

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
O. A. No. 260001462016
Cuttack, this the 22nd day of June , 2017

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

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Parashnath Dalei, aged about 29 years, S/o-Dhirendra Kumar Dalei, resident of At-Manik Ghosh Bazar, PO-Chandinichowk, PS-Purighat, Dist-Cuttack, Odisha, Pin-753002

...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-110001.
2. Chief Post Master General, Odisha Circle, At/Po.-Bhubaneswar, Dist-Khurda, Odisha-751001.
3. The Superintendent of Post Offices, Cuttack South Division, Cuttack-753001.

...Respondents

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

ORDER

R. C. MISRA, MEMBER (A):

The applicant in the present O.A. is an employee of the Postal Department who has approached the Tribunal making the following prayer:-

- (i) Admit the Original Application, and]
- (ii) After hearing the Counsels for the parties be further pleased to quash the charge-sheet and orders at Annexure-A/1, Annexure-A/3 and Annexure-A/5. And consequently, orders may be passed directing the Respondents to refund the amount recovered from the pay of the applicant with interest. And
- (iii) Pass any other order(s) as the Hon'ble Tribunal deem just and proper in the interest of justice considering the facts and circumstances of the case and allow the O.A. with costs."

2. The facts of the case are that the applicant was selected as Postal Assistant (P.A), Savings Bank Control Organization (SBCO) and joined on 06.01.2011. He was placed in charge of Supervisor SBCO, Jagatsinghpur from 22.06.2013 to 30.11.2013. A Memorandum under Rule 16 of the CCS(CCA)

Rules, 1965 dated 01.04.2015 was served on the applicant. The statement of imputation of misconduct served along with the Memorandum reveals the fact that one Sangram Keshari Behera, the then Postmaster (Grade-1), Kujang SO had issued fake one year TD Pass Book taking the opportunity of slack supervision by the applicant who was officiating as the Supervisor SBCO, Jagatsinghpur HO. Due to issuance of fake TD Pass Book by said Sangram Keshari Behera the Department sustained loss of Rs.5,19,000/-. It was alleged that if the applicant had taken a little care and detected the above irregularity, the massive fraud of Rs.5,19,000/- committed by the said Sangram Keshari Behera could have been averted. In response to the charge memorandum the applicant made a representation to the Supdt. Of Post Offices, Cuttack South Division who is the Disciplinary Authority in his case. He made a prayer that the charge memo may be dropped. The Disciplinary Authority after considering the defence representation of the applicant passed an order dated 29.04.2015 in which it was directed that an amount of Rs.1,00,000/- being a part of pecuniary loss sustained by the Department be recovered from the pay of the applicant @ Rs.5,000/- per month starting from the pay of April, 2015. The applicant filed a statutory appeal before the Director of Postal Services, who was the Appellate Authority against this order of punishment. The Appellate Authority disposed of the appeal by passing the order dated 07.12.2015. The decision of the Appellate Authority was that the charges leveled against the applicant have adequately been proved on the basis of relevant records and facts of the case. The applicant was given reasonable opportunity to defend the case. No procedural irregularity or technical infirmity was noticed in the proceedings. The penalty imposed by the Disciplinary Authority is commensurate with the gravity of proven charges against

the Appellant. With this conclusion the Appellate Authority has rejected the appeal. The orders of the Disciplinary Authority as well as the Appellate Authority have been challenged by the applicant in this O.A.

3. The Respondents have filed counter affidavit in which they have given a brief history of the case. They have submitted that Sangram Keshari Behera, the then Postmaster (Grade-1), Kujang SO defrauded the department to the tune of Rs.5,19,000/- by opening of fake TD accounts and assigning fake TD numbers. The applicant as Supervisor SBCO did not raise any objection in this matter. The Department thus concluded that he violated the provisions of Rule 145 and Rule 27 of PO SB Manual Vol-1 and was identified as one of the subsidiary offenders and proceeded against under Rule -16 of CCS (CCA) Rules, 1965. On finalization of minor penalty proceeding a punishment of recovery of Rs.1,00,000/- from his pay @ Rs.5,000/- per month was imposed by the Disciplinary Authority. The applicant made an appeal but the Appellate Authority has also rejected the same and upheld the orders of the Disciplinary Authority. Thus the prayer that the applicant made before the Tribunal in this O.A. is devoid of merit. The applicant has also filed a rejoinder to this counter affidavit.

4. I have heard the Ld. Counsels of both the sides and perused the records. I have also gone through the written notes of arguments filed by the parties.

5. This was a proceeding under Rule-16 of the CCS (CCA) Rules, 1965 and no inquiry has been conducted by the Respondents Department. I have gone through the statement of imputation made against the applicant. One Sangram Keshari Behera, the then Postmaster (Grade-1), Kujang SO is the principal offender in this case and the allegation made against him is that he defrauded the

Department by an amount of Rs.5,19,000/- by issuing fake one year TD Pass Books against various depositors. The charge against the present applicant is that he failed in the supervision of this matter for which the main offender was encouraged to commit this irregularity. The statement of imputations contains certain vague expressions like “Slack Supervision by the SBCO”, “had the said Sri Dalei taken little care and detected the above irregularity”. It is also mentioned in the charge memo that the massive fraud amounting to Rs.5,19,000/- committed by said Sri Sangram Keshari Behera could have been averted if the applicant would have taken a little care. Therefore, the statement of imputation was based upon certain surmises. One could not call it a charge sheet containing specific charges. In a disciplinary proceeding the charges were supposed to be specific; otherwise they may not be sustainable in the eyes of law.

6. The applicant has been proceeded against by the authorities for being a subsidiary offender. It is alleged by the authorities that because of the laxity of supervision of the applicant the financial loss was caused. But the Respondents have failed to establish a nexus between act of negligence and the financial loss. This nexus can not be established on surmises and possibilities. There has to be evidence in this regard and to prove the charges against the delinquent, there must be factual evidence that there is a direct nexus between the negligence of the applicant and the financial loss. There was no regular inquiry in this matter and this may be because there is no provision of mandatory inquiry under Rule-16 of the proceeding. But to establish the nexus as aforesaid, inquiry was probably required in this matter. The order of punishment in this case is recovery of the part of the financial loss caused by the main delinquent. There is no logic or rational basis to determine recovery of Rs.1,00,000/- from the applicant to meet

the ends of justice in this case. This is not to say that an act of negligence should be condoned by the Department but it appears in the present case that recovery of a certain amount that is Rs.1,00,000/- as part of the financial loss would be considered an arbitrary order, since this is not based upon any evidence. If it is concluded by the authorities that one particular delinquent has defrauded the Department of a particular amount, why is it not that steps should not be taken as per law to recover the amount of loss from the principal offender? Therefore, the charge of laxity of supervision and negligence would not in my view attract the punishment of recovery of the part of the pecuniary loss caused by the main offender in this case. On going through the order of the Appellate Authority I also find that the reasonableness of recovery of Rs.1,00,000/- as a measure of punishment of the applicant has not been discussed by the Appellate Authority.

7. The matter under adjudication in this case is covered by the decision of this Tribunal in O.A. No 634/2009 i.e., Sukomal Bag Vs. Union of India & Others decided on 11.11.2010 in which the Tribunal, decided that “for the pecuniary loss caused by fraud of another employee, the applicants should not have been punished”. In a similar case in O.A. No.106/16 in the case of Udayakar Sahoo Vs. Union of India this Tribunal vide it’s order dated 25.04.17 following the Sukomal Bag’s case (Supra) allowed the O.A. and quashed the punishment for contributory negligence. I have therefore, taken into account the orders passed by the tribunal in similar matters involving the charges of contributory negligence and found that such charges and the orders of punishment have not been found sustainable under the law. The Hon’ble Apex Court in the case of SI Rooplal and others Vrs. Lt. Governor through Chief Secretary Delhi and Others, (2000) I SCC 644 has decided that in order to maintain judicial discipline

the orders of the coordinate Benches should be followed in case similar matters have been decided earlier. The imposition of recovery of Rs.1,00,000/- of the applicant against whom there is an allegation of slackness of supervision is therefore found to be not sustainable under law.

8. On the basis of the above stated grounds the charge sheet, the orders of Disciplinary Authority, the orders of the Appellate Authority at Annexure-A/1, Annexure-A/3 & Annexure-A/5 of the O.A. are therefore quashed and the O.A. is thus allowed with no cost to the parties.

(R.C. MISRA)
MEMBER(A)

K.B.