

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD**

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(THIS THE 31<sup>st</sup> DAY OF March, 2011)

***Hon'ble Dr. K. B. S. Rajan, Member (J)***

***Hon'ble Mr. S. N. Shukla, Member (A)***

**Original Application No.999 of 2004**

(U/s 19, Administrative Tribunal Act, 1985)

Jagdish Singh Dinesh  
Aged about 35 years  
S/o late Shri Pratap Singh  
R/o 89 Kasim Bagh Cantt, Fatehgarh.

..... **Applicant**

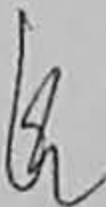
**Present for Applicant : Shri Rakesh Verma, Advocate.**

*Versus*

1. Union of India through Secretary Ministry of Communication  
Department of Posts, Dak Bhawan, Sansad Marg,  
New Delhi - 110001.
2. Director General, Posts Dak Bhawan, Sansad Marg,  
New Delhi, 110001.
3. Union Public Service Commission, Dhodlpur House, Shahjahan  
Road, New Delhi - 110011, through its Secretary.
4. Assistant Director General (Vigilence), Govt. of India, Ministry of  
Communication through its president, Department of Posts  
(Vigilence Section), Dak Bhawan, Sansad Marg, New Delhi,  
110001.

..... **Respondents**

**Present for Respondents : Shri R.D. Tiwari, Advocate**



ORDER**(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)**

Heard Shri Rakesh Verma, learned counsel for the applicant and Shri M. K. Sharma, Advocate holding brief of Shri R.D.Tiwari, learned counsel for the respondents.

2. Four days ahead of his retirement (31-07-1997) the applicant was slapped with a charge sheet which reads as under:-

*"That Shri J.S. Dinesh while functioning as Dy. CPM, Kanpur H.O. during the period from 6.6.94 to December, 1996 allowed deposits of dividend warrants in the name of third parties into the public SB account No. 945371 opened in the name of Prarambik Sahkari Banks Limited, Evam Community Sahkari Rin Simiti Ltd., 128/323, H.Block, Kidwainagar, Kanpur operated through Shri Navin Srivastava as President and Shri Madhup Srivastava as Sachiv, and despite a doubt having been raised in the office note dated 18.10.96, he allowed by his orders dated 19.10.96 withdrawals from the said account in violation of the provisions contained in Appendix I to Rule 31(6) of PO SB Man. Vol II, which resulted in fraudulent withdrawals of Rs. 1,40,000/- between the period from 19.10.96 to 4.11.96 causing loss to the Department Further, the said Shri J.S. Dinesh gave orders on 4.11.96 for return of dividend warrants to the depositors which again was an irregular action on his part.*

*It is, thus alleged that Shri J.S. Dinesh by his above acts, failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant in violation of the provisions of Rule 3 (1) (ii) and 3 (1) (iii) of CCS (Conduct) Rules, 1964"*

3. The applicant having denied the charges, inquiry was conducted and by February, 2000, the inquiry report was furnished to the applicant holding that the charges stand proved. The

applicant gave his representation and on reference to the UPSC, the commission observed that the loss estimated to the government is only anticipated and not actual loss and recommended cut of 25% of pension on permanent basis and 50% of gratuity otherwise admissible to the applicant be also forfeited. Thus, the same was imposed as penalty, vide Annexure dated 05-02-2003. As the penalty has been imposed by order of the President, there being no appellate remedy, the applicant has come up before the Tribunal on various grounds as contained in para 5 of the O.A.

4. Respondents have contested the OA and justified the levy of penalty.

5. Applicant has filed his rejoinder in which he had reiterated his contentions as in the O.A.

6. Counsel for the applicant argued that there has been violation of the principles of natural justice; that the charges cannot be said to have been proved; that impugned order has been passed mechanically without application of mind; that recourse to freeze or attach the credit in an S.B. Account can be invoked only by the Court and not by the Dy. C.P.M. ; that there is no violation of any of the departmental instructions or rules; that there was difference between cheques and dividend warrants.

7. Counsel for the respondents submitted that there is practically no difference between the dividend warrants and cheques. The deposit belongs to different persons who had not given endorsement in favour of the operator of the Account No. 945371. This fact was

brought to the notice of the applicant in advance, yet he had ordered on 18-10-1996 for allowing the payment upto 21-10-1996.

8. Arguments were heard and documents perused. The respondents were directed to make available the original records, but the same was not forthcoming.

9. The scope of judicial review is restricted to ascertain that there is no legal flaw in the decision making process. As regards quantum of penalty, it is at the full discretion of the Disciplinary authority, save when the quantum is shockingly disproportionate.

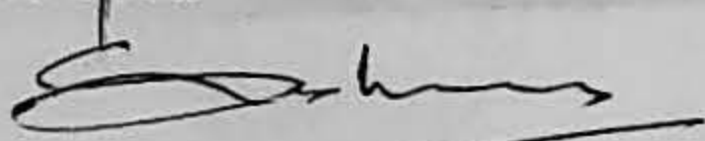
10. In so far as conformity with the rules in the decision making process is concerned, mainly that the principles of natural justice are fully met with and that mandatory questions are asked. The charges are to be unambiguous and copy of the inquiry report has to be made available for making an effective representation. All these have been strictly followed, as could be seen from the very inquiry report.

11. As regards the quantum, the UPSC has suggested 25% cut in monthly pension on permanent basis and forfeiture of 50% of gratuity otherwise admissible, presumably the latter being to offset the probable loss to the exchequer due to the omission and commission of the applicant and the former as a deterrent measure, as public money is involved. However, if the actual amount of loss is not there or happens to be less, perhaps the Disciplinary Authority could well consider the waiver of the forfeiture of 50% of gratuity. The extent of gratuity would be sizeable after 01-01-1996 and in that case 50% thereof would be more than the amount involved i.e. Rs. 1,40,000/-

Indeed, the UPSC had suggested that the loss is only 'anticipated' and not actual.

12. In view of the above, this **OA is disposed** of with a direction to the Disciplinary authority to consider only the quantum of penalty and arrive at a judicious conclusion and inform the applicant accordingly. This decision, it is reiterated, is purely on the contingency that there is no loss (or the extent of loss is less than Rs 1,40,000/-) occurred to the Government due to the omission and commission of the applicant and that the discretion is purely upon the Disciplinary authority.

No Obst.



(S.N. Shukla)  
Member (A)



(Dr. K.B.S. Rajan)  
Member (J)

*Shashi*