

CENTRAL ADMINISTRATIVE TRIBUNAL
Calcutta Bench

C.A. No. / P.R. No. 817 of 1989 DATE OF DECISION 17.9.96

Bachchan Lal - - - - - APPLICANT (S)

S. Anand Kumar & S. G. Mehta - - - - - ADVOCATE FOR THE
APPLICANT (S)

VERSUS

COL. OM - - - - - RESPONDENT (S)

S. N. B. Singh - - - - - ADVOCATE FOR THE
RESPONDENT (S)

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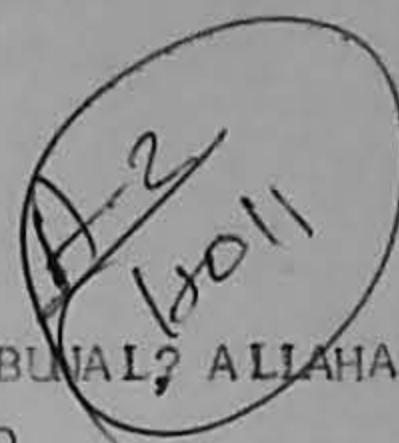
The Hon'ble Mr. C. Das Gupta ~~vice Chairman~~
Member (A)

The Hon'ble Mr. T. L. Verma Member (J)

1. Whether Reporter of local newspaper may be allowed to see the judgment?
2. To be referred to the record or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether to be circulated to all other Bench?


(SIGNATURE)

Manohar/-



CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated : Allahabad this the 17/5 day of Sept. 1996.

Hon'ble Mr. S. Das Gupta, Member-A
CORAM : Hon'ble Mr. T. L. Verma, Member-J

Original Application No. 817 of 1989

Bachchan Lal son of Shiva Ram,
Resident of House No. 14-B, Mohalla
Colonelganj, Fatehgarh, District Farrukhabad.

....Applicant.

(THROUGH ADVOCATE SHRI ANAND KUMAR & SRI G.P.MADAN)

Versus

1. Union of India through Secretary, Ministry of Communication, Govt. of India, New Delhi.
2. Superintendent Posts Fatehgarh, District Farrukhabad.
3. Director, Postal Services, Kanpur.
4. Chairman, Postal Board, New Delhi.

....Respondents.

(THROUGH ADVOCATE SHRI N. B. SINGH)

O&R D E R

(By Hon. Mr. T. L. Verma, Member-J)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed for quashing the punishment order dated 30.9.1986, appellate order dated 6.10.1987 and revisional order dated 16.1.1989 upholding the punishment order and for issuing direction to the respondents to refund a sum of Rs. 3,000/- deducted from his salary with interest

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@ 12% per annum.

2. The applicant while working as S.O. L.C.IV Fatehgarh, Head Office was issued minor penalty charge-sheet dated 20.2.1986 on the allegations that he was negligent in discharge of his duties and as a result of his omission and commission loss of more than Rs. 68,000/- was caused to the Government. The applicant submitted his written statement of defence (Annexure-2). The disciplinary authority, on a consideration of representation submitted by the applicant and other materials on record has come to the conclusion that the charges levelled against him have been proved and has accordingly imposed penalty of recovery of Rs.3000/- from his pay in twenty instalments of Rs. 150/- per month. The appeal preferred against the penalty imposed by the disciplinary authority has been dismissed by the order dated 16.10.1987. The revision application filed by the applicant was rejected by order dated 16.1.1988. Hence this application for the reliefs mentioned above.

3. The contention of the applicant is that the loss alleged to have been caused to the Government was neither the result of the fault committed by ~~the~~ him nor as a result of his negligence. Therefore, the impugned order of recovery of Rs. 3,000/- from his salary is against the provisions of rules. It has further been contended that others who were also charge-sheeted by the authority and were punished, their punishment has been quashed by the respondent No.4. The further case of the applicant is that as he was not allowed access to the documents demanded ~~as~~ ^{PC} he has been adversely affected in his ~~the~~ defence.

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4. The respondents have appeared and contested the case of the applicant. In the counter-affidavit, filed on behalf of the respondents, it has been stated that the allegations levelled against the applicant have been proved and that there has been no infraction of any rule in holding inquiry and as such interference by the Tribunal in the punishment imposed, is not warranted.

5. We have heard the learned counsel for the parties and perused the record. The learned counsel for the applicant submitted that the order affecting recovery from the pay of the applicant was contrary to Rule 11 of the CCS(CCA) Rules, 1965 and as such the same is illegal and void-ab-initio. Rule 11 of the CCS(CCA)Rules provides that punishment of recovery from the pay of delinquent employee of the whole or part of the pecuniary loss caused by him, to the Government by negligence or breach of orders, may be imposed. It was argued that for justifying an order of recovery, it has to be proved that the loss was caused due to negligence or for breach of the orders. The learned counsel for the applicant has placed reliance on the decision of Madras Bench of Central Administrative Tribunal in C.N. Hariharanandan Vs. Presidency Post Master, Madras G.P.O. and another reported in 1988(8) A.T.C.673 and Bamdev Das Vs. Union of India and others reported in 1991(18) A.T.C. page 830.

6. In Hariharanandan's case, the applicant was a Postal Assistant and had held inter-alia, the post of Counter Clerk. Another postal employee who had mis-appropriated huge sum out of deposits received from public. The disciplinary authority ordered a

recovery of Rs. 4,080/- from the pay of the applicant on the ground that had he followed the D. G., P & T instructions dated 17.2.1983 and got the entries in the pass books verified accordingly the said misappropriation would have been detected much earlier. The punishment imposed was challenged by filing O. A. No. 498 of 1987. The Tribunal while allowing the application held that the applicant was not personally responsible for causing any pecuniary loss to the Govt. The negligence on the part of the applicant was not punishable with recovery from pay. The respondents, however, were given liberty to impose any other appropriate penalty as provided in the rules. Similar view has been taken in the decision reported in 1991(18) A.T.C. 830.

7. In view of the decision of Madras Bench of the Tribunal referred to above, we propose to examine whether the applicant was personally responsible for the pecuniary loss caused to the Government. In this connection reference may be had to statement of imputation of misconduct or mis-behaviour served upon the applicant (Annexure-1). For convenient of reference, the imputation of charges is reproduced hereunder :-

R.
"1(i) Shri Bachchan Lal, while working as SO LC IV of Fatehgarh H.O. received the pay-in-slip (SB-103) of deposit of Rs.1000/- in Akberpur S.B. Account No. 3320003 dated 8x 3.2.81, made by Shri Megh Nath Singh, S/o. Shri Banwari village and Post Akberpur in his above mentioned account. Shri Bachchan Lal made an entry of this deposit of the said amount i.e. Rs.1000/- in the HO ledger card of the said account number and struck the balance as Rs. 3941.84, while in the pay-in-slip dated 3.2.81, the balance after this deposit was written as 39.44. The pay -in-slip was also impressed with date stamp of Akberpur ED SO with erroneous date (over typed)

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as 37.2.81.

1. (ii) He, while working as SO IC IV in Fatehgarh HO, received the warrant of payment dated 13.7.82 for withdrawal of Rs.250/- from Akberpur SB Account number 3320063 made by the depositor Shri Meah Nath Singh. Shri Bachchan Lal SO IC IV made the required entry of the said withdrawal in the HO Ledger card and struck the balance as Rs. 4106-74, while in the application for withdrawal dated 13.7.82 the balance after this withdrawal was written as Rs. 3694.85.

2. Shri Bachchan Lal, while working as SO IC IV in Fatehgarh H.O. received the pay-in-slips (SB-103) of deposit of Rs. 200/-, 150/-, 20/- and 100/- dated 28.11.80, 29.11.80, 3.12.80 and 6.10.81 respectively of Akberpur SB Account No. 3320265 made by Shri Srawan Kumar Assistant Teacher R.V.M. Inter College, Akberpur in the Reading room fund account of his school. Shri Bachchan Lal made the entries of these aforesaid deposits in the HO Ledger card of the said account and struck the balance as Rs. 4453-04, 4603-04, 4623.04 and Rs. 4972-39 respectively while in the pay-in-slips dated 28.11.80, 29.11.80, 3.12.80 and 6.10.81, the balances after these deposits were written as Rs. 4273.34, 4423.34, 4443.34 and 4583.34 respectively. The pay-in-slip dated 6.10.81 was also impressed with date stamp of Akberpur ED SO with erroneous date as 63.10.81.

3. Shri Bachchan Lal, while working as SO IC IV in Fatehgarh HO, received the warrants of payment (SB-7) dated 19.9.81, 22.9.81, 23.9.81, 24.9.81, 25.9.81, 26.9.81 and 28.9.81 of withdrawals of Rs.250/- each from Akberpur ED SO SB A/c. No. 3320249 made by Shri Kailash Behari Pandey, R/o. Vill. & PO Akberpur. The said Shri Bachchan Lal made the entries of these withdrawals in HO ledger card of the said account and struck the balance as Rs. 7123-55, 6623-55, 6373-55, 6123-55, 5873-55, 5373-55 and 5623-55 respectively, while in the applications for withdrawal dated 19.9.81, 22.9.81, 23.9.81, 24.9.81, 25.9.81 26.9.81 and 28.9.81, the balance after these withdrawals were written as Rs. 6750/-, 6250.15, 6000.15,

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5750.15, 5500.15, 5250.15 and 5000.15.

4. Shri Bachchan Lal, while working as SO IC IV in Fatehgarh HO received two warrants of payment (SB-7) dated 8.7.82 and 24.7.82 for withdrawal from Akberpur SB Account No.3320476 of Rs.123/- and Rs. 250/- ~~Rs.123/- and 250/-~~ respectively, made by Shri Sunil Kumar Dubey S/o. Shri Mathura Prasad Dubey, Shri Bachchan Lal, ledger clerk had posted both the withdrawals in the HO ledger card of the said account No. 3320476 and struck the balance as Rs.893.55 and Rs.643.55 respectively, while in the applications for withdrawal dated 8.7.82 and 24.7.82 , the depositor had written the balance after these withdrawals of Rs.123/- and 250/- respectively as ~~Rs.123/- and 250/-~~ 1121.53, and Rs. 871.53.

5. Shri Bachchan Lal, while working as SO IC IV in Fatehgarh HO received the pay-in-slip (SB-103) of deposit of Rs.500/- in SB Account No.3320302 dated 27.1.81 made by the depositor Shri Ulfat Singh. Shri Bachchan Lal made the required entry of the said deposit in the HO ledger card of the said account i.e. 3320302 and struck the balance as Rs.2571.90, while the depositor had written the balance after the deposit of Rs.500/- dated 27.1.81 in the said pay-in-slip as Rs. 2871.90.

6. Shri Bachchan Lal, while working as SO IC IV in Fatehgarh HO, received two warrants of payment (SB-7) dated 11.7.81 and 14.7.81 for withdrawal of Rs. 100/- and 200/- respectively from Akberpur SB A/c. No.3320392 made by Shri Budhsen Dubey, depositor of the said account. Shri Bachchan Lal ledger clerk had posted both the withdrawals in the HO ledger card of Akberpur S. A/c. No. 3320392 and struck the balance as Rs.3822.06 and Rs.3622.06 respectively, while in the applications for withdrawal dated 11.7.81 and 14.7.81, the depositor had written the balance as Rs. 3425.56 and 3225.56 after these withdrawals of Rs.100/- and 200/- respectively. But the said Shri Bachchan Lal failed to challenge the differences in the balances.

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7. Shri Bachchan Lal, while working as SO LC IV in Fatehgarh HO, received the warrants of payment (SB-7) dated 27.12.80, 8.7.81, 6.10.81, 10.10.81, 14.11.81, and 22.1.82 for withdrawal of Rs.230/-, 50/-, 200/-, 150/-, 130/- and 60/- from Akberpur SB Account

No. 3320333 made by Shri Om Prakash Chaturvedi. Shri Bachchan Lal ledger clerk had deposited all these withdrawals in the HO ledger card of the said account and struck the balances on each occasions as Rs.6730.44, 7809.19, 7609.19, 7459.19 7329.19 and Rs. 7544.19 respectively, while in the applications for withdrawal of the above cited dates, Shri Om Prakash Chaturvedi had shown the balance after each withdrawal Rs. 6981.41, 8408.94, 8208.94, 8058 .94, 7928.94 and 8143.94 respectively. But, there was over writing and cutting in the balance after each withdrawal on applications for withdrawal of all the above dates and Shri Bachchan Lal L.C. failed to challenge the difference and cutting and overwriting in balances.

8. The said Shri Bachchan Lal, while working as SO LC IV in Fatehgarh HO, failed to notice the above differences and irregularities in the balances with pay-in-slips withdrawals and HO Ledger cards and also failed to note the fact in special error Books / about the pass books which were not received for interest posting for the years-1979-80, 80-81 and 81-82 as required under rule 452(5) of P & T Man. Vol. VI Part II. He failed to prepare the list of accounts of the passbooks which have not been received for entry of interest of 79-80, 80-81 and 81-82 upto June, 1980, 1981, 1982 during the month of July every year and send to concerned SDI(P) for verification as required under DG P & T communication No. 30-44/71-SB dated 1.11.71 and 25.3.72 and No. 59-6/72-SB dated 4.10.72. Thus the cases of non-accounting for of deposits and withdrawals and value of NSCs could not be detected then and there.

~~An inquiry was held to inquire into the above allegations.~~

Q. The substance of the allegation contained in the statement of imputation extracted above is that the applicant failed to follow the provisions of rule 448 and 452(6) of the P&T Man. Part. II and Directorate Instructions No.30-44/71-53 dated 1.1.73 and 25.3.72 and 59-6/72-SB dated 4.10.72. As a result, pecuniary loss of Rs. 68,000/- was caused to the Government.

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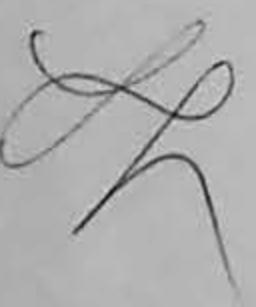
9. We have perused the order passed by the disciplinary authority, appellate authority as well as reviewing authority, Annexures-A, B and C respectively. ^{There} ~~the~~ disciplinary authority ~~though~~ has not discussed in detail the reasons for his coming to the conclusion ~~that~~ ^{to} ~~has~~ held that the applicant, while working as S.O. Ledger Clerk IV in Fatehgarh, ~~is proved to have~~ remained negligent in his duties with the result fraud and loss was facilitated, ^{to} he has been held to be guilty of the charges levelled against him. The finding recorded by the disciplinary authority, thus, is to the effect that the pecuniary loss was caused to the Government due to negligence of the applicant in discharge of his duties.

10. The reviewing authority, however, in para 5 has given detailed reason for his coming to the conclusion that the applicant was negligent in discharge of his duties which resulted in loss of more than Rs. 68,000/- to the Government. The substance of the order passed by the Reviewing Authority, is also that the applicant was negligent in discharge of his duties in as much as he did not verify whether the amount shown in the withdrawal forms tally with the record available in his office. It has also been observed that the records indicate that the applicant had not maintained the objection register and that he had also not prepared the list of pass books. The alleged omissions on the part of the applicant, as would appear from the order passed by the disciplinary authority, appellate authority and

reviewing authority have been proved. We however, find that there is no finding in any of the impugned order indicating that the applicant was personally responsible for the aforesaid pecuniary loss. The finding recorded by the appellate authority is as follows :-

"I have gone through the appeal and other connected documents very carefully and I find that the appellant has stated nothing regarding the variation in balances as shown on the relevant pay-slip/withdrawal forms with that of the concerning ledger cards as worked out by the appellant himself for preparation of lists of accounts in which interest has not been added and sent to the @@@ inspecting officers, the appellant has tried to fire in the air saying that these were prepared and sent to S.D.I. for verification by him but, the did not submit any proof. Therefore, his ~~weak~~ plea is not tenable. The appellant has also mentioned irrelevant references which are not concerned with the charges."

The above finding of the appellate authority has been upheld by the reviewing authority. Finding recorded by the appellate Authority, thus, clearly goes to show that the applicant was negligent in discharge of his duties and that pecuniary loss was caused to the Government as a result of such negligence on the part of the applicant.


11. Rule 11(iii) of the C.C.S (C.C.A.) Rules 1965 reads as follows :-

"11. Penalties.

The following penalties may, for good and sufficient reasons and as hereinafter provided be imposed on a Government servant, namely :-

- (iii) 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."

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A plain reading of the Rule extracted above makes it abundantly clear that punishment of recovery from the pay can be imposed where the Government servant is ~~personally~~ ^{personally} ~~provisionally~~ responsible for causing pecuniary loss to the Government. In the instant case admittedly, the applicant is alleged and proved to have been negligent in discharge of his duties which has resulted in causing pecuniary loss to the Government.

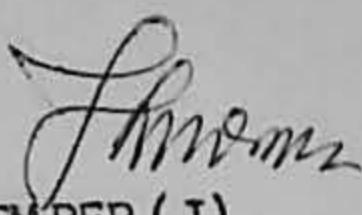
12. We have already noticed above that the Madras Bench of the Administrative Tribunal in Hariharanandan's case has held that Rule 11(c) has no application where a ~~personally~~ ^{personally} Government employee is not ~~provisionally~~ responsible for causing any pecuniary loss to the Government. The view taken by the Madras Bench of the Administrative Tribunal in Harihar Nandan's case has been followed in 1991(18) A.T.C. page 830. The case before us is in pari-materia with the cases referred to above. We are in respectful agreement with the decisions referred to above. In view of this and having regard to the finding recorded by the appellate authority as well as the reviewing authority that the applicant was negligent in discharge of his ^{how} duties, we find and ~~hope~~ that the provisions of rule 3(iii) have no application to the present case. Therefore, the punishment of recovery from pay of the applicant can not be sustained.

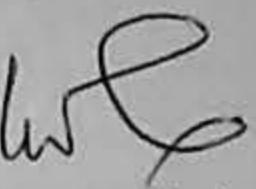
13. In the result this ~~0000~~ application is allowed and the orders dated 30.9.1986, 6.10.1987 and 16.1.1989

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are quashed. The respondents, however, are given liberty to impose any other penalty as provided in rules. There will be no order as to costs.


Member (J)


Member (A)

(Pandey)