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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 352 of 1987

Janardan Prasad Applicant.

Versus

Union of India & others Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

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This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985. The applicant, Janardan Prasad, is working as an Upper Division Clerk (UDC) in the Survey of India at Dehradun. In 1981, while he was serving as a Cashier and had gone to deposit cash in the State Bank of India (SBI), Dehradun, a sum of Rs.40,000/- out of a total of Rs.82,747/- is alleged to have been stolen from the bag, which he was holding, by cutting the leather bag from bottom, by some one else. A First Information Report (FIR) was lodged in the Police Station and the applicant was also taken up under the D&A Rules. The enquiry officer submitted his report in February, 1982 and a punishment was awarded by the disciplinary authority for the recovery of Rs.40,000/- from his pay in instalments of Rs.200/- per month starting from his pay of May, 1982. The applicant's case is that the charge of negligence of duty was

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dropped by the disciplinary authority, who agreed with the findings of the enquiry authority and, therefore, the applicant should have been exonerated, but still the disciplinary authority imposed the punishment of recovery^{3/4 of the loss}. According to him, his immediate Supervisor, i.e. respondent no.4, was also bracketed for the responsibility of the loss but no action has been taken against him and that he is only a petty clerk, therefore, the recovery of such a big amount deprives his family of the means of livelihood^{3/4}. On his appeal, against the punishment, no action has been taken by the appellate authority. The applicant has further said that due to this recovery an adverse remark was also made in his Confidential Report (CR) and he has not been given his promotions since May, 1981, so he has been subjected to double jeopardy. When no reply was given to his appeal he ~~and~~^{3/4} filed a writ petition being Civil Misc. Writ Petition No.8107 of 1985, but it was dismissed by the High Court of Judicature at Allahabad as the applicant was already prosecuting an alternative remedy with the directions that the appellate authority will dispose of the appeal within a period of two months. When this was also not done the applicant ~~and~~^{3/4} filed ^{3/4 a} the contempt petition whereafter his appeal was decided by the respondents without applying their mind and in contravention to the Government of India's instructions prejudiciously and discriminately against the applicant. The appellate authority has enhanced the quantum of recovery from the pay without giving

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him reasonable opportunity against the enhanced penalty, though it reduced the recovery from Rs.40,000/- to Rs.34,884/-. He has, therefore, sought relief for setting aside the order dated 31.5.1982 and the order dated 9.1.1987 on his appeal and to exonerate from the quantum of recovery and for order of refund of the recoveries already made. The applicant has also prayed for expunging the adverse remarks passed in the Annual Confidential Reports of 1982 and to give him all due promotions with all seniority and financial benefits from May, 1981 onwards.

3/ 2. The respondents in their reply have said that it was the applicant's responsibility for handling convey~~ance~~^{ing} and custody of cash. The applicant did not avail of the service of the Govt. vehicle and he also did not carry proper guard with him before carrying the huge amount of cash for depositing ~~in~~^{at} ~~the~~^{to the} SBI. The applicant being a cashier was responsible for the safe custody of the Govt. money and the lack of devotion to duty, for which he taken up, is evident from the following facts :

- (i) The applicant did not ensure that proper guards were detailed with him.
- (ii) He did not travel in the Govt. vehicle meant for the purpose.
- (iii) He went on his own Scooter to SBI with Govt. money.
- (iv) He did not carry the money in a bag of strong material and, ~~that~~^{that} he did not exercise proper vigilance while standing in the queue.

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According to the respondents, the applicant was not exonerated by the enquiry officer or by the disciplinary authority. It was not a case of doubtful integrity against the applicant, but it was a case of negligence and the punishment was awarded for the same. They have further said that the enquiry officer did not hold respondent no.4 responsible for all the charges. Respondent no.4 was not the physical custodian of the money also at the time of occurrence for the loss. The applicant's appeal dated 17.7.1982 has since been decided by the appellate authority and the order of punishment was imposed on the applicant by an order dated 26.9.1983, which was passed by respondent no.3. It is not dated 31.5.1982, as alleged by the applicant. The remark in his CR is only a factual remark and the same were communicated to him. The applicant has also not been deprived of his promotion during pendency of his appeal. The factual position is that the Departmental Promotion Committee (DPC), which met on 1.1.1981, assessed him fit for promotion, but his promotion was held in abeyance as a case of negligence and lack of devotion to duty came to light in April, 1981 on which major penalty proceedings were instituted against him in October, 1981 and finally he was found guilty of the charges. Thereafter he was considered for promotion by DPC in 1982, 1984, 1985 and in 1987 and was not assessed fit except in the last DPC. The appeal preferred by the applicant remained

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under consideration of the appellate authority because of the applicant relying on the monetary limit for recovery and when the instructions of the Government were received on this issue the same was decided. The appellate authority has not enhanced the quantum of recovery. Actually the total recovery has been reduced by Rs.5,116/- and the appeal has been decided on merits. So both the orders of punishment and the order of the appellate authority are quite justified.

3. In his rejoinder affidavit the applicant has reiterated his earlier averments and has raised certain questions regarding the propriety of imposition of the penalty of recovery when negligence was not proved against him. He has reiterated that the extent of monetary limit regarding recovery should be as per Rules 10 & 11 of the C.C.S. (C.C.&A) Rules and that he should have been promoted in 1981 on the recommendations of DPC.

4. We have heard the learned counsel for the parties. The learned counsel for the applicant based his contentions on the fact that the findings of the enquiry officer are not based on evidence. The applicant was vigilant through out and the Bus was not available on that particular day and the guard was also not detailed to go with him. He reiterated the stand taken in the application that the recoveries could not exceed the amounts mentioned in the C.C.S.

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(C.C.&A) Rules as such recoveries will be against the spirit of the Government of India's instructions and the loss was beyond the control of the applicant. The learned counsel for the respondents, however, submitted that it was due to the negligence of the applicant that the loss took place and had he used the proper vehicle and taken the guard with him the bag could not have been slit upon and the cash removed from the same when the applicant was standing in the queue for depositing the money. Nothing else was pressed before us.

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5. The applicant was charged for negligence in not ensuring safe custody of the Government cash which was taken by him from his office on 15.4.1981 for obtaining bank draft from SBI which amount was ultimately missing from his custody. Thus he was charged for having violated Rule 3(i)(ii) of the C.C.S. (Conduct) Rules, 1964. The enquiry officer submitted his enquiry report on 19.2.1982 and found him guilty of the charges framed against him and thereafter the punishment was imposed.

6. According to the notes on Financial Rules Chapter V, which have been placed by the applicants as Annexure 'II' to the application, all Government offices' money has to be drawn and disbursed on account of pay and allowances, etc. by the officer nominated by the Head of the office. The responsibility

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for all money received and disbursed and the maintenance of accounts, therefore, rests ^{on} ~~by~~ this Head of the office, who is assisted in this work by a Cashier. So it was the responsibility of the applicant in terms of these orders to assist the Head of the Office, who is respondent no.4, in disbursing the cash. The applicant had given a list of his witnesses and relied on documents and there is ^{no specific} ~~is~~ allegation in the application or anywhere else that he was not given adequate or reasonable opportunity to defend his case. The enquiry officer had concluded that the applicant was negligent in ensuring necessary protection to the Govt. cash while carrying it to SBI. He had failed to realise that without an escort there was a risk in taking such a huge amount. The enquiry officer further held that though there may not have been subjective lack of devotion to duty on the part of the applicant, but his negligence in ensuring protection of the Government cash was a misconduct tantamounting to violation of Rule 3(i)(ii) of C.C.S. (Conduct) Rules, 1964.

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7. The ^{main} ~~only~~ point that remains to be seen is whether the monetary limit, as claimed by the applicant in respect of recoveries, applies to him in this case or not. Rule 21(b) of C.C.S. (C.C.&A) Rules, 1965 ⁱⁿ ~~against~~ para 37 says that recovery from the pay as a punishment for the pecuniary loss caused by the Govt. servant by negligence or breach of orders should not exceed 1/3rd of the basic pay excluding Dearness

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Allowance and other allowances not spreading over a period exceeding 36 months, in other words the recovery should not exceed one year's basic pay in any case. The appellate order dated 9.1.1987 has dealt with this aspect on page 5 of the order, which is placed as Annexure 'XI' to the application. The appellate authority has said that these instructions were internal instructions issued by the Director General(P&T) for guidance in his department and cannot be construed to mean an authority for all Central Government Departments. He, therefore, rejected this plea for restricting the recovery of the amount.

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8. Rule-11 of the C.C.S. C.C.A Rules, 1965 lays down the penalties which can be imposed on a government servant. Amongst the minor penalties is the penalty for the recovery from the pay of whole or part of any pecuniary loss caused by the government servant to the government by negligence or breach of orders. This rule does not limit the recovery to any specific amount. There is no doubt that certain instructions were issued by the Posts and Telegraphs department on the subject of imposition of penalty of recovery. It is evident from these instructions which are ^{given} ~~placed~~ in para-31-C of the government instructions reproduced in the Swamy's Compilation of these rules, where it has been clarified by the Director General (P&T) in August, 1971 that the recovery from the pay as a punishment for any pecuniary loss caused by a government servant by negligence or breach of orders should not exceed one third of Basic pay and should not spread over a period of more than three years. There is no indication that this letter was issued by the D.G.(P&T) in pursuance of any such instructions issued by the government of India, Ministry of Home Affairs department of personnel. Normally such instructions ~~are~~ which

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modify even the purport of the rule laying down the penalties can ^{only} ~~also~~ be issued by the department of Personnel in the Ministry of Home Affairs. ^{if they are meant for general application} Therefore, we do not think that this monitory limit would have general application and we agree ~~that~~ with the contention made by the learned counsel for the respondents that these instructions can best be termed only as local instructions applicable in the Posts & Telegraphs department.

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9. As matter of fact, in cases, where ³⁴ recovery, after departmental enquiry followed by the imposition of penalty of recovery of loss caused to the government from the salary, becomes impossible due to the retirement of a government servant, the government can still prosecute the government servant in ordinary criminal court, if the misconduct amounts to a punishable offence or to sue him in Civil Court for a recovery of loss caused to the government by him on account of negligence or other culpable conduct. It is also not the case here that the applicant was ^{34 not} held responsible for the negligence resulting in the loss on the basis of no evidence having been recorded or no enquiry having been conducted. In the case of the applicant, a full and

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thorough enquiry has been conducted and the order of punishment and the appellate order both are speaking orders and have dwelt on the responsibility of the applicant for the loss of money. As a matter of fact, in his appeal made against the order of punishment, the applicant's plea was that he was not responsible for any act of negligence, breach of orders ^{or} ~~of~~ disregard of the rules and, therefore, the penalty of recovery should not have been imposed on him. He has also referred to the necessity of the disciplinary authority examining ^{or} ~~extra~~ ^{or} ~~out~~ ^e ~~ing~~ circumstances in which the duties were performed by him and to give it due weight ^{-age} ~~while~~ arriving at the conclusion. ~~while~~ ^{have been} ~~these~~ aspects, very elaborately dealt with, both in the disciplinary order and the enquiry order. It would appear that the applicant has not been following the proper procedure for conveying and handling the cash and this cannot be said to be not in the knowledge of his superiors as no insistence was placed on the necessity of Armed Guard escorting ^{or} ~~the same~~ the cash, being transported by him in the Office Bus. However, this can only be given weightage while fixing the quantum of recovery and the appellate authority has considered the quantum also in the appellate order. But while considering the quantum,

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the comment only is on the paragraph regarding the instructions issued by the D.G.(P&T). We feel that the recovery of entire loss from the applicant who was only an Upper Division Clerk with meagre salary who has to support his family and look after the education of his children is definitely a hardship and in case, the applicant chooses to make further representation to the reviewing authority on the quantum of punishment i.e. recovery of Rs. 34,884/- from his salary, ^{or We direct that} the reviewing authority may give consideration to this aspect keeping in view the circumstances leading to the loss of money while in the process of being deposited in the State Bank of India by him. As far as the request for promotion is concerned, which has been denied to the applicant on account of the promotion having been withheld due to the case of loss of money which came to light in April, 1981, It has been admitted that the departmental promotion Committee which met on 1.1.1981 assessed him fit for promotion. Thereafter the ~~expansive~~ adverse entry came into the picture which was made in the Confidential report of 1982. We are not aware of the further reports, but the Departmental Promotion Committee did not find the applicant suitable for promotion in 1982, 1984 and 1985. Evidently this must have been in the background of

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the punishment imposed on the applicant for the recovery of loss and his appeal pending disposal which was disposed only by the order dated 9th January, 1987. In case, his promotion became due when he was found fit by the DPC on 1.1.1981 and before the issue of charge sheet to him on 19-10-81, ^{31/} He should have been promoted to the next grade, if he was due ^{31/} for ~~to~~ the same. Even the result of the disciplinary enquiry was only imposition of a minor penalty of the recovery of loss and this should not have been denied him the promotion because no specific punishment as prescribed under rule-11 of the CCS(CC&A) Rules, 1965 was imposed on him withholding his promotions for such a long time. On this subject, the instructions issued by the department of Personnel in their letter of 1971 lay down that censure will ^{31/} ~~not~~ ^{be no} bar to ^{elig} ~~the~~ ^{31/} eligibility to sit in the departmental promotional examination or for promotion and where the responsibility of an employee ^{31/} ~~of~~ ^{for} any loss is indirect, he should not be debarred from being considered for promotion during the period of recovery of loss. It is for the competent authority in such cases to take a decision having regard to its facts and circumstances. Recovery from the pay of a government servant of the whole ^{31/} or part of any pecuniary loss caused by him to ~~the~~ government by negligence or breach of orders, is a minor penalty. The penalty of recovery from the pay

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of the loss should not stand in the way of his consideration for the promotions. These instructions further ²⁴laid down that the effect of the imposition of such a penalty does not by itself debar the government servant from being considered for promotion. It is the over all assessment of his service record for judging his suitability or otherwise for his promotion. We, therefore, direct that the respondents should re-consider the case of the applicant in the light of these instructions and ^{34 if he} is otherwise suitable and fit for promotion, he should be considered for the same on the basis of the departmental promotion committee report of 1.1.1981. ^{Both 34} These directions should be complied with within a period of three months of the receipt of this order.

10. The application is disposed of in terms of the above.

[Signature]
Member (J)

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Member (A)

Dt/May 9th, 1988/
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