

(AB) (4)

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 607 of 1987

Satish Chandra Applicant.

Versus

Superintendent Posts, Etawah & another Respondents.

Connected with

Registration (O.A.) No. 638 of 1987

Ayodhya Prasad Applicant.

Versus

Superintendent Posts, Etawah & another Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

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

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985. The applicant has challenged the orders dated 12.2.1986 and 12.4.1987 issued by the Supdt. Posts, Etawah, respondent no.1, and the Director, Postal Services, Kanpur, respondent no.2, for recovery of Rs.4,200/- from the pay of the applicant.

2. In the other application (Registration (O.A.) No. 638 of 1987) the applicant, Ayodhya Prasad, who was working as Sub-Post Master, Etawah ~~and~~ ^{3/} who was also taken up along with the applicant in Registration (O.A.) No.607 of 1987 for the responsibility for fraudulent withdrawal of Rs.12,000/- vide order dated 12.2.1986 and 30.3.1987 passed by the Superintendent Posts, Etawah and the Director, Postal Services, Kanpur. As this case is also identical so it is taken up along with Registration (O.A.) No. 607 of 1987.

3. For the purposes of this application being Registration (O.A.) No.607 of 1987 the facts of the case are that the District Magistrate, Etawah in the capacity of Commissioner, Workman Compensation, opened a Savings Bank (Public) Account (S.B.(P) A/c.) No.488080 at Etawah Kutchery Post Office on 8.2.1980 with an initial deposit of Rs.15,000/- in the name of Smt. Rukmini Devi. The applicant, who was working as Postal Assistant, S.B. Counter, Etawah Kutchery Post Office, opened only an ordinary S.B. A/c. in place of opening a public S.B. A/c. It has been alleged that the said omission facilitated fraudulent withdrawal of Rs.12,000/- from the said account on 25.3.1981. At that particular time the applicant was not working in the said Post Office and one Bipin ~~was working on that seat~~ Bihari was ~~acting vice him~~ ^{3/} In a F.I.R. lodged by the Superintendent Posts, Etawah, respondent no.1, the said Bipin Bihari, Postal Assistant and Mukh Vilas, the Sub-Post Master Incharge have been exclusively held responsible for the said loss. The applicant was, however, served with a charge-sheet under Rule 16 and was ultimately held responsible for the loss and has been subjected to the recovery of Rs.4,200/- vide punishment order dated 12.2.1986. His appeal dated 2.4.1986 was rejected on 12⁴.1987 by respondent no.2. The applicant's case is that two persons, i.e. the applicant himself and Bipin Bihari both could not be held responsible for the same loss and it is only one of the two who should have been held responsible. On 20.9.1980 when one B.D. Paliwal was working as Postal Assistant the Pass Book of the aforesaid account was presented with an application for withdrawal of Rs.7,000/- but no body turned up to withdraw the money and the Pass Book kept lying in Etawah Kutchery Post Office. In the meantime the said Paliwal was replaced by Bipin Behari and the Sub-Post Master (S.P.M.) was also replaced by one Mukh Vilas. It was on 11.3.1981 that an application was presented on behalf of the District Magistrate with his forged signatures by a person named Prakash Swaroop. In this application he mentioned about the loss of the receipt granted earlier for the

AB
S

- 3 :-

Pass Book and requested for the delivery of the Pass Book to him. The same Pass Book was delivered to the said Prakash Swaroop without cross checking of the position with the District Magistrate, Etawah, who had the original receipt in his possession. The said Prakash Swaroop forged the signatures of the District Magistrate ~~again~~ and managed to withdraw Rs.12,000/- from the said account. The withdrawal was allowed by Bipin Bihari and Mukh Vilas. No witness was taken also in respect of this payment. The Pass Book was again presented by the same person along with an application for withdrawal of Rs.3,000/- on 15.4.1981 and the signatures of the District Magistrate were sought to be checked before the money was allowed to be withdrawn. The said person took away the Pass Book and the application and never came back. Thus the wrong payment was made because the signatures of the District Magistrate were not compared with the specimens nor was the genuineness of the application dated 11.3.1981 was got confirmed from the Nazir in the District Magistrate's office. Thus the fraudulent withdrawal of the amount was made with the connivance of Bipin Bihari and Mukh Vilas and not due to the alleged omission of not writing the words 'Public Account' on the top of S.B.Ledger-Sheet corresponding to this account and the applicant, therefore, had no hand in the forging of the signatures and in the wrong payments. The applicant has ^{Sub-} admitted that the omission of not endorsing the account as 'Public Account' was not even checked by the Superintendent Posts, Etawah. He has further alleged that according to Rule 418(8)(b) of the P & T Manual, Volume VI, Part II, the Postal Assistant concerned has to note down the remark 'Public A/c.' at the top of the Index Card and to send the same to the Head Post Office. He feels that he must have complied with this rule, but the Index Card has not been made available. This rule also does not prescribe any duty on the part of the applicant to record a remark 'Public A/c.' on the Ledger. There is also no specific rule in the Manual which warrents this duty on the part of the

applicant and thus the charge-sheet issued to him is vague and no punishment can be imposed on the basis of that charge-sheet. The applicant has further said that even the Post Master, Etawah failed to detect the omission and he should also have been held responsible. He has, therefore, prayed that the charge-sheet being vague the punishment order is void and therefore, it should be quashed and the recoveries made from his pay and allowances may be ordered to be refunded with interest. He has further prayed that it may also be declared that the punishment awarded is against the provisions of Rule 106 of the P & T Manual, Volume II and therefore, the same may be set aside.

4. In their reply the respondents have said that the applicant was taken up for the omission which he had committed by not following the instructions mentioned in sub-para (8) of Para 418 and sub-para (7) of Para 420 of the P & T Manual, Volume VI, Part II, which lays down that when, an account is opened under Rule 3(6) for deposit of the values of lost Government Currency or Bank notes or for deposit of the amount of compensation payable under the Workmen's Compensation Act, the ordinary form of application card (S.B. 3) should be used, but a remark on behalf of "(name of claimant)" after the designation of the official opening the account and a remark for deposit of the value of the compensation payable under the Workmen's Compensation Act should be made on page 1 of the Pass Book. They have further opposed the application on the grounds that Bipin Bihari and Mukh Vilas in whose time the fraudulent withdrawal took place are already facing criminal trial before the Judicial Magistrate, Etawah and the applicant has not been implecated in that trial. However, he has been only put as one of the prosecution witnesses. The applicant failed to follow the provisions of the P & T Manual which facilitated the possibility of committing the crime by Bipin Bihari and Mukh Vilas. In the charge-sheet a specific mention has been made that the applicant

failed to make necessary endorsement on S.B. 3 Ledger Card ~~xx~~ of the concerned account which facilitated the fraudulent withdrawal and thus he has failed to maintain absolute devotion to his duty. Since the account was treated as ordinary account no proper verification was done before the withdrawals. Thus the omission committed by the applicant was of a very serious nature and only a certain amount of the ~~amounts~~ ^{Rs. 1000/-} has been recovered from him. The applicant has also specifically admitted that he committed the omission and, therefore, he could be taken up for the same. The non-availability of the Index Card does not help the applicant. The applicant received the application for the opening of the account and he was supposed to have completed all the formalities and thus neither the charge-sheet is vague nor the punishment is unnecessary.

5. In his rejoinder affidavit the applicant has reiterated the fact that the Ledger Card of the account had not been produced and, therefore, the penalty of recovery could not be imposed upon the applicant and that the lapses are on account of such a heavy withdrawal having been allowed without adequate checks exercised by the Postal Assistant and S.P.M.

6. We have heard the learned counsel for the parties. The main contention of the learned counsel for the applicant was that a recovery could only be made if responsibility for the fraud was fixed on the applicant and since the fraud was not due to the applicant the money could not be recovered from him. We have also gone through the records of the case.

7. In the order dated 12.2.1986 it has been mentioned that ~~the~~ ^{the} applicant opened the account as an ordinary account while it was a public account as per remarks on S.B. 3 and he failed to make necessary remarks on S.B.3 ledger card of A/c. No.488080. Thus he contravened the provisions of Rule 418(8) of the P & T Manual, Volume VI. After receiving his explanation the Superintendent Posts, Etawah imposed the punishment of recovery of Rs.4,200/- The applicant's explanation highlighted the fact that the maintenance

of the ledger card is the duty of Head Office in terms of Rule 420 of the Manual and if the account was a public account necessary remarks would have been available in the ledger card which has not been produced and since the Index card has not been produced it cannot be said that the account was opened under Rule 418(8). A recovery of Rs.175/- in 36 instalments will also be a recovery of more than 1/3rd of the pay and as such the entire punishment was incorrect. The account was only an ordinary account and the specimen signatures of the District Magistrate did not contain any remark to show that it was opened by him as a Commissioner of Workmen's Compensation Act and because the applicant has not been held responsible and the fraudulent withdrawal was made on account of the incorrect submission of the withdrawal application which was handed over by the depositor and the Pass Book reaching in the hands of unauthorised persons.

8. The position in regard to the various rules for opening of a public account has been very clearly brought out in the appellate order and we do not find anything wrong with the same. The appellate order ~~says~~ that since the required remarks were not made at the initial stage when the account was opened and the account was treated as ordinary account its omission ultimately led to the loss of Rs.12,000/- by way of withdrawing the amount by a fictitious person. There is no doubt that the withdrawal of Rs.12,000/- was made not in the time when the applicant was working as Postal Assistant and even if an omission has been made by him in not making correct endorsement we feel that a recovery of a heavy amount of Rs.4,200/- from his salary for certain omission which facilitated connivance at a subsequent occasion between persons dealing with the withdrawal of money should not have resulted in recovery of the amount and we also do not find any nexus in the recovery of Rs.4,200/- and the loss of Rs.12,000/-. We feel that any other punishment for the omission made by the applicant

-: 7 :-

would have served the purpose equally instead of making recovery for an amount which was not paid by him and which was withdrawn fraudulently on account of non-following of the procedures by the other set of persons, who figured in the First Information Report. There is no mention in the appellate order on the reasonability of the recovery imposed on the applicant. We, therefore, quash the order of recovery and remit the case back to the ^{the} ~~disciplinary~~ authority for imposing any other punishment, if ^{they} so desire, commensurate with the negligence aspect in respect of ignoring of the rules by the applicant. For the reasons mentioned above we also quash the order of recovery of Rs.5,208/- in respect of the applicant, Ayodhya Prasad, in Registration (O.A.) No.638 of 1987. The respondents will, however, be at liberty to impose any other punishment on the applicants commensurate with the responsibility for omission of the P & T Rules in respect of opening of public accounts.

9. Both the applications are, therefore, allowed in the above terms, without any order as to costs.

বঙ্গসভা

MEMBER (A).

Dated: March 25th, 1988.

PG.

বঙ্গসভা
VICE-CHAIRMAN.