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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 671 OF 1997
ALLAHABAD THIS THE 14th DAY OF *January 2004*

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

Krishna Swaroop Saxena,
S/o Shri Vishnu Sahai Saxena,
R/o Mohd. Sarai Akaiian,
Shahjahanpur.

.....Applicant

(By Advocate Shri B. Ram and Shri A. Tripathi)

Versus

1. Union of India,
through the Secretary (Posts)
Ministry of Communication,
Dak Bhawan, Sansad Marg,
New Delhi.

2. Director Postal Services,
Bareilly Region,
Bareilly.

3. Superintendent of Post Offices,
Shahjahanpur Division,
Shahjahanpur.

.....Respondents

(By Advocate Km. Sadhna Srivastava)

ORDER

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

In this O.A. filed under section 19 of Administrative
Tribunals Act 1985, the applicant has prayed for quashing the
impugned order dated 05.03.1997 (Annexure A-1) and the Appellate



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order dated 30.03.1999 upholding the punishment order dated 05.03.1997 by which recovery of Rs20,000/- in instalment of Rs 2,000/- pm has been ordered. The applicant has prayed for a direction to the respondents not to recover the said amount from the salary of the applicant for which the applicant is not responsible.

2. The facts, in short, are that the applicant joined Shahjahanpur Head Post Office as Assistant Post Master (SB) on 03.04.1991 and worked upto 21.09.1991. Thereafter he was again posted at Shahjahanpur, Head Post Office as Assistant Post Master (SB) on 05.02.1994 and worked as APM(SB) H.O. Group upto 20.11.1995 and from 30.11.1995 he is working as APM(SB) S.O. Group. One Shri Madan Mohan Mishra, the then Postal Assistant, S.B.C.O., Shahjahanpur in the S.B. Branch de-frauded the amount to the tune of Rs4,16,067/- by falsification of ledger card and showing the bogus deposits in it. The applicant while working as APM(SB) sanctioned the cheques from the account no.547159 and 549977 of Shri Madhan Mohan Mishra and his wife Smt. Meera Mishra amounting to Rs2,29,367/-. He was served with a minor penalty chargesheet dated 03.01.1997 for sanctioning various withdrawals amounting to Rs2,29,367/- during 1991 and 1995. without observing formalities as required under departmental Rules. The applicant denied the charges by filing his representation. The Disciplinary authority passed the ^{impugned} punishment order dated 05.03.1997 by which he ordered for recovery of Rs20,000/- in ten instalments of Rs2,000/- each. The applicant filed an appeal on 26.03.1997 and ^{was} while the appeal/pending the applicant filed this O.A. on 30.06.1997. On 09.09.1997 an interim order was passed and the recovery was stayed. Meanwhile the Appellate authority decided the appeal by order dated 26.03.1999 which has also been impugned by moving an amendment application which was allowed



by order dated 02.12.2002. The respondents have contested this O.A. by filing CA.

3. Shri A. Tripathi, learned counsel for the applicant submitted that it would be seen from the perusal of the Punishment order dated 05.03.1997 that no loss has accrued to the department. In ^{the}penultimate para the Disciplinary Authority has mentioned "कर्मचारी की लापरवाही के कारण विभाग को क्षति उठानी पड़ेगी" and, therefore, it is apparent that the recovery of Rs2,0000/- from the applicant on mere apprehension that the department would have to suffer loss, is neither correct nor legal.

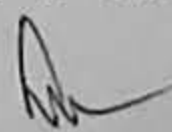
4. Assailing the Appellate order dated 26.03.1999 the learned counsel for the applicant submitted that the Appellate order is non-speaking order. Even the chargesheet has not been issued in specified manner. The learned counsel for the applicant submitted that Madan Mohan Mishra ^{He} is the main offender who was involved in commission of the fraud, ^{he} withdrew the money and from the same money he brought Kisan Vikas Patra which have been seized by the court as on the basis of the F.I.R. lodged by the department a criminal case has been instituted against Madan Mohan Mishra and others. The learned counsel for the applicant inviting our attention to para 4 of the CA submitted that the respondents have accepted that the loss has been caused by Madan Mohan Mishra and in that case the applicant cannot be held responsible for fraud committed by another person ^{i.e. Madan Mohan Mishra}. In support of his argument he has placed reliance on the judgment dated 04.09.2001 of Ahmedabad Bench of this Tribunal in O.A. No.750/98 in the case of J.M. Makwana Vs. U.O.I. and Ors. reported in 2002(1)ATJ283.

5. Resisting the claim of the applicant Km. Sadhna Srivastava learned counsel for the respondents submitted that Government has suffered the loss due to the negligence of the applicant. In fact the fraud committed by Shri Madan Mohan Mishra runs into lakhs of rupees but in view of the fact that the applicant was soon to retire the Disciplinary Authority ^{took a lenient view and} ordered for recovery of only Rs20,000/-.

6. The learned counsel for the respondents further submitted that the Appellate order is a speaking order which covers all the points raised by the applicant in his appeal.

7. We have heard counsel for the parties considered their submissions and perused records.

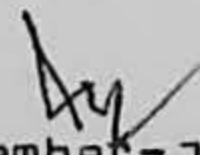
8. Admittedly the fraud was committed by Shri Madan Mohan Mishra the then Postal Assistant S.B.C.O. Shahjahanpur to the tune of Rs4,16,067/- and the applicant was chargesheeted for sanctioning the withdrawal of Rs.2,29,367/- ^{available}. We have carefully perused the counter reply. Though the ^{documents/records} required by the applicant through his application dated 11.01.1997 were shown to the applicant but the respondents have admitted that certain documents could not be shown due to non-availability as those records were torn away by the main culprit. In para 13 of the counter reply the respondents have stated that as regards the documents referred to in para 4.8 of the O.A. those records could not be shown as the documents were audited documents in the custody of audit i.e. the S.B.C.O. Branch of Post Office which functions as a Audit office for S.B. work and also the documents were not available. We do not accept the plea of the respondents that Audit documents could not be shown to the applicant. In fact the principles of Natural Justice demands that full and fair opportunity is ^{afforded} to a charged official to prove his innocence.



9. Even if we agree that there was some negligence on the part of applicant yet we would like to observe that the case of loss to the department has not been established and, therefore, the order of recovery of Rs20,000/- by the Disciplinary Authority is not correct. In this regard we would like to observe that the Disciplinary Authority in the penultimate para of his Punishment order dated 05.03.1997 has held "कर्मचारी की लापरवाही के कारण विभाग को क्षति उठानी पड़ेगी। इस तरह से कर्मचारी पर लगाये गये आरोप पूर्णतया सिद्ध होते हैं।"

This logic of the Disciplinary Authority that because of the negligence of the applicant the charges are fully proved is not acceptable to us. The law laid down in the case of J.M. Makwana (Supra), on which the applicant's counsel has placed reliance, supports the contention of the applicant that the applicant cannot be held responsible for the fraud committed by another person.

10. In the facts and circumstances and our aforesaid discussions the O.A. is allowed. The impugned Punishment order dated 05.03.1997 (Annexure A-1) and Appellate order dated 26.03.1999 (Annexure A-1(i)) filed alongwith amendment application no.4160/02 are quashed. The interim order dated 09.09.1997 ^{stands} merged alongwith this order.


Member-J


Member-A