

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 111 of 2016

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

Radhakanta Pradhan, aged about 59 years, S/o late Narayan Prasad Pradhan, permanent resident of Vill./P.O. Nikirai, P.S. Indupur, Dist. Kendrapara, presently working as ASPOs (I/C), Bhubaneswar North Division, Bhubaneswar-751007.

.....Applicant

VERSUS

1. Union of India represented through the Secretary to Govt. of India, Ministry of Communications & IT, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. Member (Personnel), Postal Services Board, Department of Posts, Dak Bhawan, New Delhi-110 001.
3. Chief Postmaster General, Odisha Circle, Bhubaneswar-751001.

.....Respondents.

For The applicant : Mr. S.K. Ojha, counsel

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

Heard & reserved on : 19.7.2019 Order on : 14.8.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The OA is filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- "(i) To admit the O.A.;
- (ii) To quash the Charge Memo No. Inv/7-161/2012-13/Ch-I(Disc), dated 08.10.09.2015 (Annex.A/8).
- (iii) To quash the order No. Inv/7-161/2012-13/Ch-I (Disc), dated 28.10.2015 (Annex.A/12) of the Disciplinary Authority so also the order of the Appellate Authority dated 28.01.2016 (Annex.A/15).
- (iv) To direct the Respondents to extend the consequential benefit so also recovered amount with interest;
- (v) To pass any other order/orders as deem fit and proper for the ends of justice."

2. The facts of the case in brief are that the applicant was a Group 'B' officer under the respondents. He was served with charge memo dated 08/10.09.2015 (Annexure-A/8) under Rule 16 of CCS (CCA) Rules, 1965. After receipt of the explanation dated 14.10.2015 (Annexure-A/11) of the applicant, the Disciplinary Authority vide order dated 28.10.2015 (Annexure-A/12) imposed a punishment of recovery of Rs.2,00,000/- to be recovered from his pay and allowances in 05 equal monthly instalments @ Rs.40,000/- per month with the finding that charge pertaining to the contributory negligence on the

part of the applicant as supervisory officer had been established. The applicant filed appeal dated 07.11.2015 (Annexure-A/13) to the Appellate Authority (Respondent No.2), who passed an order dated 28.01.2016 (Annexure-A/15) rejecting the said appeal.

3. The following grounds have been advanced in the O.A.

- (i) The applicant is not responsible for the fraud or misappropriation for which charge of contributory negligence has been framed against him.
- (ii) Non-supply of documents to the applicant as requested by him was against the principle of natural justice.
- (iii) Imposition of penalty without conducting proper inquiry is illegal since the request of the applicant was for conducting such inquiry under Rule 16.
- (iv) Charges are vague and the punishment on the basis of such charge sheet and the conclusion of the Disciplinary Authority are void ab-initio.
- (v) The Appellate Authority has not applied his judicial mind before passing the order dated 28.01.2016 rejecting the appeal of the applicant, since the issues raised in appeal like violation of the principles of natural justice, contributory negligence and conduct of regular inquiry under Rule -16, non-supply of documents, etc. have not been considered.
- (vi) The disciplinary authority has overlooked the instructions contained in DG Posts letters dated 13.02.1981 (Annexure-A/17), 10.02.1975 (Annexure-A/18) and Govt. of India letter dated 19.03.2015(Annexure-A/19) and Rule-107 of P & T Manual (Annexure-A/20).
- (Vii) The impugned order is not in accordance with the order dated 09.09.2015 of this Tribunal passed in O.A. No.1077/12 (Annexure-A/21).

4. The respondents have filed their counter opposing the O.A. It is submitted that the Disciplinary Authority has assessed the lapses of the applicant after going through the charge sheet and defense statement carefully before imposing order of punishment. It is stated that it is in accordance with OM dated 06.09.2000 (Annexure-R/1). It is also stated that before issue of charge sheet, the applicant was permitted to verify all the available documents at Kendrapada Sub-Division which he had already verified and hence, permission to verify these documents again was not given to him. It was stated that when the applicant failed to furnish any reply till 28.10.15 to the Disciplinary Authority, he passed the order of punishment based on the basis of the material available on record. It is further stated that nothing could be recovered from the principal offender till the filing of counter because of lack of

urgency shown by the applicant in the matter. It was stated that one MIS Account No.832772 was ceased by him and as a result, the amount of the said pass book could not be recovered from the principal offender during his incumbency. It is further stated that the applicant did not take any action under PAD Act, 1850 against the Principal Offender in consultation with the Tahasildar concerned. Regarding the conduct of inquiry it is stated that his responsibility was established on the basis of the documents. It is further stated that the disciplinary case against the applicant was never closed by the respondents. The case referred by the applicant related to a vigilance complaint for the period when the applicant was working at Kendrapada Sub-Division. It is also stated that the Appellate Authority has passed the order in proper application of mind.

5. Applicant has filed the rejoinder stating that an ordinary SPM (Principal Offender) will not dare to misappropriate such a huge amount in one year without connivance of high officials. The Senior officers were not found responsible for the lapses, whereas the applicant was victimized. It is stated that the main reason for initiation of disciplinary proceeding was why the applicant referred this matter to CBI, for investigation. It is stated that no departmental action was taken against the main culprit for such misappropriation and no FIR was lodged against him. Other contentions in the counter have been generally denied in the rejoinder. It is further averred that the fraud in the MIS Accounts to the tune of Rs.20,99,195/- had taken place before the applicant joined and that he detected such fraud.

6. I have heard learned counsels for both the sides and also perused the pleadings on record. Applicant's counsel also filed written submissions and reiterating the stand taken on the O.A.

7. It is seen that the applicant, prior to issue of charge sheet, was served a show cause notice dated 29.06.2015 (Annexure-A/6) calling for his explanations as to why responsibility will not be fixed on him for the lapses which resulted in misappropriation. The reply given by the applicant on 03.08.2015 (Annexure-A/7), it was mentioned by the applicant that due to non-availability of records at Kendrapara and non-cooperation of the postmaster, the inquiry into the matter was delayed at the level of the applicant. It was also stated that the applicant remained in dual charge of Kendrapara and Pattamundai and he was asked by authorities to organize the PLI Mela in different places. It was stated by the applicant that some of other fraud cases were dealt by him single handedly. He referred to his tour diary in support of his reply.

8. When the charge memo at Annexure-A/8 was issued it is seen that no reply has been submitted by the applicant who asked for certain documents vide his letter dated 14.10.15 (Annexure-A/11). Then the punishment order dated 28.10.2015 (Annexure-A/12) was issued. It is seen that at no point of time there seems to be a request of the applicant in his reply to the Disciplinary Authority for conducting the inquiry to the charges framed against the applicant. No document has been furnished in support of his contentions in Paragraph 5 (iv) of the O.A. that the request was made for the delinquent for conducting the inquiry under Rule-16.

9. When the matter was heard for admission by this Tribunal vide order dated 26.02.2016, the respondents were directed not to take any further action in pursuance to the order dated 28.10.15 (Annexure-A/12).

10. The impugned punishment order dated 28.10.2015 (Annexure-A/12), the following observations were made:-

"In view of above, Shri Pradhan has failed fully to defend his case as to (1) why he failed to complete the past work verification even if a squad was formed for the purpose, (2) why did he carry out annual inspection of 2012 of Karilopatna SO beyond one year, when he was aware of the fraud case (3) why he remained silent to submit periodical development of SB-46 notices issued with response thereon, over a period of more than one year (4) how his SPOs Shri G.C. Mohanty had non-cooperated with him for which he failed to seize preliminary records from HO such a Specimen Signature book & SO ledger particulars and finally (5) why did not he undertake timely examination of one depositor of MIS account No..832772 over a period of one year wherein an amount of Rs.1,65,000/- was alone defrauded by the SPM, Karilopatna SO. In nutshell, what I find from his defence is that he is completely silent on his own inaction, admitting his contributory negligence in this massive fraud case. Throwing the entire gauntlet on the shoulder of his previous SPOs Shri G.C. Mohanty without nailing him to counter in this fraud case, can not absolve him from his contributory responsibility.

As such, I hold him entirely responsible for lapses cited above and consequential loss occurring thereafter to the tune of 20,99,195/- including Rs.1,65.000/- in the MIS passbook account No.832772 and therefore I Shri Tilak De, Chief PMG, Odisha Circle, Bhubaneswar in consideration of his superannuation on 31st March 2016, do hereby order that a sum of Rs.2,00000 be recovered from his pay and allowances in 05 equal monthly instalments @ Rs.40,000/- each only starting from November 2015."

11. It is clear from the above that there is the charge of negligence and delay in inquiry which have been established according to the Disciplinary Authority. I do not find any satisfactory explanation furnished by the applicant against the charge of delay in finalizing his inquiry into the fraud particularly with reference to one MIS account No. 832772 in which Rs.1,65,000/- was misappropriated by the concerned SPM. The appeal filed by the applicant, copy of which is at Annexure-A/13 of the O.A. was also silent about such findings of the Disciplinary Authority. Vide the order of the Appellate Authority vide Annexure-A/15, each of the grounds raised by the applicant in his appeal was

considered and after due consideration the appeal has been rejected by the appellate authority.

12. With regard to the contention in the O.A. regarding non-adherence of the rule 106 and 107 of the PMT Manual (Annexure-A/20), the above rules read as under :-

"Imposition of the penalty of recovery

106. In the case of proceedings relating to recovery of pecuniary losses caused to the Government by negligence, or breach of orders by a Government servant, the penalty of recovery can be imposed only when it is established that the Government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach caused the loss.

107. In a case of loss caused to the Government, the competent disciplinary authority should correctly assess in a realistic manner the contributory negligence on the part of an officer and while determining any omission or lapses on the part of an officer, the bearing of such lapses on the loss considered and the extenuating circumstances in which the duties were performed by the officer shall be given due weight."

13. It is seen from the punishment order of the Disciplinary Authority that the lapses on the part of the applicant in this serious matter involving loss to Government, have been established as per the findings of the Disciplinary Authority and nothing has been furnished in the pleadings of the applicant to rebut such findings of the Disciplinary Authority and the Appellate Authority, who has also agreed with the Disciplinary Authority. The applicant has blamed his senior officers for delay, without furnishing any materials to corroborate his allegations. As a supervisory officer of the concerned SPM, it was the duty of the applicant to complete the inquiry and initiate appropriate action as per law against the culprit. As stated in the counter, no amount could be recovered from the Principal Offender due to such delay on the part of the applicant.

14. It is the settled law as per the judgment of Hon'ble Apex Court in catena of cases that this Tribunal has limited power to interfere in the disciplinary cases. No violation of the statutory rules on the part of the respondents has been established in the disciplinary proceeding. Hence, I am of the considered opinion that no adequate reasons have been furnished in the O.A. justifying any interference of the Tribunal in the matter. The O.A. being devoid of merit is accordingly dismissed. There will be no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER(Admn.)

K.B.

