

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

Original Application NO. 1062 of 2001.

Allahabad this the 25th day of Nov 2005.

Hon'ble Mr. K.B.S Rajan, Member-J

Indra Bahadur Singh,
S/o late Bechan Singh,
R/o B-34/130-4, Manas Nagar, Durga Kund,
Varanasi.

.....Applicant.

(By Advocate: Sri A. Tripathi)

Versus.

1. Union of India through Secretary (Posts)
Ministry of Communication, Dak Bhawan,
Sansad Marg, New Delhi.
2. The Director Postal Services,
Allahabad Region, Allahabad.
3. Senior Superintendent of Post Offices,
Varanasi East Division, Varanasi.

.....Respondents.

(By Advocate: Sri S. Singh)

O R D E R

Recovery of Rs 50,000/- on account of the alleged misconduct that during the applicant's tenure as Sub Post Master, one of the Postal Assistants had caused huge loss to the government (more than a lac) and as such, a part of the same is to be recovered from the applicant as he failed to discharge his duties as a supervisor of the Postal Assistant, is the challenge in this case.

2. The facts capsule as under:-

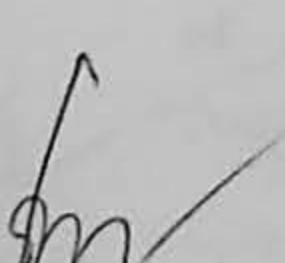
- (a) The applicant was posted as Sub Postmaster Chetganj, Sub Post Office during the year 1989 to 1992 one and Shri Rajnath Prasad was posted as Postal Assistant.

- (b) In 1994-95, an alleged case of fraudulent payment of interest on 6 years N.S.Cs VII issue to the tune of Rs.1,00,389/- by said Shri Rajnath Prasad, came into light and the department decided to take disciplinary action against the applicant.
- (c) The applicant was served with a chargesheet vide memo dated 21.11.2000.
- (d) The applicant vide his letter dated 20.12.2000, demanded photocopy of the connected documents on which basis the charges were leveled against the applicant in order to submit his effective defence representation.
- (e) Respondents allowed the inspection of the documents enumerated at Serial NO.1, 4, 5 (S.O. Account but not the S.O. daily account), 7,8, 12, 15, 16, 17, 18, 19, 20 and 21 but did not show the documents mentioned at Serial NO.2, 3, 6, 9, 11, 13 and 14 for one or the other pretext and at the same moment the respondents did not indicate these documents as immaterial or unconnected/irrelevant.
- (f) The applicant has submitted his defence representation dated 8.2.2001.
- (g) The disciplinary Authority without considering the request for inspection of all connected and relevant documents and also without considering the facts decided the case by imposing the penalty of recovery of Rs.50000/- from the pay of the applicant in 35 equal installments of Rs.1388/- and last installment of Rs.1420 vide order dated 26.2.2001.
- (h) The applicant preferred an appeal on 21.3.2001 to the respondent NO.2
- (i) The ^{Appellate Authority} ~~applicant~~ has rejected the appeal of the applicant without considering the grounds.

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3. The version of the respondents, which is as under:-

- (a) Since due to the negligence working of the petitioner the department suffered a huge loss of money hence the impugned orders have legally passed for the recovery of loss in equal installments.
- (b) During the period from 31.5.1989 to 1.9.1992 the petitioner was working as Sub Post Master, Chetganj, Varanasi and Sri Rajesh Singh was working as Postal Assistant Chetganj Post Office during the said period.
- (c) The petitioner stated that after checking of the vouchers he had tallied the account and the amount shown on the Sub Office Account/Sub Office Daily Account of Chetganj Post Office.
- (d) The petitioner performed the duties of S.P.M Chetganj Varanasi during the period from 21.5.89 to 1.9.91 (excluding the date spent on leave) and during this period Sri Raj Nath Prasad the Counter Assistant Chetganj, Post Office had misappropriated a sum of Rs.100380/- showing fraudulent interest payment on 6 years NSC VIIth issue.
- (e) The petitioner was permitted to inspect the relevant documents on 26.12.2000 vide letter dated 21.12.2000.
- (f) The petitioner inspected the records available on 11.1.2001 and the documents which were not available were not shown to him.
- (g) The misappropriation of Government money could have been avoided if the petitioner would have followed the provisions of departmental Rules.
- (h) Documents which were demanded by the petitioner could not be shown to him



because of non-availability of the same and were destroyed at the office of D.A.

4. Arguments were heard and the documents perused. Three spinal grounds were forcefully advanced on behalf of the applicant:-

- (a) That the documents requisitioned were not made available;
- (b) That the Appellate Authority had not applied his mind and his order is non speaking.
- (c) There is no misappropriation by the applicant of any public money and as such, recovery cannot be effected.

5. In so far as the non furnishing of the documents is concerned, the respondents have fairly conceded that what was made available for inspection were the documents which were available and these were sufficient to prove the charges, vide para 27 of the C.A. However, it is not their contention that the other documents are irrelevant. In fact, there would be certain documents, which, when exhibited, would go in favour of the delinquent employee. The custodian of the documents is undoubtedly the respondents. When such documents are demanded, it is the responsibility of the respondents to make available the same to the applicant. The contention that the documents made available would suffice for proving the charge is no explanation for not making available the documents as demanded by the applicant. Thus, principles of natural justice ~~has~~ been violated in the proceedings.

6. As regards the non speaking order by the appellate authority, law requires that each ground of appeal is met with. In this regard, reliance could be placed in the judgment of **State Bank of**

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Bikaner & Jaipur v. Prabhu Dayal Grover, (1995) 6 SCC 279, at page 289 :

"....we find that it has discharged its obligation by considering the records and proceedings pertaining to the disciplinary action and the submissions made by Grover. In other words, the order clearly demonstrates that the appellate authority had applied its mind not only to the proceedings of the enquiry, but also the grounds raised by Grover in his appeal and on such application found that there was no substance in the appeal."

7. If the above principle -that it would suffice if the appellate order demonstrates that the the authority had applied its mind not only to the proceedings of the inquiry but also the grounds raised in the appeal and on such application found that there was no substance in the appeal, the appellate order cannot be faulted with - be invoked in this case, it would be evident that the decision was without application of mind. Of course, that the grounds of appeal have been referred to and reply ad seriatim is given is evident from para 3 and 4 of the appeal and undoubtedly, that the appellate authority had stated that he had gone through the documents, vide para 4 of the appellate order. But one vital point to be observed here is that the disciplinary authority nowhere mentioned that the all the documents demanded have been made available to the applicant. From the beginning till the end, it had maintained that only the available documents had been made available though it was also stated that the same would suffice to prove the misconduct. But the Appellate Authority had stated, *"Appealrthi ko upalabda evam sangat sabhi abhilekh dikhaye gaye hain."* This does not appear to be

correct. With a view to endorsing the view of the disciplinary authority, the appellate authority seemed to have stated on the above lines. This is certainly illegal. The ground raised by the applicant thus holds good.

8. Yet another ground is that it is the admitted fact that the applicant was on sanctioned leave on various dates as contained in para 10 of the counter and the applicant contends that for disbursement of any interest without his signature by the Postal Assistant he cannot be blamed. It is found on verification of the details of leave and the details of interest paid that there is no over lapping of the dates of leave and dates of payment of interest save one day i.e. 27-10-1990. Hence, this ground does not stand.

9. The applicant was charged of negligence on account of the non signing of the relevant journal entries when the payment was made by the postal assistant. The payments made were illegal and as such, negligence, in my opinion would be attracted, if only the applicant had signed the journals. If no illegality is found in respect of the entries of payment of register which had been authenticated by the applicant, the applicant is not at fault at all. If in such case also interest paid was illegal, the applicant has to account for. The following are the dates when the applicant had checked and signed the interest payment:-

August 90: 29th

September 90: 5th, 7th, 10 - 12th 15th, 17th.

October 90: 1st and 8th

November, 90: 7th and 9th

March, 91 12th

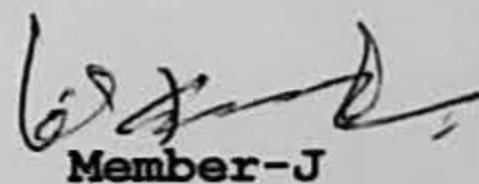
June, 91: 12th

(para 12 of the counter refers).

10. In view of the above, the applicant cannot be faulted with for not having signed the registers on those days when he was on leave or where fraudulent payment was made. The authorities could however hold the applicant responsible in respect of payments made when the applicant had authenticated the payment. The amount would not in that event come to the stupendous one lakh or more.

11. In view of the above discussion, the OA succeeds. The orders impugned i.e. order dated 26-02-2001 and 06-06-2001 are hereby quashed and set aside. Amount recovered if any on the strength of the above orders are to be refunded to the applicant. It is however, open to the respondents to consider imposition of penalty in respect of illegal payment of interest with the authentication of the applicant's signature in the journal.

No cost.


Member-J

Manish/-