

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
(ALLAHABAD BENCH) ALLAHABAD.

O.A. NO. O.A. No. 318/92 OF 199
TA. NO.

Date of decision 26.11.92

... D.P. Misra Petitioner

... Sri B.N. Ashhana Advocate for the petitioner

Versus

... Union of India and others Respondent

... Sri S.C. Tripathi Advocate for the Respondents

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CORAM :-

The Hon'ble Mt. Justice U.C. Srivastava, V.C.

The Hon'ble Mr. K. Obayya, A.M.

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


Signature

NAQVI

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD

O.A. No. 318/92

D.P. Misra..... Applicant

versus

Union of India Respondents.
and others

Hon'ble Mr. Justice U.C.Srivastava, V.C.
Hon'ble Mr. K. Obayya, A.M.

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

The pleadings are complete and the case is being heard and disposed of finally.

2. The applicant was Extra Departmental Branch post Master, Baisar Post Office in Accounts with Dhani Bazar sub-post office under Kunraghan Head Office, Gorakhpur District. The applicant was involved in certain fraud cases and he was put off from duty with effect from 10.10.73 to 6.6.74 and again from 11.12.74 to 24.2.81 but later on after enquiry he was put back on duty. Subsequently another case of misappropriation of amount worth Rs. 6500/- and Rs. 5000/- were against the applicant detected during the period 1.3.83 to 3.10.84.

It was also said that the forgery was done by one Tirloki Nath Extra Departmental agent but applicant was found responsible in taking unauthorised assistance. This amount was later on paid to the department and as such though loss was caused to the department. Yet another case of defalcation of Government money was detected after a complaint from Ram Harakh the depositor of Baisar S.B. account was made in which he said that he deposited a sum of Rs. 1500/- in the S/B account the same was not accounted for and misappropriated by post master. In the preliminary

enquiry the said fact was prima facie proved and accordingly the applicant was put off ~~on~~ duty third time on 13.4.85 and further investigation took place by the department and the department's contention is that the amount which has been mis-appropriated comes to Rs. 20,300/-. In respect of the complaint of Ram Harakh after preliminary enquiry the applicant was charge sheeted and departmental proceedings started against him. The enquiry officer submitted his report and acting on it the disciplinary authority held that he embezzled a sum of Rs. 1500/- and removed from service vide order dated 11.2.87 against which order he did not file any appeal. Subsequently it appears that the Senior Superintendent post offices, Gorakhpur addressed a letter on 3.6.87 to seal and transfer the landed property of the applicant for the said sum of Rs. 20,300/- and the District Magistrate thus acted under section 4 of Public Accounts Defaulter Act 1850 and Rule 204 and 204(A) of Post and Telegraph Manual for recovering the said amount. As the recovery was started the applicant approached this Tribunal and the recovery was stayed and the applicant's case is that there is no finding that he has embezzled a sum of Rs. 20,300/- and it appears that no opportunity of hearing in the matter was given nor any finding was recorded after associating him. No recovery proceedings could have been taken place against him. On behalf of the respondents reliance has been placed on the Public Accounts Default Act. A very perusal of the act itself indicates that rule 204 and 204(A) Post and Telegraph Manual on which

reliance has been placed itself provides that 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 Post and Telegraph Manual, or other books etc. 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 where the department loses 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 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. Even under Public Accounts Act an opportunity of hearing is to be provided as the findings was recorded, action can be taken. In the instant case although the department at its level detected an embezzlement of a sum of Rs. 20,000/- and odd but the applicant was not associated with any

enquiry. No clear finding was recorded nor the / was given any opportunity to make defence in the loss to be / made good as provided under section 204 and 204-A above. Without associating the applicant with the enquiry ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ of the amount could have been taken when the earlier ~~xxxxxxxxxxxxxx~~ and the sum of Rs. 1500/- was found embezzled against him and removed from service. In these circumstances the application deserves to be allowed and the recovery order dated 20.11.91 is quashed. However, it will be open for the respondents to take recovery proceedings against the applicant in accordance with law. No observation is to be made for taking action with which the department is to take action for safeguarding the property from which the amount can be recovered in case an attempt is made by the applicant to dispose it of. The application stands disposed of with no order as to the costs.

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Dated: Allahabad
26th Nov., 1992

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