

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 13124 OF 2018

In the matter of an application under Articles 226 & 227
of the Constitution of India.

AFR

Director General (Posts),
Govt. of India & Ors.

.....

Petitioners

-Versus-

Medini Prasad Dash

.....

Opp. Party

For Petitioners

: Mr. P.K. Parhi, ASGI along
with Mr. B.K. Padhi, CGC

For Opp. Party

: Mr. D.P. Dhalsamanta,
Advocate

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MISS JUSTICE SAVITRI RATHO**

DECIDED ON : 09.05.2022

DR. B.R. SARANGI, J. The petitioners, by means of this writ
petition, seek to quash the order dated 14.11.2017
passed in O.A. No.304 of 2015, by which the Central
Administrative Tribunal, Cuttack Bench, Cuttack, while
allowing the said O.A., has quashed the charge memo
dated 12.09.2014, the order dated 31.12.2014 passed
by the disciplinary authority and the order dated

11.05.2015 passed by the appellate authority, and directed that any recovery made from the opposite party may be refunded to him within a period of four weeks from the date of receipt of the order.

2. The factual matrix of the case, in brief, is that the opposite party, who was the applicant in O.A. No.304 of 2015, had joined as Postal Assistant on 18.03.1980 at Sambalpur Head Office under the Department of Posts. While he was working as Postal Assistant at Bargarh Head Office w.e.f. 31.05.2013, he was issued with a charge memo on 12.09.2014 under Rule-16 of CCS (CCA) Rules, 1965. In response to same, he filed his written defence on 22.09.2014 stating therein that on 16.04.2010 he came to know that one Gokul Sahu, GDSBPM, Talpadar Branch Office was a paralysis patient and his work was being managed by his son Tekchand Sahu. After coming to know of the irregularity, he had informed the then Inspector of Post Offices, who visited the Branch Office on 25.06.2010. The Inspector of Post Offices in his report had pointed

out the irregularity. Subsequently, the next Inspector of Post Offices also inspected the Branch Office, but could not detect the fraudulent case. On receipt of information about the misappropriation in one Savings Bank Account No.1298889 of Gajindra Bag, the opposite party called for the pass book and informed the Inspector of Post Offices, who visited Talpadar Branch Office, seized the office key and gave the charge of Branch Office to the EDDA Duitiya Bhorasaga. It was further stated that the fraud was discovered by him and therefore, the charges framed against him are not valid and he should be exonerated.

2.1 The disciplinary authority, however, did not accept the defence offered by the opposite party and held him guilty of lack of supervision and concluded that had the opposite party observed the due procedure laid down by the department, then the fraud at Talpadar Branch Office could have been detected earlier and further loss of government money could have been avoided. By so concluding, the disciplinary authority

imposed punishment on him for recovery of Rs.1 lakh in twenty installments at the rate of Rs.5,000/- per month with effect from the pay of January, 2015. Against the said order of the disciplinary authority, the opposite party filed an appeal before the appellate authority, viz., the Director of Postal Services, Sambalpur, which was disposed, vide order dated 11.05.2015, confirming the punishment awarded by the disciplinary authority

2.2 Aggrieved by the said order, the opposite party filed O.A. No.304 of 2014 before the Central Administrative Tribunal, Cuttack Bench, Cuttack, seeking to quash the charge memo dated 12.09.2014, the order dated 31.12.2014 passed by the disciplinary authority, viz., the Superintendent of Post Offices, Sambalpur Division, and the order dated 10.02.2015 passed by the appellate authority, viz., the Director, Postal Services, Sambalpur Region. The tribunal, vide order dated 14.11.2017, quashed the aforementioned charge memo as well as the orders of the disciplinary

authority and the appellate authority. Hence this writ petition.

3. Mr. B.K. Padhy, learned Central Government Counsel appearing for the petitioners contended that the order dated 14.11.2017 passed by the tribunal in O.A. No.304 of 2014 suffers from non-application of mind. As such, no illegality or irregularity was committed by the disciplinary authority in imposing penalty of Rs.1 lakh and directing to recover the same from the opposite party in twenty instalments @ of Rs.5,000/- per month with effect from the pay of January, 2015, which was confirmed by the appellate authority. Therefore, the order dated 14.11.2017 so passed by the tribunal in O.A. No.304 of 2015 has to be quashed.

4. Mr. D.P. Dhalsamanta, learned counsel appearing for the opposite party, per contra, contended that the charge memo dated 12.09.2014 issued against the opposite party was vague and unspecific and the action of the petitioners violates Articles-14 and 16 of

the Constitution of India. More so, the disciplinary authority had imposed penalty without conducting an inquiry, and direction for recovery of Rs.1 lakh from the opposite party was unreasonable, since no assessment was made for the pecuniary loss. Thereby, the order dated 31.12.2014 issued by the disciplinary authority was without application of mind, since no misappropriation was done by the opposite party himself. Therefore, the order of recovery was issued by the disciplinary authority without explaining the manner in which the lapses on the part of the opposite party had a link with the loss sustained by the department. It is further contended that the opposite party had detected the fraud and because of his action, the Inspector of Post Offices conducted the inquiry and submitted the report. Therefore, it is contended that the punishment imposed on the opposite party is unjust and liable to be quashed and, as such, no recovery should have been made from the opposite party without conducting a proper inquiry. To substantiate his contentions, he has relied upon the judgment of the

apex court in **O.K. Bhardwaj v. Union of India**, (2002) SCC (L&S) 188 and **Ramachandra Keshav Adke (Dead) v. Joti Chavare**, AIR 1975 SC 915.

5. This Court heard Mr. B.K. Padhy, learned Central Government Counsel appearing for the petitioner and Mr. D.P. Dhalsamanta, learned counsel appearing for the opposite party by hybrid mode. Pleadings have been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. On careful perusal of the factual matrix, as delineated above, it appears that loss was caused to the department to the tune of Rs.1 lakh due to irregularity in maintenance of record. As such, the lapses, which were detected, were not attributable to the opposite party. Rather, since his predecessor, namely, Gokul Sahu was not able to hold the office because of his paralysis, his son was authorized to do the work and he did not discharge his duty as was required to be

done as per the prescribed procedure. When the opposite party joined the post, he detected the irregularities committed by his predecessor and he brought to the notice of the authority to cause an enquiry. On that basis, enquiry was conducted and it was found that there was fraud and negligence on the part of the predecessor of the opposite party with regard to the maintenance of the pass books from Talpadar B.O. for addition of interest and for checking the transactions. Since the opposite party had brought this fact to the notice of the higher authority, on that basis an enquiry was conducted by the authority and the opposite party was prosecuted by framing charge against him. Therefore, Gokul Sahoo, the predecessor of the opposite party, got scope to commit fraud of Rs.2,53,830.20 in different SB/RD accounts out of the total fraud of Rs.6,34,924.80, but no action was taken against him. No steps were also taken to call for the SB pass book account nos.1298926, 1298842, 1298843 and 1298675 of Talpadar BO to settle the discrepancies between balance shown in interest statement and that

in SO ledger during posting of interest for the year 2009-10, violating the provisions of Rule-73(4) of POSB Manual Volume-1. The petitioners submitted that the opposite party had filed O.A. No.88 of 2015 before the tribunal earlier and the said O.A. was disposed of at the admission stage ordering the petitioner no.4 to consider the appeal filed by the opposite party. The punishment order imposed by the disciplinary authority, which was confirmed by the appellate authority, was challenged by the opposite party before the tribunal by filing O.A. No.304 of 2015.

7. While entertaining the O.A., the tribunal passed interim order protecting the interest of the opposite party. The petitioners filed M.A. No.312 of 2017 praying for vacation of interim order, since the opposite party was to retire on superannuation on 31.10.2017 and it would be difficult to recover the amount from the retirement benefits under Rule-73 of CCS (Pension) Rules. The same was heard on 30.10.2017 and reserved

for orders, after hearing from learned counsel for both the parties.

8. The memorandum of charge framed against the opposite party is placed on record as Annexure-1 dated 12.09.2014. In response to same, the opposite party filed written statement of defence specifically stating the following aspects:

“ But after my joining on 16.04.10, I came to know more about the irregularity and heard such things about him from many quarters. Then suddenly I informed the matter to then Sd IPO Srei Girish Chandra Sahu who paid a visit to the BO on Dt.25.06.10. He in his I.R. Report had clearly mentioned about the nature of the work of Sri Tekchand Sahu. In the introductory para of his I.R. report he mentioned clearly that-

- (i) The regular BPM Sri Gokul Chandra Sahu was a Paralysis patient bedridden and was unable to work as BPM.*
- (ii) The work of the BPM was being managed by his son Sri Tekchand Sahu unauthorizedly.*
- (iii) The work of his son was suspicious and he had also pointed out about the overwriting and ensure of SB-26 PB opening receipts.”*

When a specific grievance was made by the opposite party, as mentioned above, it was incumbent upon the authorities to cause proper inquiry and come to a conclusion, but no inquiry was conducted to that effect.

9. As it appears, while imposing penalty of recovery of an amount of Rs.1 lakh from the opposite party, minimum prescribed procedure was not followed in the light of the judgment in **O.K. Bhardwaj** (supra), wherein the apex Court laid down the principle that opportunity of being heard is essential even in case of minor penalty. As such, reliance was placed by the opposite party on **Ramachandra Keshav Adke (dead)** (supra), wherein the apex Court held that where the power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden.

10. The above being the principles of law laid down by the apex Court, in the instant case, though alleged fraud of defalcation by the BPM was brought to the notice of the authorities by the opposite party by filing written statement of defence, but the same was not taken into consideration in proper perspective by the authorities. As a matter of fact, regular BPM Gokul Chandra Sahu was bedridden, being a paralysis patient,

and the work of BPM was being managed by his son Tekchand Sahu unauthorizedly. This fact was proved during the course of inquiry and the petitioners do not dispute the same. But the petitioners made effort to link the opposite party with such irregularities. However, while fixing the responsibility on the opposite party and imposing penalty of Rs.1 lakh to be recovered from him, the petitioners have failed to conduct any inquiry in respect of the BPM, at whose instance the defalcation was committed. The petitioners, knowing fully well that defalcation was done by the BPM, fixed the responsibility on the opposite party alleging supervisory lapses on his part. Since the opposite party had brought to the notice of the authorities with regard to the fraud committed by the BPM, an inquiry was caused and defalcated amount was detected, that itself cannot be recovered from the opposite party, as because he was no way responsible, rather, as a bona fide employee, he had brought the defalcation to the notice of the authorities during his tenure.

11. Before the tribunal reliance was placed by the opposite party on the earlier orders dated 22.06.2017 and 13.10.2017 passed by the tribunal in O.A. No.582 of 2016 and O.A. No.241 of 2014 respectively, whereby in similar circumstances the tribunal had allowed the benefit by quashing the order of punishment imposed by the authorities. Applying the same to the facts of the present case, the tribunal held that the opposite party had brought to the notice of the Inspector of Post Offices that defalcation was committed by the BPM, but this aspect was not taken into account either by the disciplinary authority or by the appellate authority. While trying to establish the lapses on the part of the opposite party, due to lack of supervision, the disciplinary authority and the appellate authority failed to justify how they arrived at a figure of Rs.1 lakh as a compensation for the loss of Rs.6,34,924.80 sustained by the department. Such fixation of compensation is arbitrary, unreasonable and contrary to the provisions of law.

12. In view of such position, if the loss caused to the department was only because of lack of supervision on the part of the authority in the helm of affairs, then the opposite party is not a party to the loss caused to the department, as his predecessor had committed the irregularities. Therefore, the punishment, imposed on the opposite party by the disciplinary authority, which has been confirmed by the appellate authority, is without application of mind and, as such, cannot sustain in the eye of law.

13. In that view of the matter, the tribunal is well justified in quashing the charge memo dated 12.09.2014, the order dated 31.12.2014 passed by the disciplinary authority and the order dated 11.05.2015 passed by the appellate authority, and directing that any recovery made from the opposite party may be refunded to him within a period of four weeks from the date of receipt of the order. Therefore, this Court does not find any illegality or irregularity in the order dated 14.11.2017 passed by the Central Administrative

Tribunal, Cuttack Bench, Cuttack in O.A. No.304 of 2015 so as to warrant interference of this Court.

14. Accordingly, the writ petition merits no consideration and the same is hereby dismissed. However, there shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

SAVITRI RATHO,J.

I agree.

(SAVITRI RATHO)
JUDGE

Orissa High Court, Cuttack
The 9th May, 2022, Alok

