

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1509/97

New Delhi, this the 31st day of August, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Sh. Bhagwat Prasad
employed as Postal Assistant
Jangpura Post Office, New Delhi
under South East Postal Division
New Delhi resident of Kalyanpuri, Delhi
c/o Shri Sant Lal, Advocate,
C-21(B), New Multan Nagar, Delhi-56.Applicant

(By Advocate: Shri Sant Lal)

Vs.

Union of India through

1. Secretary,
Ministry of Communications,
Department of Posts,
Dak Bhawan, New Delhi.
2. The Member (Personnel),
Postal Services Board,
Dak Bhawan, New Delhi.
3. The Director Postal Services (P),
Delhi Circle, Meghdoot Bhawan,
New Delhi.
4. The Senior Superintendent of Post Offices,
South East Division,
Golf Link, New Delhi.
5. The Sub Divisional Magistrate/
Asstt. Collector, Preet Vihar,
Wenter Complex,
Nand Nagri, Delhi - 93.Respondents

(By Advocate: Shri Harvir Singh proxy for Mrs. Protima K. Gupta).

O R D E R

Hon'ble Shri T.N.Bhat, Member (J)

This OA is directed against the orders as at Annexures A-1, A-2, A-3, A-4 and A-5. By the order as at Annexure A-1 issued by the S.D.M./Assistant Collector, respondent no. 5 hereinabove, an amount of Rs. 55,117/-.

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is sought to be recovered from the applicant as arrears of land revenue. This letter is issued on a reference being made by the superior officers of the applicant in pursuance to the orders of punishment issued against the applicant on completion of disciplinary proceedings against him on the charge that while working as Treasurer at Lajpat Nagar Post Office the applicant had failed to keep the cash worth Rs. 55,117.23 in a safe and secure condition as a result whereof the aforesaid cash and five cheques amounting to Rs. 1,37,336/- were lost, the box containing the cash and the cheques having been removed by some miscreants from the premises of the aforesaid post office.

2. It was alleged that the entire amount and the cheques were kept in a box at a stool near applicant's table and when the applicant went to make a telephone call to the Lodhi Road Head Office in connection with some official matters he instead of keeping the box in the cash chest embeded in the treasury cage left the tin box ~~at~~ ^{on} the stool ~~etc~~ in an unguarded and unsecured condition as a result of which the tin box was stolen alongwith the cash and cheques.

3. Annexure A-2 is the order by which the disciplinary authority, namely, the Senior Superintendent of Post Offices, South East Division, New Delhi has imposed the punishment of reduction of the applicant's pay by three stages (from Rs. 1300 to Rs. 1210/-) for a period of three years w.e.f. 1.2.1995 with further direction that the applicant will not earn increments during the period of reduction and on the expiry of the

[Signature]



period, the reduction in his pay will have the effect of postponing his future increments in pay also. The period of suspension w.e.f. 4.11.1990 to 17.12.1990 has also been treated as "Non-duty" for all purposes and nothing has been held to be payable to the applicant for that period other than subsistence allowance already paid.

4. Annexure A-3 is the report of the Enquiry Officer according to which the charge has been held to be proved against the applicant that he left the treasury cage unguarded and unsecured resulting in loss of the cash and cheques.

5. As regards Annexure A-4, ^{that} ~~which~~ is an order dated 27.11.1996 passed by the appellate authority, by which the appeal preferred by the applicant has been rejected. The order has been passed by the Director, Postal Services, Delhi Circle.

6. Lastly, we have the order dated 2/3-6.1997 passed by the Member (P), Postal Services Board by which the revision petition filed by the applicant before him has been rejected as being without any merit.

7. We have heard the learned counsel for the parties at length and have perused the material on record.

8. The essential facts giving rise to the disciplinary proceedings are not in dispute. It is the admitted case of the parties that the applicant was working as Teasurar-I in the aforesaid post office and there was another Treasure also who was designated as

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Treasuror-II. Both of them used to sit in the same room/cabin. It is also not disputed that the applicant went out for a few minutes to make a telephone call relating to official matters and when he returned back to his seat he found the tin box containing the cash and cheques missing.

9. It is, however, the contention of the applicant that while leaving his seat he had entrusted the tin box to Treasuror-II, namely, Shri Ran Singh Chahal, and that it was due to the negligence of the aforesaid Treasuror-II that the tin box was stolen. In this regard, it is averred by the applicant that Sh. Chahal also left his seat leaving the tin box uncared for and it was for this reason that somebody took away the tin box containing the cash and cheques.

10. More importantly, it is contended by the applicant that both Sh. Chahal as well as the Post Master Incharge of the Post Office were also served with chargesheets in which it was established against them that they had not taken proper care of the cash Box and that the charges against both of them were held proved. On this ground the applicant prays for quashing the impugned orders. The aforesaid two officials have been awarded lesser punishments than the applicant.

11. The aforesaid contentions of the applicant have not been denied by the respondents. However, ^{the} a case set up by the respondents is that it was primarily the duty of the applicant to take proper care of the cash as he was ^{the} Treasuror Incharge while Sh. Ran Singh Chahal had to take care of other things entrusted to him and that,

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therefore, the aforesaid Mr. Chahal could not be held responsible for the negligence relating to the tin box. The main contention of the respondents is that when the applicant left his seat to make a telephone call he ought to have taken the tin box to the safe which is embedded in the ~~floor~~ ^{floor} and only then left his seat. It is, however, not disputed that this procedure is normally gone through in the evenings at the close of the day when the cash box is kept in the embedded chest/safe. Therefore, we cannot agree with the respondents that even when the applicant's absence from his seat was for only a few minutes he was required under the rules and instructions to keep the cash box in the safe.

12. But the fact remains that it was the sole responsibility of the applicant to keep the cash and other things in safe custody during working hours. This is also clear from the instructions issued by the Postal Department. Under para 30 of the aforesaid instructions the Treasurer is solely responsible for the safe custody during working hours of all the money, articles, documents and property contained in the office safe from which current transactions are carried on. In offices where a separate Assistant Treasurer (in the instant case Treasurer-II) is sanctioned independent of the Treasurer he will be responsible for sale, custody and distribution of stamps, postal stationery, Reply Coupons and saleable publications. In view of this position we do not find any infirmity in the finding recorded by the enquiry officer and acted upon by the disciplinary authority.

By Mr. ...

13. However, as regards the quantum of punishment we do find that there has been non-application of mind on the part of the disciplinary authority as well as the appellate authority and the revisional authority. As already mentioned, the applicant had left his seat when Treasurer-II was still present in the cabin and when the tin box containing the cash and cheques was found missing the Treasurer-II was also chargesheeted for precisely the same charges as that served upon the applicant. In the circumstances our considered view is that the two officials should not have been treated differently so far as the quantum of punishment is concerned. One may even go to the extent of stating that the gravity of the misconduct committed by Sh. Chahal was more than that of the applicant. However, in view of the fact that the applicant was primarily responsible for taking care of the tin box we would hold that the gravity of the charge against him was the same as that against Sh. Chahal. It is not disputed that a much lesser penalty has been imposed upon Sh. Chahal although according to the contents of the chargesheet Sh. Chahal had left the Treasury cage when his counterpart, the applicant herein, was away and this had resulted in the loss of cash and cheques.

14. We are also not inclined to agree with the respondents that the action initiated for recovery of the amount of Rs.55,117/- through the SDM/Assistant Collector, Preet Vihar was a valid action. CCS (CCA) Rules makes a provision for recovery of the amount lost by the Government and this being a matter relating to the service conditions of the applicant, the respondents should have

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taken action under the CCS (CCA) Rules instead of making a reference for recovery of the aforesaid amount under the Public Accountants Defaults Act, 1850. We, accordingly, set aside the action of the respondents so far as it relates to making a reference of the Collector under PAD Act, 1850.

15. So far as the penalty imposed upon the applicant in the departmental proceedings is concerned, while upholding the order of the disciplinary authority in holding the applicant guilty of the alleged misconduct we quash that part of the impugned order of punishment by which punishment ⁱⁿ excess to that which has been imposed upon Sh. Chahal was awarded to the applicant. We remit ^{afresh} the matter to the disciplinary authority to consider the question of quantum of punishment in the light of the observations made by us hereinabove and pass a fresh order on this question communicating the same to the applicant. Needless to say that if the applicant is still aggrieved by the severity of the punishment awarded to him it shall be open to the applicant to file a fresh OA, if so advised. We, however, make it clear that in case the same punishment as the one imposed upon Sh. Chahal is imposed upon the applicant he will not be entitled to seek any remedy afresh.

16. OA is disposed of in terms of the above order, leaving the parties to bear their own costs.

S. P. BISWAS
(S. P. BISWAS)
Member (A)

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(T. N. BHAT)
Member (J)
31.8.98