary proceeding. The other grounds agitated are that the findings of the Respondents are perverse, arbitrary and against the materials on record. The orders passed by the Respondents are alleged to be non-speaking orders which do not discuss the points raised by the delinquent officers. The other ground mentioned by the applicant is that the report of the Inquiry Officer was handwritten, not legible and not signed and on the basis of such an inquiry report no punishment can be imposed by the Disciplinary Authority. The applicant was also not given a fair copy of the inquiry report. The applicant thus alleged that the report of inquiry being unauthenticated is liable to be set-aside.

4. The Respondents in their counter affidavit have submitted that the applicant while working as SPM of Rajabagicha Sub Post Office committed fraud in several accounts like Savings Bank, Recurring Deposit, Time Deposit and Monthly Income Scheme Accounts. SDI(P) had inquired into the allegations as per the direction of the Competent Authority. Thereafter, the Inquiry Officer and Presenting Officer were appointed in order to give reasonable opportunity to the applicant for the hearing of his case in an oral inquiry. The allegation regarding non-supply of documents has been denied by the respondents. They submit that the applicant was supplied with the copies of the listed documents at Sl. No. 2, 9, 13, 17 and 20. Besides that, the applicant was allowed to pursue all other listed documents and he had also taken the copies/ extract of documents wherever he liked to do so. In evidence of getting the opportunity of having perused and taken the extract of the documents and the photocopies, the applicant put his signature in the order sheet. The additional documents requisitioned by the applicant were also allowed to be perused by him during the process of inquiry. Therefore, it is the contention of the respondents that the allegations of the applicant regarding non-supply of documents is unfounded and baseless. The further contention of the respondents is that the applicant has also perused the inspection report and the compliance report pertaining to the years 2001, 2002 and 2003 in the Rajabagicha Sub Post Office. The allegation of the applicant regarding non-receipt of the inquiry report is also denied by the respondents, who submit that the inquiry report was forwarded to the applicant to enable him to submit his defence, if any. One legible signed copy of the inquiry report of the Inquiry Officer was sent to the applicant, but the applicant managed to manipulate the said copy and made false allegations about receiving unsigned copy of the I.O report. The Respondents authorities have claimed that they have followed all the required

procedures and after going through the records and documents of the case and considering the factual aspects of the matter, the authorities came to a conclusion that the applicant is not fit person to be retained in service and thus he was awarded the punishment of dismissal from service. The appeal petition and the revision petition submitted by the applicant have been disposed of after due consideration of the facts of the case. They submit that the applicant while holding a responsible post of SPM Rajabagicha Sub Post Office, was dealing with the public money, and he committed fraud to the tune of Rs.12,40,731/- in respect of 48 numbers of different SB, RD, TD & MIS accounts. Due to the misdeeds of the applicant, the Department of Posts lost faith and confidence in the eyes of the general public. After considering all these factors the Disciplinary Authority as well as the Revisional Authority have upheld the order of dismissal passed by the Disciplinary Authority. The punishment awarded is commensurate with the magnitude of the irregularity committed by the applicant and there has been no deviation of the rules and procedures as prescribed in the CCS(CC& A) Rules, 1965 while conducting the major penalty proceeding against the applicant.

5. The applicant has filed a rejoinder in this case in which his main contention is that the inquiry was conducted by a biased I.O. and listed of additional documents were not made available to him. The report of the inquiry officer was also unsigned and the order of dismissal was passed without hearing the applicant. The applicant claims to have handled crores of rupees in his earlier posting without any stigma or complaint by a single individual. Therefore, his good record of past service cannot be just ignored or brushed aside by the Respondents.

6. After hearing of this matter, the Ld. Counsels of both sides have submitted their written notes of arguments. The Ld. Counsel for the applicant has

again emphasized the fact that the I.O. did not supply the legible documents and reiterated the allegations that an unsigned and illegible copy of report of the I.A. was given to the applicant. The applicant had also raised his voice from the beginning regarding change of the I.O. and for the supply of the documents, but those prayers of the applicant were not heeded and the I.O. went ahead with the conduct of the inquiry proceeding. During the pendency of the O.A. No.967/05 filed by the applicant before the Tribunal, the I.O. submitted the final inquiry report to the Disciplinary Authority and this inquiry report did not bear the signature of the I.O. The applicant at Annexure-A/22 of this O.A. has submitted some photocopy of the document in order to prove his point that the document was not signed by the I.O. Even though under Rule 15 of the CCS (CC&A) Rules, 1965, it is prescribed that along with issue of charge sheet to the delinquent officer, all the listed documents must be supplied but the Respondents in the present case did not do so and thus vitiated the procedure of inquiry. The applicant no doubt was allowed to peruse and take extracts of the documents, but as submitted by the Ld. Counsel for the applicant his prayer to take copy at his cost was not allowed. The other issue raised by the applicant's Counsel is that the applicant had undergone eye operation from 19.07.2005 to 21.07.2005 in the S.C.B. Medical College & Hospital at Cuttack. Even during this period the I.O. conducted the inquiry. The applicant's prayer for engagement of an Advocate to defend his case was also not entertained by the I.O. Therefore, the applicant has been deprived of the legitimate opportunity of defending his case.

7. The Ld. Sr. Central Govt. Panel Counsel on behalf of the Union of India has submitted in his written note of argument that all the procedures provided under the CCS (CC&A) Rules, 1965 have been duly followed and considering the seriousness of the irregularities committed by the applicant the

commensurate punishment of dismissal was imposed by the Disciplinary Authority and latter on, the same was confirmed by the Appellate Authority and the Revisional Authority. The applicant had approached this Tribunal on earlier occasions and Respondents have complied with the directions of the Tribunal by disposing of the appeal and the revision petition. The copies of the listed documents at 2, 9, 13, 17 & 20 were supplied to the applicant and besides that, he was allowed to peruse all other documents and take the extracts of such documents wherever he liked. The applicant having been provided with all opportunities to defend his case, the principles of natural justice have been fully complied with by the Respondents in conducting the disciplinary proceedings and imposing the punishment of dismissal on the applicant.

8. Having gone through the documents with regard to this O.A., we have heard the Ld. Counsels of both the sides very earnestly. On a perusal of charges framed, it is quite obvious that the charges are grave in nature involving misappropriation of money and other financial irregularities reflecting serious misconduct on the part of the applicant. In the Department of Posts, where there is a strong interface with the public, honesty and integrity of the officials particularly of those dealing with public money are of utmost importance. In case of any irregular and indecent behaviour, the image of the Department of Posts could be sullied in the public. Probity and honesty of the public officials must be maintained at all costs by the Department. Having said that we have to examine the specific allegation of the applicant regarding the denial of access to various documents, the conduct of the I.O., and the supply of the copy of the inquiry report. We do not find any irregularity in the fact that in respect of some documents, the applicant was allowed to peruse such documents and

take extracts there of wherever he liked. We do not find any specific materials establishing the case that the I.O. was biased in conducting the inquiry. The Respondents have specifically averred that a legible signed copy of the inquiry report was given to the applicant. The applicant has enclosed some photocopies of the application to prove that the inquiry report was not legible and was not signed. The Respondents have replied that such photocopies have been manipulated and that the applicant was given the signed copy of the inquiry report. On balance we are not convinced that the inquiry report was not signed by the I.O. and therefore this ground made out by the applicant is not substantiated. On perusal of the order of the Disciplinary Authority dated 17.04.2006 we found that the Disciplinary Authority has recorded as follows:-

“The Inquiry Authority inquiring into the Rule 14 case submitted his Inquiry Report dated 27.02.2006 to this office, which was received by this office on 28.02.2006. A copy of the Inquiry report dated 27.02.2006 of the Inquiry Authority was sent to the charged official giving him an opportunity to represent, if any he has to make, on the findings of the Inquiry Authority. But in spite of submitting any representation, Sri Majhi vide his letter dated 20.03.2006 asked this office to supply a typed copy of the Inquiry Report of the Inquiry Authority and alleged that the Inquiry Report does not bear the signature of the Inquiry Authority. He has also alleged that he is not acquainted with the handwritings of the Inquiry Authority. In response to his above representation, a suitable reply was sent to the charged official vide this office letter of even number dated 21.03.2006 and he was instructed to submit representation, if any to this office within 15 days from the date of receipt of the Inquiry Report by him. The charged official received the Inquiry Report on 17.03.2006 and 15 days were over on 01.04.2006 and till date no representation from the charged official has been received. So it is presumed that the charged official has no representation to make in this connection and he has admitted the findings of the Inquiry Authority in toto. Moreover, it is appearing that the charged official is attempting to delay the finalization of the case by making unnecessary correspondences.”

The above observation of the Disciplinary Authority in his order dated 17.04.2006 further strengthens the case of the Respondents that the inquiry report was supplied to the applicant.

9. In the present case the applicant filed a statutory appeal which was disposed of by an order dated 18.02.2009 of the Appellate Authority who upheld the order of the Disciplinary Authority. The order of the Appellate Authority on perusal is found to be very detailed dealing with all points raised by the applicant. It cannot be said that the order is non speaking in nature. The Appellate Authority has fully applied his mind to each and every point of the case and has finally come to a conclusion that the penalty imposed on the applicant is commensurate with the nature of lapses and that is why she confirmed the orders of the Disciplinary Authority. The applicant has also filed a revision petition which was disposed of by the Revisional Authority by an order dated 08.02.2011. This order was also found to be very detailed and each and every issue has been properly dealt with. The Revisional Authority has specifically mentioned that she has taken extreme care to see that justice is done to the petitioner. On going through the orders of the Revisional Authority, we are of the view that the Revisional Authority has also applied her mind scrupulously to the revision petition and very diligently dealt with all issues. After detailed consideration she has concluded that the charges against the petitioner were fully substantiated and the punishment given was also commensurate with the lapses on the part of the applicant. At the level of Appellate Authority and then at the level of the Revisional Authority, the order of punishment of Disciplinary Authority has been confirmed after due application of mind, to each and every aspect of the Disciplinary proceeding. We are therefore, of the opinion that there is no failure of justice at

any stage and the disciplinary proceeding has been properly dealt with and the punishment has been imposed on the applicant after thoughtful deliberation in accordance with law as well as the principles of natural justice.

10. The Hon'ble Apex court in the case of ***Union of India V. Sardar Bahadur, (1972) 4 SCC 618***, has held that where there are relevant materials which support the conclusion that the officer is guilty, it is not the function of the High Court to arrive at an independent finding. It is also laid down by the Hon'ble Apex Court that if two views are possible, court shall not interfere by substituting its own satisfaction or opinion for the satisfaction or opinion of the authority exercising the power. In the case of ***SBI V. Samarendra Kishore Endaw, 1994 (I) SLR SC 516***, it has been laid down by the Hon'ble Apex Court that power of judicial review is meant to ensure fair treatment and not to ensure that the authority reaches a conclusion which is correct in the eyes of the Court. The Hon'ble Apex Court in the case of ***B. C. Chaturvedi V. UOI and Ors. AIR 1996 SC 484***, has ruled that "judicial review is not an appeal from a decision but a review of the manner in which the decision is made". Further, "the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with". It is further laid down that "a review of the above legal position would establish that the Disciplinary Authority and on appeal, the Appellate Authority, being fact-finding authorities have the exclusive power to consider the evidence with a view to maintain discipline".

11. Viewed against the law as laid down by the Hon'ble Apex Court regarding the scope of interference of Court and Tribunals in the matter of disciplinary proceedings, we also of the opinion that in the disciplinary proceeding which is the subject matter of this O.A, there is no scope of

interference by this Tribunal with the orders of the Disciplinary Authority, the Appellate Authority as well as the Revisional Authority. The charges as proved against the applicant being very serious in nature the punishment also according to our view, is commensurate with the gravity of the charges. In view of this, the O.A. being devoid of merit is dismissed, with no costs to the parties.

(R.C. MISRA)
MEMBER(A)

(A.K. PATNAIK)
MEMBER (J)

K.B.

