

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No. 79 of 2017

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Sri Susmita Priyadarsini, aged bout 49 years, wife of Sri Nilamadhava Satpathy, Permanent resident of Vill/PO-Talasahi, PS/Dist-Khurda and presently working as Postal Asst. Head Post Office Khurda.

.....Applicant

-Versus-

1. Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi.
2. Director Postal Services(HQ), Bhubaneswar, Office of the Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist-Khurda-751001.
3. Sr. Supt. of Post Offices, Puri Division, At/PO/Dist-Puri.
4. Post Master, Head Post Office, Khurda, At/PO/Dist-Khurda.

.....Respondents

For the Applicant : Mr. Mr. S. K. Ojha
For the Respondents: Mr. Mr. D. K. Mallick

Heard & reserved on: 24.07.2019 Order on: 16.08.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member(A):

The Original Application has been filed by the applicant seeks the following reliefs:-

- "i) To admit the OA,*
- ii) To quash the charge memo No. F/6-1/2008-09(CH.III) dated Puri the 13.07.2015(Annexure.A/1).*
- iii) To quash the order No. F/6-1/2008-09(Ch-IV) dated Puri the 05.07.2016(Annexure-A/5) passed by the respondent No. 3,*
- iv) To wash the order of Appellate Authority (respondent No.2) communicated vide Memo No. ST/51-07/2016, dated 02.01.2017(Annexure-A/8)*
- V) To direct the respondents to extend the consequential benefits to the applicant.*
- vi) To pass any other order/orders as deem fit and proper for the ends of justice."*

2. The facts in brief is that the applicant while working as Postal Assistant under Respondents since October, 2008, a charge memo dated 13.07.2015(Annexure-A/1) was issued to him for misconduct or misbehaviour alleging that after receiving the daily account of Pallahat, SO she failed to examine the cash balance held by the SPM Pallahat, SO and to bring to the notice of the Postmaster, Khurda HO about the excess cash if any, held by Pallahat SO. But this was not done by the applicant and due to such inaction the then SO could

resort to fraud of Rs. **11,16,942.50/-**. The charge memo was issued under Rule-16 of the CCS(CCA) Rules, 1965 for secondary offender. The explanation was furnished by the applicant on 02.01.2017, stating that the daily accounts were properly checked with the concerned vouchers and there were placed by her before the Postmaster for instruction. It is submitted that the Postmaster had signed on the reverse of the daily accounts in token of his check.

3. It was further stated by the applicant that retention of excess cash on various dates are entered in the Error Book of the concerned Branch which was being shown for the Postmaster. After receipt of the explanation from the applicant, the order dated 05.07.2016 was passed by the respondents No.3 imposing the punishment of recovery of Rs. 53, 623/- towards the proportionate share of the applicant for the loss of recovered from her salary in 10 equal monthly instalments(Annexure-A/5).

4. The applicant preferred an appeal dated 20.07.2016(Annexure-A/6). In the appeal, the contention of the applicant was that the retention of excess cash was recorded in the Error Book Sub-Account Branch, which was not allowed for her inspection before submitting her explanation. It was stated by the applicant that she had prepared SO Summary and HO Cash book on the basis of the records of the SO daily accounts and the Postmaster, Khurda HO was well aware of the fact of the retention of the cash by the SPM, Pallahat SO.

5. It was also stated that on 16.12.2008 , the SPM, Pallhat SO retained cash of Rs. 6364.50/- and on 22.12.2008, retained of Rs.8511.50/- which cannot be construed as excess cash beyond limit. The Appellate Authority (Respondent No.2) in his order rejecting the appeal stated as under:-

“It is an undisputed fact that the appellant while working as Sub-Account PA, Khurda HO under Puri Division during the period from 01.12.2008 to 03.12.2008, on 15/16.12.2008, 22.12.2008 and 24.12.2008 had received the SO daily account of Pallahat SO. The SPM Pallahat SO had retained excess cash exceeding the authorized maximum balance and reflected the same in the daily account of the said dates. The appellant was required under provisions of Rule 58 of Postal manual Volume-VI (Part-III) to carefully examine the cash balance held by the SPM Pallahat SO and bring to the notice of the Post Master Khurda HO about the excess cash held by him. But the appellant did not carry out the prescribed check and did not bring out the fact of retention of excess cash to the notice of the Post Master Khurda HO by placing the alleged daily accounts before him for review and issue required order/remarks. The claim of the appellant regarding signature of the Postmaster in SO daily accounts is found false and fabricated. The Error Book of the Sub-Account Branch of Khurda HO is not

maintained by the appellant as claimed by her and her false claim is established from the report of the Postmaster Khurda HO vide letter No. PM/Khurda HO/Fraud/Pallahat/2016-17 dated 25.06.2016. This is just an afterthought idea to ran away without admitting the charge”.

6. The applicant has advanced the following grounds in the O.A:-

- i) Action of the authorities in this case is against principle of natural justice.
- ii) Appellate Authority did not consider the points raised in the appeal.
- iii) The Disciplinary Authority has overlooked the instruction contained in DG Post letter dated 13.02.1981 and dated 10.02.1975 and Govt of India letter dated 19.03.2015, which are annexed at Annexure-A/9, A/10 and A/11 respectively.

Copy of the order dated 09.09.2015 of this Tribunal in OA No. 107/12 has been cited by applicant to strengthen her case.

7. In the Counter filed by the respondents, it is stated that the fact that the Pallahat SO SPM was retaining excess cash regularly, was not placed before authorities by the applicant. Respondent No.3 has issued charge sheet as the applicant has failed to carry out the duties specified under Rule- 58 of Postal Manual under which she was required to examine the excess balance held by the SPM Pallahat SO and bring in to the notice of the Postmaster, Khurda HO. The applicant failed to carry out the responsibility and because of her negligence, fraud to the tune of **Rs. 11, 16, 942.50/-** could be committed by the SPM, Pallahat. It cannot be stated that applicant was not involved in the said misappropriation. Regarding the claim relating to Error Book, it was submitted in Para-8 of the counter that Error Book of the Sub- account Brach of Khurda HO was not maintained by the applicant as per the letter of the Postmaster dated 25.06.2016 (Annexure-R/2). It is further stated that the punishment order passed by the disciplinary authority is based on documentary evidence and material available on record.

8. Heard Ld. Counsels for the applicant and respondents. It was submitted by Ld. Counsel for the applicant that occurrence of the fraud happened in 2008 but proceeding was initiated in 2015 i.e. after a delay of about 7 years. It was submitted that Error Book was mentioned by the applicant and fact regarding excess cash of Pallahat SO has been mentioned in the Error Book. It was

submitted that the applicant reported to Postmaster about the excess balance through Error Book, which was deliberately not produced by the respondents.

9. Ld. Counsel for the respondents submitted that she was allowed to verify the documents as available. It was also submitted that the applicant did not raise the issue of the Error Book in her appeal. In reply, the applicant's counsel submitted that the issue about non-verifications of Error Book was stated in the appeal of the applicant.

10. Ld. Counsel for the applicant also filed a copy of the judgment dated 28.06.2017 of this Tribunal in OA No. 103/15, in the case of the K. Mohanata Vs UOI and another . In this cited case, the applicant was working as SPO when he was issued charge memo under Rule 16 of the CCS(CCA) Rules, 1965. The CPMG imposed a punishment of recovery of Rs. 1 lakh and the appeal filed by the applicant was rejected. The applicant in that case, did not conduct inspection of the one particular office of SO under Puri HO. During inspection he did not verify all records and did not issue any notice to the in SB 46 to the depositors for obtaining information of the balance of Pass Book. It was held by the Tribunal in OA No.103/2015 as under:-

"8. Similar matters were decided by this Tribunal earlier also, wherein learned counsel for applicant was a party. It has been brought to my notice that this tribunal in OA No. 958/12 wherein, minor penalty of recovery of certain amount for applicant's contributory negligence was challenged, had set aside the orders punishment vide order 24.06.2014. On perusal of order, it is found that the Tribunal had relied on earlier decisions of this Tribunal rendered in OA No. 634/2009 filed by one Shri Sukomal Bag and, the Tribunal further placed reliance therein, on the decisions of co-ordinate Benches in the case of C.N. Harihara Nandan Vs. Presidency Post Master, Madras and Anr. [(1988) 8 ATC 673] and in the case of J.M. Makwana Vs. UOI & Ors.[2002(1) AT] 283] . It is thus very clear that several decisions have been rendered by this Bench as well as other Co-ordinate Benches, holding that for contributory negligence, orders of recovery would not be considered to be sustainable under the law. The facts of the present OA being similar, I would not like to take a divergent view. However, at the cost of repetition I would like to observe that the departmental authorities are always within their power to proceed against employees who have failed in supervisory duties and impose appropriate punishment after following the due procedure. However, punishment of recovery is not found to be justified as per law enunciated in several cases and the same should be equally followed in the instant case.

9. In the result, the Original Application is allowed and the impugned Charge-sheet dated 06.08.2012(Annexure-A/3), the order of disciplinary and appellate authorities dated 02.01.2014 and 08.01.2015 filed as Annexure-A/5 and Annexure-A/10 are quashed and set aside. Further, respondents are directed that , if already an

amount has been recovered, the same should be refunded to applicant within four weeks from the date of this order. However, the parties shall bear their own costs.”

11. The facts of the present O.A are similar to the facts of the OA No.103/2015 cited by the applicant's Counsel. The ratio of the judgment dated 28.06.2017 will squarely apply to the present OA. In this OA, it is noticed that the respondents have taken a plea that the applicant's claim about the Error Book was incorrect in view of letter dated 25.06.2016 (Annexure-R/2). From perusal of the letter dated 25.06.2016, it is seen that the letter states that the Error Book is not traceable. It cannot be said that the applicant's claim is wrong on the basis of the letter dated 25.06.2016. There is also no charge of fraud against the applicant about non-maintenance of the Error Book. There is no evidence on record to prove any lapses of the applicant which can be linked to the fraud or misappropriation for which the applicant has been punished as a secondary offender.

12. In view of the above and following the order dated 28.06.2017 in OA No. 103/15, the impugned punishment order dated 05.07.2016, the order dated 02.01.2017 of appellate authority and charge memo dated 13.07.2015 are set aside. The OA is accordingly allowed with no order as to costs.

(Gokul Chandra Pati)
Member(Admn.)