

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/479/2016

Date of Reserve:29.08.2019

Date of Order:24.10.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Nihar Ranjan Patnaik, aged about 59 years, S/o. R.K.Patnaik, Postal Assistant, Bhubaneswar GPO, Bhubaneswar-751 001, Dist-Khurda.

...Applicant

By the Advocate(s)-M/s.S.Patra-I
S.Rath
D.D.Sahu

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Dak Bhawan, New Delhi-110 001.
2. Chief Post Master General, Odisha Circle, Bhubaneswar-751 001.
3. Director of Postal Services (Headquarters Region), Office of the Chief PMG, Odisha Circle, Bhubaneswar-751 001, Khurda.
4. The Senior Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar-751 009.
5. The Senior Postmaster, Bhubaneswar GPO, Bhubaneswar-751 001, Khurda.

...Respondents

By the Advocate(s)- Mr.P.K.Mohanty

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant was working as Postal Assistant, Bhubaneswar GPO under the Department of Posts at the time of filing of this Original Application. While working in PRI(P), he was issued with a statement of imputation of misconduct in respect of his having worked as P.A. in Summary Branch of GPO, Bhubaneswar for the period from 22.07.2012 to 24.08.2012, whereby it was alleged that the applicant had grossly neglected his duties and contributed to the act of commission of misappropriation by one Narandra Kumar Balabantray and has such, he failed to maintain devotion to duty as enjoined in Rule-3(1)(ii)

of CCS(Conduct)Rules, 1964. In this connection, the applicant was proceeded against under Rule-16 of CCS(CC) Rules, 1965 vide Memo dated 20.12.2013 (not annexed to the O.A). The applicant submitted a representation to this and in consideration of his representation, the Disciplinary Authority vide /99/12-13/SOs-9 dated 24.04.2014 (A/6) imposed penalty as under:

"Therefore, the undersigned orders for recovery of Rs.32,923/- (Rupees thirty two thousand nine hundred twenty three) only from the pay of Sri Nihar Ranjan Pattnaik, Postal Assistant, Bhubaneswar GPO (now working as PRI(P) in 06 instalments @ Rs.5,000/- (Rupees five thousand) only per month the last one being Rs.7,923/- (Rupees seven thousand nine hundred twenty three) only starting from the month of April, 2014".

2. The applicant submitted an appeal dated 28.04.2014 (A/7) to the Appellate Authority and the Appellate Authority vide Memo No.ST/51/8/2014 dated 28.10.2015 (A/8) rejected the appeal as devoid of merit. Aggrieved with this, the applicant has approached this Tribunal in this O.A. praying for the following reliefs:

- i) The orders dated 24.04.2014 under Annexure-A/6 and dated 28.10.2015 under Annexure-A/8 be quashed.
- ii) The Respondents be directed to refund the recovered amount from the applicant with 13% interest with cost.
- iii) Pass any other order/orders as would be deemed just and proper.

3. The grounds on which the applicant has mainly based his reliefs are as follows:

- i) As per Clause 106 & 107 of Postal manual, Volume-III read with DG(P&T) Memo No.6/8/59-Disc. Dated 09.07.1959 (A/9) every official responsible for misconduct or negligence should be suitably dealt with. It is of equal importance that the concept of contributory negligence should be correctly understood by the Disciplinary Authority and there should not be any attempt to somehow or other to effect recovery of the entire loss sustained by the Department by imposing punishment whereas, the Disciplinary Authority while imposing punishment in the instant case, failed to scrupulously follow the said instructions, as a result of which many dishonest persons have been escaped and the innocent one, the present applicant has been punished..
- ii) The applicant has pointed out that in the earlier orders issued by the Divisional Office vide A/2 & A/3, there were instructions not to post Sri Balabantaray in a sensitive seat involving cash transactions. Despite that the then SSPOs of Bhubaneswar Division Shri Aditya Kumar

Nayak gave independent charge to Sri Balabantray as SPM of a single-handed SO, namely Bhubanipur SO.

- iii) Shri Aditya Kumar Nayak, SSPOs Bhubaneswar used to go on frequent visits to rural areas and Bhubanipur SO comes on the way. As per Clause 234 of Postal Manual, Volume-VIII (A/10), while on tour, the Superintendent of Post Offices should pay unexpected visits to post office at places through which he travels and satisfy himself in a general way that the cash and stamp balances of the office are correct. Had Mr.Nayak shown a little bit interest to look into the matter through surprise visit to Bhubanipur SO, misappropriation by Shri Balabantray could have been prevented. Besides, it has been pointed out that the said Shri Nayak was well aware of the attitude and integrity of Shri Balabantray and because of his lack of attention, Shri Balabantray got scope to misappropriate Government money.
- iv) Because of the inspection not being carried out by the Inspector of Posts, Nimapara Sub Division as per the norms and stands within the prescribed time limit, this paved path to Shri Balabant Ray to swindle away the Government money.
- v) As per Rule-270 of Postal Manual, Vol.III (A/11), the Inspecting Authorities should periodically pay visit to Sub Post Offices/Branch Post Offices under their jurisdiction and should satisfy themselves that cash and stamp balance of the Post Office are correct. As per Note-1 under Clause-270 of the Postal Manual, checking of cash and stamp balances is compulsory at the time of visits to the Post Offices by all Supervising Officers including the Divisional Superintendent in case of Branch and other Sub Post Offices where the treasury duties are being performed by the Branch/Sub Post Master himself. In the instant case, no periodical visit has been made by any of the Inspecting Authorities to Bhubanipur SO where the Sub Postmaster Shri Balabantray, performing the treasury duties during the period from 30.03.2011 to 08.10.2012 misappropriated the Government money. This fact has been suppressed by the Respondents while imposing punishment on the applicant.
- vi) The fraud was detected on 08.10.2012 with a shortage of cash to the tune of Rs.12,80,000/-. Even though there were around 10 subsidiary offenders working in Treasury, Sub Account and Summary Branch of Bhubaneswar GPO who had contributed to this, only the applicant was considered to have contributed to such fraud, leaving aside the Inspecting Authorities.
- vii) One Sarat Chandra Bal, an approved LSG official had joined as APM (Treasury), Bhubaneswar GPO on 14.09.2011 on regular basis and worked continuously till 23.08.2012 whereas the alleged fraud had been committed by Shri Balabantray during the period from 30.03.2011 to 08.10.2012. The applicant being not an approved LSG official had been ordered to work as APM(Treasury), Bhubaneswar GPO on several dates only to manage the leave vacancy of Shri Bal in addition to his own duties as PRI(P). Therefore, it was not proper on

the part of the respondents not to bring within the ambit of inquiry the regular incumbent Shri Sarat Chandra Bal, contributing to such fraud.

- ix) In sum and substance, the grounds urged by the applicant are that the fraud which has been committed by Shri Balabantray, while working as SPM, Bhubanipur SO being actuated with contributory negligence, there are other officials who had contributed to this and not the applicant only. In the circumstances, it was incumbent upon the respondents to tag all those officials at the helm of affairs along with the applicant for the purpose of disciplinary action.

4. Per contra, the respondents have filed a detailed counter opposing the prayer of the applicant. According to respondents, since the applicant did not discharge his duty properly, he cannot be absolved of his responsibilities by pointing out the fault on others. Had he carried out his assigned duties diligently and brought the irregularities to the notice of his immediate supervisor, necessary follow up action could have been taken in time as a result of which Shri Naradenra Kumar Balabantray could not have got scope to misappropriate Government money. Respondents have pointed out that the applicant kept himself away from the basic work of justifying retention of excess balance by Shri Balabantray for a long period which is totally in contravention of the provisions of Rule-102 of Postal Manual Volume-VI, Part-III. This action facilitated occurrence of fraud by Shri Balabatray. It has been stated that the applicant was proceeded against under Rule-16 of CCS(CCA) Rules, 1965. In consideration of his representation and on carefully scrutiny of the relevant documents/records, the Disciplinary Authority held the applicant guilty of the charge and awarded the punishment of recovery of proportionate amount of Rs.32,923/- from the salary of the applicant. The appeal preferred by the applicant was also rejected by the Appellate Authority as devoid of merit.

5. Respondents have pointed out that Shri Balabantray, the Principal Offender had been proceeded against under Rule-14 of CCS(CCA) Rules, 1965 and has been imposed punishment of removal from service vide order dated 20.03.2015 (R/1). According to respondents, since the applicant had exhibited gross negligence to his duties which led to

fraud to Shri Balabantray, the punishment of recovery as imposed by the Disciplinary Authority and confirmed by the Appellate Authority should not be interfered with.

6. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submissions filed by the respective parties. In the written notes of submission, the applicant has brought to the notice of this Tribunal the decisions of this Tribunal in O.A.No.97 of 2011 (decided on 22.03.2012) and O.A.No.260/00106 of 2016 (decided on 25.04.2017) claiming to be similarly situated person and therefore, this Tribunal should pass the similar orders..

7. We have considered the rival submissions at some considerable length. We have also perused the representation submitted by the applicant to the Charge Memo, the orders of the Disciplinary Authority, Appeal preferred by the applicant against the orders of the D.A. and the orders of the Appellate Authority. It is not a case where the indictment of charge of misappropriation is directly attributable to the applicant. However, it has been alleged that the applicant while working in Summary Branch of Bhubaneswar GPO from 22.07.2012 to 24.08.2012 was entrusted with the work of scrutinizing the SO daily accounts received and bringing the irregularities to the notice of APM (Treasury), Bhubaneswar GPO and wherever necessary, he had to make correspondence with the lower formations to rectify the irregularities noticed. On verification by the Inspector of Posts, Nimapara Sub Division on 08.10.2012, it was found that one Narendra Kumar Balabantray SPM, Bhubanipur SO had kept Rs.12,80,000/- short in cash and stamp balance in the office, which, he stated to have spent for his personal requirement. It is a fact on record that the said Balabantray while working as SPM, Bhubanipur SO during the period from 30.03.2011 to 08.10.2012 had retained excess cash without justifiable liability. From this, it is clear that the said Balabantray had kept excess cash without justifiable liability from 30.03.2012, i.e., earlier to applicant's working in Summary Branch, i.e., 22.07.2012 and till 01.10.2012, i.e., after the applicant's duties as such was over on 24.08.2012. Although we agree with the proposition advanced by the Respondents that had the applicant discharged his duties with due

diligence and sincerity, the possibility of commission of misappropriation of Government money could have been curbed, but, at the same, this Tribunal cannot brush aside the fact that a duty was too cast on the officials who had worked in the same capacity or in the supervisory capacity before 22.07.2012 and after 24.08.2012, to elicit the culpability on the part of Shri Balabantray and in such eventuality, the applicant alone could not have been made a scapegoat.

8. Be that as it may, perusal of the decision of this Tribunal in O.A.No.97 of 2011 (Satyaranjan Das vs. UOI& Ors) , as relied upon by the applicant, makes it clear that the applicant therein had been proceeded against under Rule-16 of CCS(CCA) Rules, 1965 since he failed to perform his duty of preparation of summary work of the Sub Post Office, viz. Checking of balances of Sub Post Offices from daily accounts of sub Post Office with reference to authorized balance, checking of excess cash balance memo and also failed to bring the irregularity if any noticed by him to the attention of the Postmaster. This Tribunal, vide order dated 22.03.2012 granted relief to the applicant therein relying on an earlier decision dated 11.11.2010 in O.A.No.634 of 2009 (Sukemal Bag vs. UOI & ors.), against which W.P(C) No.4343 of 2011 filed by the Respondent-Department has been dismissed by the Hon'ble High Court vide order dated 22.08.2011 in the following terms:

"Heard learned counsel for the petitioner.

This Writ Petition is directed against the order of the Central Administrative Tribunal, Cuttack Bench, Cuttack dated 11.11.2010 in OA No.634 of 2009. The opposite party was the applicant before the Tribunal. The Original Application was filed before the Tribunal challenging the order of punishment directing recovery of an amount of Rs.60,000/- from the pay and allowance of the opposite party on monthly instalments of Rs.6,000/- starting from December, 2007 onwards. The Tribunal in Paragraph-4 of the impugned order specifically came to a conclusion that it is not the case of the petitioners that the opposite party had misappropriated the Government money nor was the case of the petitioners that for the direct culpable negligence pecuniary loss was caused to the petitioners. It is the positive case of the petitioners that due to failure in supervisory duty of the opposite party another employee misappropriated the Government money and subsequently he died by committing suicide.

On the basis of the aforesaid observation, the Tribunal directed that no punishment for recovery of a sum of Rs.60,000/- could have been imposed on

the opposite party by the Disciplinary Authority and accordingly allowed the Original Application and set aside the order of punishment.

After hearing learned counsel for the petitioners and on perusal of the reasons assigned by the Tribunal in the impugned order, we find no justification to interfere with the same.

The Writ Petition is accordingly dismissed".

9. At this juncture, it is to be noted that this Tribunal while disposing of O.A.No.97 of 2011, had observed as under:

"8. The allegation of misappropriation of Government money is directed against the SPM, Rajnigiri SO. It is not the case of the Respondents that the applicant had misappropriated the Government money nor was it the case of the Respondents that the Applicant's culpable negligence led to the pecuniary loss to the Government. We find no basis for apportionment of loss so as to recover Rs.20,000/- from the Applicant. On being asked the learned ASC appearing for the Respondents as to on what basis this apportionment misappropriated amount was arrived at by the Disciplinary Authority, he was not able to furnish any satisfactory answer. Therefore, on examination of the case in hand vis-a-vis the case of Sukumal Bag (supra) we find no distinction between both the cases so as to take contrary view from the view taken by this Tribunal in the case of Sukumal Bag (supra). Accordingly, by applying the ratio of the aforesaid order of this Tribunal, we quash the impugned orders of the disciplinary authority dated 28.11.2011 (Annexure-A/3) and Appellate Authority dated 24.6.2011 (Annexure-A/6)".

10. Viewed from this angle, we do not find any factual distinction of the case in hand with that of O.A.No.97 of 2011. We may add that in the instant case, there were other officials who appear to have contributed negligence in their duties which led to commission of fraud by Shri Balabant Ray, were left scot free, whereas only the applicant was proceeded against and imposed punishment. Besides this, we would also like to note that even if there was clear indication about the conduct and integrity of Shri Balabant Ray not to post him in sensitive seat dealing with cash transactions, for the reasons best known, the same was utterly disregarded. Since, in the instant case, involvement of many officials to the contributory negligence is writ large, it was improper and unreasonable on the part of the respondents authority to proceed against and impose punishment on the applicant alone.

11. For the reasons discussed above, we quash and set aside the Article of Charge at A/4, orders of the Disciplinary Authority dated 24.04.2014 (A/6) and the orders of the Appellate Authority dated 28.10.2015 (A/8) and direct the respondents to refund the amount already deducted from the salary of the applicant within a period of one month from the date of receipt of this order, failing which, the respondents shall be liable to pay interest on the delayed period till the actual payment is made.

12. In the result, the O.A. is thus allowed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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