

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 234 of 1988

Ram Narain Dixit Applicant
Versus
Supdt. Posts, Etawah & Ors. Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. A.B. Gorthi, Member(A)

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

By this application the applicant has prayed for setting aside the punishment order by which the recovery for Rs.4184/- has been made by him and the appellate order, and has further prayed for the amount recovered from him may be refunded with interest.

2. The applicant was working as an Assistant Post Master/Sub-Post Master in the selection grade of 425-640 in Etawah Postal Division. The grievance of the applicant in this case is that the recovery can be made by way of punishment Under rule 106, 204 & 204-A of P & T Manual Vol-III and as a matter of fact, there is no denial of the fact that the amount on which mis-appropriation was committed by the then Postal Assistant of Etawah city. The first transaction

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took place on 22-2-1983, and the second transaction took place on 18.5.83 when another account holder deposited the amount. It was also not misappropriated but was credited to the Government account when the entries reached Etawah head office for being posted in the duplicate ledger card maintained there, a difference of Rs.100/- was noticed in the balance and then it was put up before the applicant, he immediately ordered for calling for the Pass Book. He also noted 'PBC' in the remark column of ledger card No. 457183 against the entry of deposit of Rs.500/- which indicated that the Pass Book has been called for. The only negligence on the part of applicant was that he could not devote himself whole-heartedly in obtaining the pass book and the reason for the same was that he could not assess any fraud further at the time available with each A.P.M for such work is almost negligible. However it is established that the loss of Rs.100/- ~~which~~ was caused to the Government.

3. The applicant admittedly ²⁴ call for S.B. A/C Pass Books from all sub and branch offices Etawah district for the entry of annual interest and in case of any difference in the balances arrived at in the ledger card maintained at the head post office and the ledger register maintained at the sub post office and also in the pass book.

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The applicant's punishment was only in respect of his Contributory negligence i.e. lack of supervision or thorough checking. Admittedly according to Sri Udai Beer Singh, Postal Asstt at Etawah city committed misappropriation of various date but because of the great loss caused to the Government and the negligence on the part of applicant who did not reconcile the difference before proceeding further and failed to report the balance of Saving Bank Pass book and ledger to the Supdt. Post office and to take necessary action which was required to be done at his end that is why a memo of charge of imputation was served on him for the laxity on the part of the applicant vide memo dated 25.2.1987 after examining his defence etc, the punishment of recovery was awarded. It has been stated that there is no provision for writing balance of accounts after transaction in the 'Pay-in-slip' and there is no case of withdrawal in the fraud. All the cases relate to the deposits in the Counter and the transactions made in the Pass Book on the counter were not produced before the Sub-post master Etawah city for checking the balance with the ledger cards. In such cases only course was left to call for the Pass Books by Etawah head office incase of the difference of the balances and for making entry of interest and the applicant has miserably failed to do his duties as Asstt. Post Master.

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4. A reference has been made on rule 106 which reads as follows:

106- Imposition of the penalty of recovery

" In the case of proceedings relating to recovery of pecuniary losses caused to the Government by negligence, or breach of orders by a government servant, the penalty of recovery can be imposed only when it is established that the government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach caused the loss."

5. Rule 204 reads as follows:

204 Responsibility

" Where owing to the negligence of a departmental employee or its agent including an extra departmental agent, or through the omission on his part to observe any rule as provided in the different volumes of the posts and Telegraphs Manual, or other books like the Post Office Guide, the Department either by reason of the enquiry being impeded or frustrated, directly or indirectly or for any other reason is put to a loss of Government money or property or has to make good the loss of any money or property, or where

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the department losses money by embezzlement or fraud of any of its employees, etc. any member of the staff or any agent who by his negligence default or disregard of the rules, has caused the loss or has contributed to its occurrence, either by reason of the enquiry being impeded or frustrated directly or indirectly or for any other reason, may be required to make good the loss either in whole or in part as the competent authority may decide provided that there is a clear finding that (i) the departmental employee/ E.D. Agent is held responsible for a particular act or acts of negligence or breach of orders or rules and (ii) that such act or acts of negligence and/or breach of orders or rules caused the loss contributed to its occurrence by reason of enquiry being impeded or frustrated directly or indirectly or for any other reason."

6. Rule 204-A which reads as under:-

204-A. Instructions for regulating the enforcement of responsibility for losses:

- " 1. The cardinal principle governing the assessment of responsibility is that every public officer should exert the same vigilance in respect of public expenditure and public funds generally

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as a person of ordinary prudence would exercise in respect of the expenditure and the custody of his own money. While, therefore, the competent authority may, in special cases, condone an officer's honest errors of judgment involving financial loss, if the officer can show that he **has** acted in good faith and done his best upto the limits of his ability and experience, personal liability must be strictly enforced against all officers who are dishonest, careless or negligent in the duties entrusted to them.

2. It is of the greatest importance to avoid delay in the investigation of any loss due to fraud, negligence, financial irregularity, etc should the administrative authority require the assistance of the Accountant-General in pursuing the investigation, he may call on that officer for all vouchers and other documents that may be relevant to the investigation, and if the investigation is complex and he needs the assistance of an expert audit officer to unravel it, he should apply forthwith for that assistance to Government which will then negotiate with the Accountant-General for the services of an investigating staff. Thereafter the administrative authority and the audit authority will be personally responsible, within their respective spheres, for the expeditious conduct of the enquiry.

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3. In cases where loss is due to delinquencies of subordinate officials and where it appears that this has been facilitated by laxity of supervision on the part of a superior officer the latter should also be called strictly to account and his personal liability in the matter carefully assessed.

4. The question of enforcing pecuniary liability should always be considered as well as the question of other forms of disciplinary action. In deciding the degree of an officer's pecuniary liability, it will be necessary to look not only to the circumstances of the case but also to the financial circumstances of the officer, since it should be recognised that the penalty should not be such as to impair his future efficiency.

7. Thus rule 106 now provides that a penalty of recovery can be imposed only when it is established that the government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach caused the loss. Para 106 as referred above cannot be made applicable in the case of the applicant as it is not his negligence which caused

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the loss and as a matter of fact the loss has been caused by another person and the only fault which has been found on his part is that if the supervision would have been done properly and he would have been performed his duty in the manner which should have been done the fraud could have been detected earlier. The explanation of the applicant for the same is also there that what ever he could have been detected in the circumstances was detected.

8. Para 204 & 204-A are concerned, it deals with the responsibility where owing to the negligence of a departmental employee or its agent including an extra-departmental agent, or through the omission on his part to observe any rule as provided in the different volumes. If loss occurs, such employee either by reason of the enquiry being impeded or frustrated directly or indirectly or for any other reason may be required to make good the loss either in whole or in part as the competent authority may decide provided that there is a clear finding that the departmental employee/E.D. Agent is held responsible for a particular act or acts of negligence and/or breach of orders or rules caused the loss or contributed to its occurrence by reason of enquiry being impeded or frustrated directly or indirectly or for any other reason.

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9. So far as in rule 234 it is relevant that in cases where loss is due to delinquencies of subordinate officials and where it appears that this has been facilitated by laxity of supervision on the part of a superior officer, the latter should also be called strictly to account and his personal liability in the matter can fully be considered as well as the question of other forms of disciplinary action in particular if the loss has accrued through fraud, every endeavour should be made to recover the whole amount lost from the guilty person, and if laxity of supervision has facilitated the fraud, the supervising officer at fault may properly be penalised either directly by requiring him to make good in money a sufficient proportion of loss, or indirectly by reduction or stoppage of his increments of pay.

10. Now out of the total loss so caused the applicant has been made to pay a sum of rupees 4184/- out of Rs. 6800/- defalcated and the rest is to be paid by others. Now the rule as extracted makes it clear that without fastening the extension of liability occurred due to the cause of negligence or laxity of supervision such penalty could not have been awarded and the penalty in terms to be awarded to the extent to which the loss has been caused because of such laxity and supervision and in the instant case the fraud has been committed

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by someone else and more than one person could be said to be responsible for this negligence or laxity of supervision. Without ascertaining the negligence deciding the extent of liability the applicant has been made to pay a particular amount which could not have been done and accordingly the application deserves to be allowed in part. The respondents shall ascertain whether there was any negligence on the part of the applicant and his negligence in fact was the cause of the loss or that if proper supervision would have been done then a particular fraud to a particular amount could not have been deducted and the defalcation could have been ^{saved} said to that extent and it is thereafter only that his liability along with others is to be fixed and let it be done within two months from the date of communication of this order. The amount in case is found liable and the liability is reduced, the amount which has been so recovered in excess shall be refunded within another two months. ^{The application is disposed of in the above terms &} with no order as to costs.

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[Signature]
Member (A)

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V.C.

Dated: 26th February: 1992

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