

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 862 of 2015

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

Bijaya Kumar Mishra, aged about 53 years, S/o Purna Chandra Mishra, presently working as Asst. Supdt. Of Posts, RMS 'N' Division, Cuttack and permanent resident of Vill. Markona, PS-Sijulia, Diost-Balasore-756126.

.....Applicant

VERSUS

1. Union of India represented through its Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi.
2. Director of Postal Services (HQrs), O/o Chief Postmaster General, Odisha Circle, Bhubaneswar-751001.
3. Chief Postmaster General (CPMG), Odisha Circle, Bhubaneswar-751001, Dist.-Khurda.

.....Respondents

For the applicant : Mr.T.Rath, counsel

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

Heard & reserved on : 6.9.2019

Order on : 17.9.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

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

- “(i) To admit the OA.
- (ii) To quash the charge memo dtd. 2.5.2014 under Annexure A/3.
- (iii) To quash the punishment order No. Inv./7-125/07, dtd. 17.6.2014 under Annexure A/6 and to quash the Appellate order No. ST/54-01/2014 dated 11.12.2014 under Annexure A/9.
- (iv) To direct the respondents to refund the recovered amount with 12% interest per annum from the date of realization to till the payment is made.
- (v) To pass any other order/orders as deem fit and proper for the ends of justice and allow the OA with cost.”

2. The applicant, while working as Assistant Supt. of Post Offices (in short ASPO), was issued a charge-sheet dated 2.5.2014 (Annexure-A/3 to the OA) under the rule 16 of the CCS (CCA) Rules, 1965 (in short 'Rules') after he was found to have contributory negligence resulting in the fraud/ misappropriation leading to loss to Government. On receipt of the defence reply dated 30.5.2014 of the applicant (Annexure-A/5), the disciplinary authority (in short DA) imposed the penalty of recovery of Rs. 90000/- from the applicant in ten monthly instalments vide the impugned order dated 17.6.2014 (Annexure-A/6).

Appeal dated 14.7.2014 (Annexure-A/7) was filed before the respondent no. 3, which was rejected vide order dated 11.12.2014 (Annexure-A/9).

3. It is stated in the OA that as per the guidelines of the DG Posts dated 10.2.1975 (Annexure-A/1), the responsibility should not be fixed for mere routine or petty lapses and the negligence should be the direct and prominent cause of loss to the Government. It is claimed in the OA that no such negligence has been alleged against the applicant in the charge-sheet, which can be treated as a direct and prominent cause of the loss and the allegation against the applicant was supervisory negligence. The charges are also stated to be vague and not in accordance with the DG's letter dated 13.2.1981 (Annexure-A/4). It is stated in the OA that the onus of the SPOs is being shifted to the applicant by shifting the blame. The applicant had submitted two reports against the SPM who was the primary offender for wrong medical claim and the misappropriation, but the SPOs did not take any action on the same and the concerned SPM was allowed a long rope by the SPOs. It is also stated that there is no provision in the Postal Manual that the Inspector is the supervisory officer of a sub-post office and he had no scope to come across the daily operational activities of the SPM concerned.

4. Counter has been filed by the respondents stating that the applicant had inspected the post office in question in 2005 and 2006 and had found excess balance. No investigation of the fraud was taken up on both the occasion. When he was deputed to investigate about the medical claim, he reported shortage of cash of Rs. 99000/- and was able to detect the fraudulent activities of the SPM concerned. It is stated that due to failure of the applicant, the then SPM of Turigadia SO could get an opportunity to misappropriate government money. The proceedings under the rule 16 was initiated and after examining the reply of the applicant, the DA found him to be responsible for the loss of Rs. 90000/- and accordingly the punishment order was issued based on relevant records/documents. The respondents have referred to the DOPT OM dated 6.9.2000 (Annexure-R/1) in support of their action in this case. It is stated that the averment of the applicant that the Inspector is not the supervisory authority of the SPM is not correct. It is stated that it was necessary on the part of the applicant to prevent retention of excess cash by the SPM.

5. Rejoinder filed by the applicant stated that "Postmaster, Balasore HO is the daily supervisor on the work and conduct of the SPM and Supdt. Of Post Offices is also daily/monthly supervisor of the work of SPM Turigadia SO...." It is also stated that as per the rule 136 of the Postal Manual, the Supdt. is required to examine excess cash balance and to check irregularities and

possible frauds in the sub-offices and that the frauds were committed after second inspection of Turigadia SO by him. It is also stated that there is no rule that investigation will be conducted based on excess retention of cash balance.

6. Learned counsel for the applicant was heard. He submitted that there was a delay of about 7 years in initiating the disciplinary proceedings and that the loss of Rs. 90000/- is being recovered from the applicant, who is a supervisory officer. It is further submitted that the primary offender confessed the guilt and he was convicted. As stated in para 5.10, it is necessary for the department to recover the loss from the primary offender.

7. Learned counsel for the respondents submitted that there were lapses on the part of the applicant and under the rule 216 of the Postal Manual (Annexure-A/12 series) in case they suspect any fraud of the type, then immediate investigation should follow. It was also submitted that the primary offender was convicted and removed from service.

9. Having regard to the submissions as well as the pleadings by both the parties, the question to be decided in this case is whether the charge-sheet and the punishment orders issued to the applicant are sustainable in this case. There is one charge framed against the applicant i.e failure on his part to suspect the fraudulent activities. From the charge-sheet, the fraud of Rs. 112000/- was committed by the SPM of Turigadia SO from 28.12.2006 to 15.1.2007 and these dates are after the inspection of the SO carried out by the applicant on 8.11.2005 and 7.11.2006 as stated in the charge-sheet dated 2.5.2014 (Annexure-A/3). Hence, the allegation that the applicant failed to suspect fraudulent activity of the SPM is not at all convincing. The contention of the applicant in para 5.2 of the OA that he has not violated the rule 226 of the Postal Manual has not been convincingly rebutted in the Counter filed by the respondents. It is also not the case of the respondents that there was non-compliance of any instructions of the superior authorities to the applicant to undertake any investigation by the applicant in this case. The allegation against him is failure to suspect fraudulent activity due to excess cash balance detected by the applicant during inspection. The averments in para 4(B) of the Rejoinder that the Superintendent is required to examine the monthly sub-office accounts under the rule 136 of the Postal Manual, have not been contradicted by the respondents. There is no explanation as to the reason why the authorities who receive the daily accounts and monthly accounts of the sub-office did not object to the retention of excess cash balance by the SPM Turigadia SO. There seems to be a general failure of all the officers associated with this work to prevent regular retention of excess cash by the SPM Turigadia SO during the period. There is no instruction to the applicant based on his

inspection report to undertake investigation and no rule has been furnished to show that in case of excess cash balance detected by the inspection official, he is required to undertake an investigation.

10. In view of the above discussions, it is clear that instead of trying to ascertain the name of the officials who have defaulted in this case for preventing retention of excess cash balance by the SPM concerned, full responsibility has been fixed on the applicant for not carrying out his inspection more efficiently although no violation of any rule or instructions of higher authorities was alleged against the applicant. Hence, based on the available records, the impugned orders including the charge-sheet dated 2.5.2014 (Annexure-A/3) are not based on any evidence. Incidentally, the fraud was detected by the applicant when he was asked to conduct an inquiry into the allegation of false medical claim on 9.3.2007.

11. It is seen that in the appeal filed by the applicant (Annexure-A/7), it is stated by the applicant as under:-

"2.....

(d) It is a fact that SPM has committed fraud in respect of six SB Accounts after 07.11.2006 as noted below....."

In his representation to the DA in reply to the charge-sheet, the applicant had stated a sunder:-

"3 (e) In view of the my submission narrated in the forgoing paragraphs I humbly submit to my learned DPS (HQ) that I have done my duty properly without commission of any irregularity in course of my inspection of Turigaria SO on 07.11.2006. There is no laxity in supervision on my part as I am not a supervisor of SPM Turigaria."

12. It is noticed that neither in the order dated 17.6.2014 of the DA (Annexure-A/6) nor the order dated 11.12.2014 of the appellate authority examined the point that the alleged fraud had taken place after the date of second inspection i.e. 7.11.2006. There was no occasion to detect any fraudulent activity on the part of the applicant during annual inspections on 7.11.2006, when the alleged fraud or misappropriation as stated in the charge sheet after 7.11.2006 and the impugned orders of the DA and the Appellate Authority held the applicant guilty without discussing this point. No preliminary investigation was found to have been conducted in this case linking the applicant to the fraud/misappropriation as alleged in the charge-sheet.

13. In the circumstances, I have no hesitation to hold that the impugned charge-sheet dated 2.5.2014 (Annexure-A/3) has been issued without proper application of mind on the part of the disciplinary authority and there is no

prima-facie materials on record to justify issuance of the said charge-sheet, which is, therefore, not sustainable. The DOPT Om dated 6.9.2000 (Annexure R/1) relied in the counter will not be helpful for the respondents' case in this OA. The orders of punishment dated 17.6.2014 (A/6) and the order of the appellate authority dated 11.12.2014 (A/9) are also not sustainable for the above reasons. These impugned orders are accordingly quashed since these orders are based on faulty charge-sheet, with no evidence on record against the applicant. The respondents are, however, at liberty to identify the officials who were responsible for inaction and who should have taken action under the rules to prevent retention of excess cash balance and misappropriation in this case and initiate appropriate disciplinary action against them in accordance with the provisions of law within three months from the date of receipt of a copy of this order.

14. The OA is allowed as above with no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath