

RESERVED



CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

DATED : The 17 day of September 1996

ORIGINAL APPLICATION NO. 156 OF 1988

CORUM : Hon'ble Mr. T. L. Verma JM
Hon'ble Mr. D. S. Bawejah AM

Prabudha Gautam s/o Badri Prasad,
Assistant Post Master, Post Office,
Jaupur, resident of Village Shivapur,
P.O. Muradgunj, District Jaunpur.....Applicant
C/A Sri R.B.Srivastava.

VERSUS

ORDER

By Hon'ble Mr. T. L. Verma JM

Subject matter of challenge in this O.A. is order dated 16.5.1984, whereby penalty of recovery of Rs.5,760/- has been imposed on the applicant for the monetary loss caused to the department due to the lapses on his part and order dated 31.3.1986 passed by the Appellate Authority upholding the punishment imposed by the Disciplinary Authority.

(A2)
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2. The applicant was initially appointed as clerk in the Post and Telegraph department on 4.12.1957 and was promoted to lower selection grade by order dated 10.3.1983. At the relevant time, he was posted as Sub-Postmaster, Pukhtasarai, district Jaunpur. He was issued imputation statement for misconduct and misbehaviour on 30.9.1983. The allegations against the applicant were that while functioning as S.P.M., Pukhtasarai, he failed to comply with the provisions of 411 A(3)(5) of P. & T. Manual part II. It is alleged that on account of his failure to challenge the discrepancy of Rs.11,000/- in S.B. Account no. 49377 deposited on 6.5.1980, verifying the withdrawal and deposit in S.B. Account no. 408548, S.B. Account nos. 406729, 408386, 408132, 126025, 104455 and 406784, a loss of Rs.1,28,335/- was caused to the department. The applicant submitted his written statement of defence on 6.1.1984. The Disciplinary Authority, on a consideration of the written statement of defence submitted by the applicant and other materials on record, has come to the conclusion that the allegations levelled against the applicant have been proved and that the applicant has thereby committed contravention of Rule 424(2) & (5) of Post and Telegraph Manual VI(2) 411A(3) Vol.II and Rule 30A of Post and Telegraph Manual, Volume I and 6 part I as well as Rule 3(1)(2)(3) of the CCS and CCA conduct rules 1969 and accordingly imposed a penalty of recovery of Rs.5,760/- from his pay. The appeal preferred by the applicant against the said order was rejected by the order dated 31.3.1986. Hence this application for the reliefs mentioned above.

has been assailed
The impugned order of punishment on the ground that the same is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution and also Rule 3 of Post and Telegraph deptt of DG(Spl) post

(AV 3)

office circular No. 36 dated 23.12.1986. The further case of the applicant is that embezzlement of Govt. money had been committed by Lal Chand Misra, who was working as Counter clerk during therelevant time and that the applicant had no role to play in his capacity as Sub-Post Master in checking the transaction of the Saving Bank Accounts. Hence no case of misconduct as alleged has been made out against him. The punishment imposed, according to the applicant, is without jurisdiction. It has also been submitted that the applicant was not given adquate oppor tunity of defending himself in as much as the documents on which the charges were based were not supplied to the applicant inspite of his request.

3. The respondents have appeared and contested the claim of the applicant. In the Counter affidavit filedon behalf of the respondents, it has been averred that during the period in question, applicant was posted as S.P.M., Pukhta-Sarai, Post ffice and that he was found negligent in discharge of his duties as Sub-Post Master, as a result a loss of Rs.1,28,335/- was caused to the department. It has further been a verred that the applicant was allowed to inspect the relevant documents for which the applicant had made a request. It has further been alleged that the applicant failed to verify withdrawal made from the Saving Bank Account above Rs.250/-. It is alleged that failure on the part of the applicant to exercise proper supervision as S. P. M. in the withdrawal from the Saving Bank Account above Rs.250/-, amounts to violation of provision of P & T Mannual.

4. We have heard the learned counsel for the parties and perused the records.

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5. The allegation against the applicant is that he failed to challenge the descrepancy of Rs.11000/- in S.B.Account no.49377 deposited on 16.5.1980 and not accounted for by Lal Chand Misra, Saving Bank Clerk at the time of subsequent deposit of Rs.3000/- on 23.6.1980.

(b) forged withdrawal of Rs.1900 was posted on 19.9.1979 in the S.O.ledger of Saving Bank Account no.408548. Depositor made a deposit of Rs.3500/- on 29.7.1980, which was initialled by then the S.P.M. (applicant) He is alleged to have failed to challenge the descrepancy with regard to the balance noted in the payee slip.

(c) deposit of Rs.3000/- made on 25.9.1980 was not accounted for by Saving Bank Clerk. The subsequent deposit of Rs.1504/- and 2800/- made on 3.10.1980 and 27.11.1980 was correctly accounted for, but the balance in the payee's slip shown without taking into account the deposit. (d) Deposit of Rs.2000/- and 1000/- dated 6.7.1980 and 12.7.1980 in S.B.Account no.408386 were initialled by the applicant in the S.O.Ledger, but failed to challenge the descrepancy of Rs.1000/- deposited on 19.6.1980.

6. The appeal filed by the applicant against the punishment imposed by the Disciplinary Authority (internal page 1 of the appeal) refers to the duties of S.P.M. where instant counter service is introduced and According to the provision quoted in the appeal, filed by the applicant, On receipt of ledger and pay in slip S.P.M. will check the entries with the concerned ledger and ensure balance noted in pay in slip agree with the ledger in each account and initial the entry. He will then return the ledger to counter clerk and retain pay in slip for return to the counter clerk after the close of counter hours for preparation of list of transaction.

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7- It is alleged that the S. B. Account Clerk used to issue Saving Bank receipt to the Depositor after retaining their pass book for the purpose of levying interest. The S. B. 28 receipt, according to rules, is issued by the S.O. in duplicate. The receipt book used in Pukhtasarai Post Office branch post office was in triplicate. The duplicate copy ought to have been cancelled before bringing the same in use, but the same was not done.

8. From the facts as mentioned above, we are satisfied that the allegation levelled against the applicant that he committed contravention of rule 424 (2) and (5) of the P & T Manual Rule 30-A of Post and Telegraph Manual as well as Rule 3(1)(2) and (3) of C.C.S (C.C.A.) conduct rules as a result of which the loss of Rs.1,28,335/- was caused to the department has been established. It is, however, absolutely clear that only allegations against him is of negligence and omission to exercise supervision on S. B. Accounts Clerk as a result of which pecuniary loss of Rs.1,28,335/- was caused.

9. The learned counsel for the applicant submitted that the imposition of punishment of recovery of Rs.576/- from the pay of the applicant is contrary to provision of Rule 11(III) of C.C.S. (C.C.A) rules 1965. It was argued that such a punishment can be imposed only where the incumbent is personally responsible for causing loss. The rule 11 (III) reads as follows :

The following penalties for good and sufficient reason as herein provided be imposed on a government servant. " recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order"

AN/6

It was submitted that the rule extracted above makes it clear that punishment of recovery from pay can be imposed only where the government servant proceeded against is personally responsible for causing pecuniary loss to the government. In the instant case, admitted, the applicant was alleged to have been negligent in exercising supervision on the work of S.B.Accounts Clerk which resulted in causing pecuniary loss to the government. There is, thus no allegation was made against the applicant that he was himself responsible for causing pecuniary loss to the government. Similar question came up for consideration before Madras Administrative Tribunal in C.N. Harihar Nandan v/s Post Master G.P.O. reported in 1988 (8) Administrative Tribunal cases 673. In the aforesaid case, the applicant was Postal Assistant and had also held inter alia the post of Accounts Clerk. Another postal employee had misappropriated huge sums out of deposit received from public. The applicant proceeded against and the Disciplinary authority ordered a recovery of Rs.4080/- from his pay on the ground that he had not followed the directions of Director General, Post and Telegraph instructions dated 17.1.1983 which resulted in the delay in deducting misappropriation. Order passed by the Disciplinary authority was upheld in appeal. The applicant challenged O.A. No. 498/87 before the Central Administrative Tribunal Madras. The Tribunal allowed the application and quashed the punishment imposed on the ground that the applicant was not personally responsible for causing pecuniary loss to the government. The respondents, however, were given liberty to impose any other appropriate penalty in the disciplinary proceedings as provided in the rules. Similar view was taken by Calcutta Bench of

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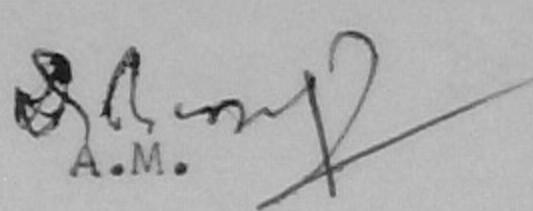
Central Administrative Tribunal in Sudhir Kumar Dass
v/s Union of India 1988 (7) S L R page 615 and
Central Administrative Tribunal Cuttak Bench in
Ram Deo Dass v/s Union of India 1991 (18) C.A.T.
cases 830.

9. The case before us is in pari-materia with the cases referred to above. We have given our conscious consideration to arguments advanced and the decisions of the C.A.T's referred to above. We respectfully agree with view that punishment of recovery from pay as provided in Sub-rule 3 of 11 of C.C.S (C.C.A.) rules can be imposed only in cases where the incumbent is personally responsible for causing pecuniary loss to the government. In other words, such a punishment cannot be imposed if the loss has been caused by the act of some one else. In the instant case, the statement of imputation itself states that the applicant was guilty of negligence in exercising supervision. Therefore, the question of his being personally responsible does not arise. He was only technically responsible due to his non compliance with the instructions contained in the postal and Telegraph Manual and other rules.

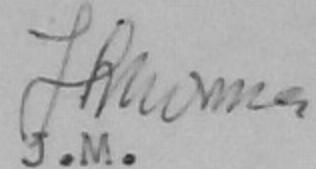
10. Inview of the above, and having regard to the decisions of Administrative Tribunals referred to above, we are satisfied that in the circumstances of the case, punishment of recovery from the pay of the applicant was not warranted under sub-rule (III) of Rule 11. The disciplinary authority, however, could have imposed any other punishment prescribed in Rule 11 (1) (II) and(IV).

JK

11. For reasons stated above, we allow the application and quash the order dated 16.5.1989 and order dated 31.3.1986. However, we provide that this will not preclude the respondents authority from imposing appropriate proceedings. The amount if recovered shall be returned within 3 months from the date of communication of the order.



A.M.



J.M.

Siddiqi