

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**OA No. 438 of 2017
MA No.145 of 2018**

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

Kushal Mahali, aged about 43 years, S/o Late Shankar Mahali, resident of Vill-Latia, PO-Badia, Via-Mosabani, PS-Mosabani, Dist-East Singhbhum, Jharkhand, Pin-832104, presently working as Inspector of Posts, Jharsuguda Sub Division, At/PO-Jharsuguda, Dist-Jharsuguda, Odisha, Pin-768201.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda, Odisha-751001.
3. The Director of Postal Services, Sambalpur Region, Sambalpur-768001.
4. The Superintendent of Post Offices, Sambalpur Division, Sambalpur-768001.

.....Respondents.

For the applicant : Mr.C.P.Sahani, counsel

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 30.8.2019

Order on : 17.9.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs :

- “(i) Admit the original application, and
- (ii) After hearing the counsels for the parties be further pleased to quash the charge sheet at Annexure A/1 and the orders at Annexure A/3 & Annexure A/6. And consequently, orders may kindly be passed directing the respondents to give consequential benefits.

And/or

- (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 OA with costs.”

2. The applicant, while working as the Inspector of Posts under the respondents in Sambalpur west division, was issued a charge-sheet dated 10.1.2017 (Annexure-A/1) issued under the rule 16 of the CCS (CCA) Rules, 1965 alleging failure of the applicant to detect the misappropriation by one Sri Tandia, the GDSBPM of Barabazar BO during inspection of the said BO by the applicant and failure to conduct verification of some suspected withdrawals

promptly, which could have prevented further misappropriation of Rs. 370000/- by Sri Tandia. It is stated in the OA that the applicant made a representation on 18.2.2017 (Annexure-A/2), which was considered by the respondent No.4, who passed the order dated 27.3.2017 (Annexure-A/3) ordering recovery of Rs. 100000/- from the applicant from his pay with a monthly instalment of Rs. 10000/- from the month of April, 2017.

3. He filed the appeal with a prayer to keep the recovery in abeyance till disposal of the appeal, which was not considered. He filed the OA No. 233/17, which was disposed of with a direction to the appellate authority (respondent No.3) to dispose of the appeal and till its disposal not to effect any recovery. Thereafter, the respondent No.3 dismissed the appeal vide order dated 3.7.2017 (Annexure-A/6), which is impugned alongwith the order at Annexure-A/3 in this OA.

4. The OA was considered by this Tribunal and vide order dated 25.7.2017, while admitting the OA, the respondents were directed not to recover from the applicant for next 14 days and vide order dated 24.8.2017, it was extended till disposal of the OA.

5. The grounds urged in the OA are that the charges are not specific and it was the responsibility of the SPM concerned to verify high withdrawals. It is also stated that the impugned punishment order has been passed only on the basis of presumption with no proof. It is stated that as observed by Hon'ble Apex Court in the judgment dated 17.12.1998 in the case of Kuldip Singh vs. Commissioner of Police & Ors. AIR 1999 SC 677, suspicion or presumption cannot be taken as a proof in domestic enquiry. In the judgment in the case of Rajinder Kumar Kindra vs. Delhi Administration through Secretary (Labour) & Ors. AIR 1984 1805, it was held that the findings in a disciplinary proceeding have to be based on evidence. It is further stated that the disciplinary authority (in short DA) did not hold any enquiry. It is stated that the applicant did not display any negligence of duty. It is stated in the OA that the culprit for the fraud has been located from whom the full amount can be recovered and no direct or indirect responsibility can be fixed on the applicant. It is stated that under the rule 106 of the Postal Manual, the recovery punishment can be imposed only when there is direct responsibility of the government servant for the loss through negligence or breach of orders. It is stated that as per the judgment of the Tribunal in the case of Satyabadi Nayak vs. Union of India and Ors. recovery order passed by the DA is invalid unless negligence and lapses leading to loss are proved. It is stated that the only fault alleged against the applicant is negligence in supervisory duty and for such negligence, no punishment of recovery will be sustainable. The applicant has also cited the

judgment of this Tribunal in the case of Sukomal Bag vs. UOI & Ors. in OA No. 634/2009, in which it was held that for supervisory lapses, punishment recovery of losses cannot be imposed.

6. The Counter of the respondents stated that the applicant has been charge-sheeted for failure to act according to the rules for which the misappropriation could take place. It is stated that the applicant had got proposal for approval of 4 proposals for withdrawals, which should have been verified with reference to the above accounts as laid down under the rule 85 (iii) of the POSB Manual. Due to the applicant's failure, the misappropriation by the then GDSBPM could not be detected earlier and he could have been prevented from misappropriating more than Rs. 370000/-.

7. Rejoinder has been filed by the applicant, reiterating the pleas taken in the OA and denying the contentions in the Counter. For withdrawals of more than Rs. 10000/-, the verification should have been done by Inspector/ASPs, which was not done. The applicant had initially brought the fraud to light. It is stated that the charge-sheet has been issued to recover a portion of the defrauded amount for which the applicant is no way responsible.

8. Heard learned counsel for the applicant who also filed a written note of argument. It is stated that the applicant did not do the inspection of Barbazar BO carefully for which, the misappropriation of Rs.115400/- could not have been committed by the GDSBPM Sri Tarun Tandia. It was stated that due to a typographical error in noting down the balance, such an allegation against the applicant is without any evidence. It is further alleged that the applicant received verification memo for withdrawals of more than Rs. 10000/- on which no action was taken. Such verification memos were never sent to the applicant for verification. It is stated that there was no proof in support of such contention. It was the responsibility of the SPM/APM/SBCA of Sambalpur HO to verify the same and to send to the applicant, if required as per the rule 85(ii) of POSB Manual. It is stated that as per the rule 106 of the Postal Manual, the penalty of recovery can only be imposed only when it is established that the government servant was responsible for a particular act or negligence or breach of orders or rules and such negligence/derelection caused the loss in question. It is stated that the findings on both the negligence and how it caused the loss were required to be recorded by the DA while passing his order. These points were raised by the applicant, but these were not considered by the respondents. The orders passed by the Tribunal in similar situations in OA No. 634/2009 (Sukomal Bag vs. UOI), OA No. 79/2017 , OA No. 106/2016, OA No. 849/201 and OA No. 46/2016 have been enclosed in support of the argument on behalf of the applicant.

9. Heard learned counsel for the respondents who also submitted his written note of argument stating that the applicant was the Inspector when the fraud was committed by Sri Tarun Tandia, ex-GDSBPM of Barbazar BO. It is stated during inspection, the applicant has wrongly shown the balance of one account which he verified. It is also stated that the applicant failed to verify four verification memo involving high withdrawals, which turned out to be fraudulent and had it been done, substantial part of the fraud could have been prevented.

10. Under the rule 106 of the Postal Manual, a supervisory officer can be held responsible for the loss if it is established that his negligence or dereliction of duty caused the loss or fraud in question. From the allegations against the applicant, it is seen that the Article-II of the charge-sheet mentions four verification vouchers for high withdrawals were alleged to have been sent to the applicant, who failed to comply and it is alleged that these withdrawals were fraudulent and the applicant violated the rule 85(iii) of the POSB Manual by not returning the same after verification. The applicant's plea is that he never received the same. No appreciable effort was made by the respondents to ascertain whether these memos were sent to the applicant and if he had violated the rule 85(III) of the POSB Manual as alleged in the Article-II of the charge-sheet.

11. In OA No. 79/2017, the applicant was the PA, who was allegedly failed to bring to the notice of the SPM about the excess balance retained by the primary offender in that case. The plea of the applicant was that she had mentioned about the excess cash in the Error Book which was not available for inspection by the applicant. The respondents did not accept the plea of the applicant on the basis of a letter which stated that the Error Book in question was not traceable. It was observed as under:-

"There is no evidence on record to prove any lapse 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 the present OA, the charge against the applicant is violation of the rule 85(iii) of the POSB Manual, which is linked to the loss. The applicant in his reply dated 18.2.2017 (Annexure-A/2) to the charge-sheet has stated that he had not received the alleged vouchers for verification. The disciplinary authority in his order dated 27.3.2017 (A/3) has not specifically stated if there is any proof in support of sending the said memo to the applicant. Hence, from the facts and circumstances of the present OA, the cited case is considered to be distinguishable. It is noticed that no evidence of despatch/delivery of the verification memos listed in the Article-II of the charge-sheet to the applicant has been furnished in the pleadings of the respondents in this OA.

13. In the OA No. 634/2009 (Sukomal Bag vs. UOI), it is seen that the charge against the applicant in that OA was for lack of supervision, which is not the case in the present OA. Hence, the judgment in OA No 634/2009 is inapplicable to the present OA. Similarly, other OAs cited by the learned counsel for the applicant are factually distinguishable.

14. As discussed in para 12 above, the point mentioned about non-delivery of the verification memos by the applicant in his reply dated 18.2.2017 (Annexure-A/2) to the charge-sheet has not been disproved by the disciplinary authority in his punishment order dated 27.3.2017 (Annexure-A/3), for which, it is not sustainable in the eyes of law as it is passed without refuting the claim of the applicant. Unless such claim is refuted, there is no evidence on record to justify the punishment imposed on the applicant. Therefore, the impugned order dated 27.3.2017 (A/3) and consequent order of the appellate authority dated 3.7.2017 (Annexure-A/6) are set aside and the matter is remitted to the disciplinary authority (respondent No. 3) to reconsider the letter dated 18.2.2017 (A/2) filed by the applicant in his defence and pass a fresh order in the proceedings in accordance with law within three months from the date of receipt of a copy of this order.

15. The OA is allowed in part as above with no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath