

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ALLAHABAD this the 1st day of November 2006.

**HON'BLE MR. JUSTICE KHEM KARAN, V.C.
HON'BLE MR. P.K. CHATTERJI, MEMBER-A**

ORIGINAL APPLICATION NO. 396 OF 2001

C.L. Prasad, S/o Sri Lalsa Prasad working as Assistant Post Master in Head Post Office, Varanasi, R/o House no. A-3/70-C Trilochan Bazar, Varanasi.

.....Applicant.

V E R S U S

1. Union of India through Secretary the Director General of Posts, New Delhi.
2. Director of Postal Services, Allahabad Region, Allahabad.
3. The Sr. Superintendent of Post offices Varansi East Division, Varanasi.

.....Respondents

Present for the Applicant:

Sri Anand Kumar

Present for the Respondents:

Sri D.K. Dwivedi

O R D E R

BY P.K. CHATTERJI, MEMBER-A

The applicant in this O.A. is Postal official working at Varanasi Head Post Office. He was working as Assistant Post Master in the Sub Account Branch of Varanasi Head Post Office. He was served with a charge sheet dated 9.11.2000 by the Senior Superintendent of Post Office, East Division, Varanasi. The charges against him were that on 30.12.1999 and 31.12.1999 when he was working as

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Assistant Post Master (Sub-Account) in the Head Post Office, Varanasi, he received sub-office daily account dated 29.12.1999 of sub-post office, Ramgarh on 31.12.1999. In this daily account, the sub-post office Ramgarh had asked for cash from the Head Post office showing the liability of payment to the tune of Rs. 1,90,000/-. The same Sub-office daily account also showed that sub post office had cash balance of Rs.73936.68/- on 29.12.1998.

2. The applicant, on receipt of sub office daily account on 31.12.1999, passed an order for sending Rs. 1,50,000/- to Ramgarh Post office through Mail Overseer and another Rs. 15,000/- through cash bag. The charge against the applicant was that for clearance of liability of Rs. 1,90,000/- he need not have sent of Rs. 1,65,000/- because Rs. 73,936.32/- was already in deposit at Ramgarh Sub Post Office. Thus, the applicant sent about Rs. 49,000/- in excess of the requirement overlooking/ignoring the amount contained in the sub Office daily account. On the night of 31.12.99/1.1.2000 a theft took place at Ramgarh Sub Post Office in which Rs. 2,20,189/- was stolen. The respondents have attributed this loss partly to the negligence of the applicant. If he had sent cash exactly as per the requirement of the Sub Post Office for clearance of liability, the loss to the tune of about 49,000/- would have been averted. In other words, if the money in deposit at the Sub Post office at the night of the theft was less

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automatically, the amount of loss would have been less.

3. On the basis of the Chargesheet and after considering the representation of the applicant, the respondents punished him with recovery of Rs. from his pay. The applicant being aggrieved by this decision has filed this O.A.

4. We have gone through the points raised by the applicant as well as submissions of the respondents. The respondents' averment is to put it succinctly that the applicant lacks in responsibility and he had not examined the daily account properly to access the exact requirement of cash for Ramgarh and for this negligence the department had to suffer additional loss to the tune of Rs. 49,000/- which could have been averted. This lack of care and concern of the applicant should not go unpunished as this will set bad example for others in the Post Office.

5. The applicant, on the other hand, has controverted the submissions made by the respondents during the hearing. In the O.A. as well, the applicant has cited written evidence that he was watching the trend of cash accumulation of sub post office and was bringing to the notice of the appropriate authorities. There is a system of intimating cash accumulation at Sub Post offices to

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the Senior Superintendent of Post offices through the Excess Cash Balance memo. The applicant has brought it to the notice of this Tribunal that on 21.8.99 he had made an office note that several post offices including Ramgarh was not showing the clear liability in the daily account. It was also mentioned by him that these post offices were retaining excess cash without showing clear liability. Therefore, there was need to direct these post offices suitably. A copy of this note sent by the applicant is attached with the O.A. as Annexure no.6.

6. We wanted to know from the learned counsel for the respondent as to what action has been taken by the authorities on receiving this warning. However, he had no clear answer to this point and only thing he harped upon is that but for the carelessness of the applicant, the loss of the substantial amount could have been avoided. The daily account for Ramgarh Sub Post office, although, it did not have a clear break up of the liability, still afforded the scope to assess how much cash was actually needed. But the applicant failed to take note of this and thereby sent excess cash.

7. During the course of hearing, the learned counsel for the applicant referred to several decisions of the Tribunal relating to cases in which officials were made to pay for the fault of others

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on the plea of some mistake often inadvertent and unintentional committed by the official in course of work. The O.As referred to by the applicant reveals a trend of finding out scapegoats from officials other than the main offender. These officials were in no way involved in the criminal act which caused pecuniary loss to the department. But in course of the enquiry into the incident if any mistake was noticed on the part of any individual, he was roped in for the purposes of recouping the loss. In some of the decisions, the Tribunals have discouraged this practice of finding scapegoat.

8. It would be pertinent to extract from the relevant judgment of the Tribunal cited by the learned counsel for the applicant:

(i) **C.N. Harihara Nandanam Vs. Presidency Post Master, Madras GPO & Others (1998) 8 ATC 673).**

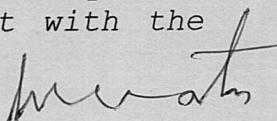
8. The above analysis of the charge sheet and the orders passed by the Disciplinary authority and the Appellate authority make it very clear that the applicant was not personally responsible for causing any pecuniary loss to the Government. He was as stated by the appellate authority, only technically responsible due to his non-compliance of the instructions issued by the DG P&T by not getting every sixth transaction entry properly verified. We have also perused the judgment passed by another Bench of this Tribunal in O.A. no. 295 of 1987. The aspect of recovery from a government servant's pay of the whole or part of any pecuniary loss caused by him to the government by negligence or breach of order, with reference Rule 11 of CCS (CCA) 1965, has not been gone into. We are

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satisfied that in this case the applicant was not directly responsible for causing any pecuniary loss to the government, and that no such finding has been arrived at. As stated by the appellate authority in his proceedings no. B.4/16/86-87 dated 21.4.1098 at best he can be held to be technically responsible. Accordingly, we set-aside the proceedings of the second respondent no. F.1/2-IV/85-86 dated 26.11.1986 and the first respondent in No. B.4 4/16/86-87 dated 21.4.1987. However, we make it clear that this will not be a bar on the respondents to impose an appropriate penalty in the disciplinary proceedings as provided in the Rules."

(ii) **J.M. Makwana Vs. Union of India & Others (2002(1) ATJ 283 Ahmedabad Bench).**

7. Even if, for a moment we believe that applicant was negligent in not posting the entries of the passbook in the error book, then also this negligence was not such that it would be a cause for punishing the applicant with recovery of loss sustained by the department as well as withholding of one increment. The applicant obviously is not directly responsible for the misappropriation of this amount and therefore the recovery if any was to be made for the loss of the amount ought to have been made from the person directly responsible for the misappropriation. Merely because the department found that it was not possible to recover the amount from the main culprit, some other scapegoat cannot be found out and cannot be levied with the punishment of recovery of the loss. We are fortified in our conclusion by the judgment of Madras Bench of this Tribunal in the case of C.N. Harihar Nandan Vs. Presidency Post Master, Madras SPO decided by the Madras Bench of the CAT on dated 12.9.88 and reported in (1988) 8 ATC 673. There also in the similar situation the employee was the ground that he was negligent in performing his duty. He was also tried to be made technically responsible due to the non-compliance of the instructions of not getting every sixth transaction entry property verified. Quashing the recovery order, the Madras Bench has observed that the applicant was not directly responsible for causing any pecuniary loss to the govt. and at the best he can be said to be technically responsible. He, therefore, cannot be made to recover the loss sustained by the department. We are in agreement with the

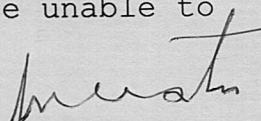


ratio laid down in this judgment and applying the same to the facts of the present case, we hold that the applicant cannot be made responsible for the criminal act of somebody else and the order of the recovery of the loss to the govt. from the salary of the applicant cannot be sustained. The same view is taken by us in the case of S.K. Chaudhary Vs. UOI & Ors in O.A. no. 504/96 decided on dated 26th March, 2001. In the conclusion, therefore, we allow this O.A. and quash and set-aside the impugned order of withholding of one increment as well as order of the recovery of RS. 9000/- issued by the SP Banaskantha, Palanpur on dated 20th July 98 and confirmed by the appellate officer and direct the respondents to refund to the applicant any amount if recovered from the salary of the applicant by way of recovery on account of this order within 3 months of the receipt of the copy of this order, failing which the same will have to be refunded with running interest at the rate of 12% per annum. No order is passed as to costs."

(iii) **J.P. Singh Vs. UOI & Ors decided by Allahabad Bench of the Tribunal on 2.4.2002 in O.A. no. 923/1999.**

"We are in respectful agreement with the above decisions in the cases of C.N. Harihara Nandan & J.M. Makwana and the ratio laid down in the above judgments are squarely applicable in the instant case and we hold that the applicant in no way is responsible for the criminal act of some one else. The order of recovery cannot be sustained."

9. We have considered the material in depth and also taken note of different pronouncements. We do not dis-agree that there was a scope for the applicant to find out how much cash was in deposit at Ramgarh sub post office before remitting the same. The applicant should have looked at the sub office daily account carefully before sending the cash. However, gravity of this act of omission need not be magnified beyond proportion. We are unable to



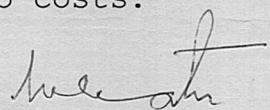
appreciate how this failure can be linked with the theft which was committed by others and with which it has no direct bearing. It is true that the amount of loss could have been less if the applicant was more careful. However, the conduct and work of the official has to be viewed in entirety taking note of the fact that he noticed the irregularity on the part of the Sub Post offices and he had tried to bring the irregularity to the notice of the appropriate authority. Therefore, his good intention cannot be called into question.

10. We are aware that in disciplinary matters, the Court and Tribunal should not interfere with the decision of the disciplinary/appellate authorities and such interference can be made only if the decision is perverse and the punishment is shockingly dis-proportionate. In this case, however, we are confronted with the situation in which the official is being punished dis-proportionately heavily compared to the seriousness of his lapse. In our view, the punishment should be just enough to make him realize his mistake and be more alert in future. It was not necessary that the respondents through a knee-jerk reaction had ^{to} cast a wide net for catching all the scapegoats so as to realize and recover the entire loss. The applicant is in no-way involved in the criminal act and we think that this practice of attributing the loss to officials not directly involved in the criminal act is not a dignified practice and casts a shadow on the organizational ethos. Perhaps this is a colonial

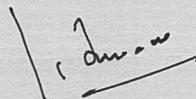
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legacy. But the respondents must think afresh and leave behind such disreputable legacy and move ahead. It is not necessary that in choosing the quantum of punishment the quantum of pecuniary loss has always to be kept in view regardless of the seriousness of the lapse.

11. We are of the view that there is need of sealing down the punishment, although we are otherwise not much inclined to interfere in this way. But keeping in view the observations made above, we modify the punishment to recovery to the tune of Rs. 5,000/- from the pay of the official which we think would be just and adequate and make him more alert and careful in future. With these observations, the O.A. is disposed of with no order as to costs.



MEMBER-A



VICE-CHAIRMAN

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