

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 574 of 2015

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

Laxman Murmu, aged about 27 years, S/o Bhanu Charan Murmu, At/PO-Rayan Ramchandrapur, Via-Jaleswar, Dist-Baleswar, now working as SPM, Dhanmandal.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Director of Postal Services (HQRS), At/PO-Bhubaneswar, Dist-Khurda-751001.
3. Superintendent of Post Offices, Cuttack South Division, Dist-Cuttack-753001.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.A.C.Deo, counsel

Heard & reserved on : 23.8.2019

Order on : 5.9.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed the present OA seeking the following reliefs :

"In view of the facts stated above, it is humbly prayed that the Hon'ble Tribunal may be graciously pleased to quash Annexure-A/1, A/2 & A/4 and direct the respondents to refund the amount already recovered with interest.

And any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice.

And for this act of kindness, the applicant as in duty bound shall remain every pray."

2. The applicant in this OA is aggrieved by the impugned order dated 27.1.2015 (Annexure-A/2) by which, the punishment of recovery of Rs. 65000/- has been imposed by the respondents in pursuance of the charge-sheet dated 16.9.2014 (Annexure-A/1) issued to him under for minor penalty under the rule 16 of the CCS (CCA) Rules, 1965 (in short Rules, 1965). The applicant, while working as the Postal Assistant (in short PA) in Rameswar Sub Post Office (in short SO), was proceeded against for negligence in duty for which a theft occurred in Rameswar SO on 30.3.2014 resulting in a loss of Rs. 1,64,320/- to the Government. The charge against the applicant was that he

did not object to the retention of excess cash by the Sub Post Master (in short SPM) who was in charge of Rameswar SO at that point of time.

3. It is stated in the OA that the post of night watchman was abolished in the SOs and no iron chest was supplied for safe custody of cash and valuables in the office. It is further stated that before completion of police investigation into theft, the respondent No. 3 issued charge-sheet to the applicant. It is also stated that the instalment decided by the respondents for recovery was higher than one-third of the total salary of the applicant. The applicant sought to see some records before submitting the explanation to the charge-sheet, but it was not allowed. The applicant tried to explain higher cash balance due to liabilities and pension payments in his reply. After the order of punishment was passed, the applicant filed the appeal dated 11.3.2015 (Annexure-A/3) raising various grounds including the ground that the punishment of recovery is to be imposed if the official is directly responsible for the loss as per the rule 106 of Postal Manual as well as the rule 11 A of the Rules, 1965. It is stated in the OA that the respondent No. 2 without application of mind rejected the appeal holding the applicant as subsidiary offender.

4. It is further stated by the applicant in the OA that as per the judgment of this Tribunal in the case of Sukamal Bag vs. Union of India, which was upheld by Hon'ble High Court. It is also averred that there was no fact finding inquiry conducted to prove the charges against the applicant.

5. The respondents have filed Counter to oppose the OA, stating that the applicant was joint custodian of the cash under the rule 84B of the Postal Manual (Annexure-R/2) and he did not object for retention of excess cash beyond the authorized limit for minimum and maximum cash balance for Rameswar SO as per the order of the respondent No. 3 (Annexure-R/1 of the Counter). It was stated in the Counter that the proposal for upward revision of cash balance was not approved by the competent authority. Regarding the limit of recovery of loss, it is stated that as per the DOPT OM dated 6.9.2000, there is no limit to quantum of recovery of loss. It was also stated that the applicant was permitted to peruse the available and relevant documents. It is stated that the entire loss is proposed to be recovered from two officials who were responsible for the loss. It was further stated in the Counter in reply to the averment of the applicant that the SPM was always submitting ECB memo which was not being objected by the authorities, the SPM never submitted any ECB memo to Athagarh Head Office. Regarding applicability of the judgment of the Tribunal in the case of Sukamal Bag (supra), it is stated in the Counter that the decision in other situations will not be applicable.

6. No Rejoinder has been filed by the applicant. Learned counsel for the applicant was heard. He cited the judgment in the case of Sukamal Bag (supra) in support of the applicant's case. It was submitted that the judgment in the cited case will be applicable to the present OA. Learned counsel for the respondents reiterated the averments made in the Counter.

7. Having regard to the pleadings and submissions by the rival parties, it will be necessary to decide the applicability of the cited judgment in the case of Sukamal Bag to this OA. The facts of the above cited case are described in the order dated 11.11.2010 as under:-

"Applicant is a retired Head Postmaster of Jeypore (K) Head Post Office. He retired from service on 30.9.2008. While he was continuing as Postmaster, Jeypore (K) Head Post Office he was served with a charge sheet dated 14.11.2007 (Annexure A/4) under Rule 16 of CCS (CC&A) Rules, 1965 on the allegation of lack of supervision in his duty leading to failure to maintain absolute integrity and devotion to duty as required under Rule 3(1)(i)(ii) of CCS (Conduct) Rules, 1964. The substance of the allegation is that for the failure of supervisory duty by the applicant, one Shri Dilip Kumar Dash, SPM of Mirganiguda SO in account with Jeypore (K) Division misappropriated Government money to the tune of Rs.2,92,944.15 who subsequently died. Applicant furnished his reply to the said charge sheet and on consideration of the reply, the Senior Superintendent of Post Offices, Koraput Division, Jeypore (K) after taking into consideration all the points raised by the applicant in his reply vis-a-vis the materials available on record, in his order under Annexure A/5 dated 11.12.2007/ 13.12.2007, held that the applicant is fully guilty of the charges levelled against him and responsible for the pecuniary loss caused by Late Dilip Kumar Das and consequently ordered recovery of an amount of Rs.60,000/- from the Pay and Allowance of the applicant on monthly instalment of Rs.6000/- starting from his salary for the month of December, 2007 onwards till September, 2008."

8. In this OA, the applicant was not the supervisory officer of the SPM who had allegedly kept the extra cash in violation of the specified limit. The applicant is taken as a joint custodian of the cash and has been charged for not objecting to the higher balance in violation of the guidelines of higher authorities. The charge in Article-I stated as under:-

".....Had if said Sri Murmu raised objection against retention of excess cash by Sri Naik exceeding the authorised maximum cash balance on 29.3.2014 (Saturday), as fixed vide SPOs, Cuttack South Division Memo ibid, then the loss of Rs. 164320/- sustained by the Deapartment, as a result of said theft case could have been averted....."

The above charge has not been effectively countered or answered by the applicant as no such objection of the applicant is on record. Even though the applicant has stated that the SPM was responsible for maintaining the cash balance, but he cannot avoid any responsibility for the same as he was the joint custodian as stated in his appeal dated 11.3.2015 (Annexure-A/3), Further, perusal of the provisions of the rule 84 B of the Postal Manual (copy at Annexure-R/2 of the Counter) shows that the applicant had the responsibility to ensure that the balance cash and other valuables are correctly entered in

the SO accounts and Register and he should have satisfied for its safe custody in the iron safe. Since the safe was not provided to Rameswar SO, it was his responsibility to have mentioned about it in the Remark column of the SO accounts and raised his concern and objection about excess balance which had to be kept out of the iron safe. It is clear that the applicant cannot avoid any responsibility for retention of excess cash on 29.3.2014 beyond authorised limit when the theft took place. It is also seen from the charge-sheet that the excess cash balance was being maintained in Rameswar SO on other days apart from 29.3.2014 and there is nothing on record to show that the excess balance has been objected to by the applicant.

9. From the facts and circumstances as discussed in the preceding two paragraphs, it is clear that the facts of the case on Sukamal Bag and in this OA are different. In Sukamal Bag case, the applicant did not have any direct responsibility in any loss on account of misappropriation by his subordinate official, which is not the case in this OA as discussed in para 8 above. Hence, the ratio of the cited judgment in the case of Sukamal Bag (*supra*) is inapplicable to this OA.

10. In view of the discussions above, none of the grounds mentioned in the OA appears to be convincing. The respondent-department is the custodian of the cash and assets of the public who have faith in the officials and employees working under the respondents. Hence, there cannot be any leniency in case of any violation of the rules or instructions on the part of the employees of the respondent-department which has resulted in a loss of public property. In the circumstances, I do not find any justification to interfere in the matter and the OA is dismissed with no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath