

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 30th day of October 1996.

Original Application no. 667 of 1994.

Hon'ble Mr. T.L. Verma, Judicial Member  
Hon'ble Mr. S. Dayal, Administrative Member.

Madho Ram Garg, S/o Late Sri J.P. Garg, Assistant Post Master,  
Head Post Office, Muzaffarnagar.

... Applicant.

C/A Sri K.P. Srivastava

Versus

- i. Union of India through the Secretary (P) Ministry of Communication, Govt of India, New Delhi.
- ii. Director Postal Services, O/O P.M.G., Dehradoon.
- iii. The Sr. Supdt. of Post Offices, Muzaffarnagar, U.P.

... Respondents.

C/R Sri N.B. Singh.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant seeks following reliefs:-

- i. Quashing of the order of disciplinary authority dated 31.12.91, ordering recovery of sum of Rs. 3780/- to be recovered from the pay of the applicant in 36 monthly instalment of Rs. 105/- each, also seeks quashing of order dated 16.07.92 in which

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recovery of Rs. 3780/- has been reduced to that of Rs. 1000/- recoverable in 10 monthly instalments of Rs. 100/- each after taking <sup>lenient</sup> view of the matter and the order of the authority in revision dated 29.10.93 rejecting the petition of the applicant for revision.

- ii. direction to the respondents to refund the amounts so recovered from the salaries of the applicant with 20% interest from the date of recovery.
- iii. direction to the respondents to promote the applicant w.e.f. 01.10.91 as his promotion has been ~~post~~ deferred from that date.
- iv. direction to the respondents to pay costs of the application.

3. The facts of the case as narrated in the application are that the applicant served as Assistant Post Master (SB)-SO group, Muzaffarnagar, Head Post Office from May 1989 to October 1989. He was transferred to Muzaffarnagar City Post Office and handed over the charge of the post in October 1989. The depositor's application was received on 18.05.89 for issue of a duplicate Pass Book A/c no. 22041093 of Sherpur Branch Post Office coming under Purkhezi Sub Office. The application was duly entered and verified with the recommendation by the S.P.M for issue of duplicate S.B. Pass Book. The ledger clerk verified the particulars from the <sup>d</sup> ledger card of the Head office and submitted the application in the binder for further action. The applicant after satisfaction submitted the said application for issue of duplicate pass book

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before Dy. Post Master (SB) for orders. The Dy. Post Master ordered the issuance of duplicate Pass Book and signed the register. The ledger clerk prepared duplicate pass book of account no. 22041093 and the applicant signed the duplicate pass book after verifying particulars of the account and balance as well as interest added for the year 1988-89 and signed the records. The duplicate pass book was sent to S.P.M Purkhezi with S.B. Slip with the direction to deliver it to the depositor and obtain his receipt and send it back. The receipt was filed in the guardfile maintained for duplicate pass book. There was shortage of about 25% of the staff during the month of May and June 1989 which was a regular feature and the ledger clerks were asked to prepare the list of accounts standing at Branch Offices and single handed offices in which Pass Books were not received for posting of interest for the year 1988-89 till 30.06.89. Therefore, there was pendency <sup>of</sup> posting of vouchers received from the sub offices into the binders of Head Post Office. After posting of vouchers, list of account standing at Branch Offices E.D. Sub Offices and single handed Sub Post Offices was prepared, verified and signed by the applicant and despatched by the ledger clerk to the Sub Divisional Inspector by registered post. The list included Sherpur Branch Office also. The S.O. S.B. Branch of the Head Post Office, Muzaffarnagar, was inspected/ visited by Senior Supdt. of Post Offices, Supdt. Post Office and AS.PO's and no irregularities were found nor was it ever said that the list of the Sherpur was not prepared and not sent to S.B.I(P) for verification of valances in the pass books.

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The inspecting and visiting officers never noticed that the application for duplicate pass book of S.B. A/c no. 22041093 was missing in the guard file or the relative guard file or the list of Sherpur Branch Post Office of the register containing SB accounts. This was also not pointed out in the annual inspection of the Sherpur Branch Post Office and Purkhezi Sub Office conducted by the respondents and their subordinate administrative and supervisory staff. Postal overseer is also responsible for verification of the Branch Office performance and proper watch of the working Branch Post Master. He also did not find any irregularity in the account in question. The applicant was charged sheeted by memo dated 01.01.91 with the allegation that he failed to submit the list of S.B. Account of Sherpur Post Office pertaining to pass books which were alleged not to have been received for addition of interest for the year 1988-89 by the S.D.I (P) for verification of the balances, that the application for issue a duplicate pass book was not available on the records of the Head Post Office, and that the applicant has violated rule 75(1) (iii) and Rule 68(4) of the S.B. Manual Vol I and thereby violated Rule 3 (1) (ii) and Rule 3(2) (1) of conduct rules of 1964. The preliminary report of the statement/evidence collected during preliminary enquiry was not supplied. The applicant denied stating that the list of SB account of Sherpur Branch Office was available during the preliminary enquiry of the S.D.I (P) in the records of the Head Post Office and that it remained unattended in the office of S.D.I (P) although the office/annually inspected by S.P.M Head Post Office. He also stated that the application for duplicate pass book was in the 'Guard File' which was handed

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over to the successor and the respondents had issued a photo copy of the said application. In any case it was contended by the applicant that he was not responsible for the current up keep of records as he was transferred two years back. He argued that the charges were manipulated and fabricated by S.D.I. (P) who concealed relevant document and by the disciplinary authority. Disciplinary authority did not accept the defence statement of the applicant and passed punishment order. The applicant has drawn attention to rule 106, 107 and 111 of P and T Manual Vol III of Government instructions of D.G. P and T dated 13.02.81 below sub rule 3 of rule 11 of CCS (CCA) rules 1965. Charge sheet did not follow Govt. instructions as the disciplinary authority did not mention the particulars of alleged transaction dealt with by the applicant and details of the amount of loss which was alleged to have been sustained by the department. Manner and modus operandi of the alleged fraud and the connection between the acts and omission and the loss sustained has not been given. There was no assessment done by disciplinary authority to assess the contributory negligence of the applicant and, therefor, arbitrary punishment was awarded. The applicant has pointed out that one of the conditions of appointment as B.P.M was that he should have imovable property in his name. Still no attempt was made by the respondents to recover the embezzled amount from the property of the B.P.M. The respondents facilitated the offender from 1987 to 1991 to mis-appropriate and embezzle the public money.

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The disciplinary authority which is S.S.P.O had inspected the office of the S.D.I.(P) but did not take any notice of non verification by SDI (P) of the list of SB accounts standing on Sherpur Branch Office in respect of S.B. pass book not received by Head Post Office from November 1987 to December 1990. The S.S.P.Os furnish false certificate to the circle office during the year 1988, 1989 and 1990 to the effect that the balance of all accounts have been verified with satisfactory result as it is necessary under rule 75(vii) of S.B. Manual Vol. I. Thus actual responsibility is alleged to be that of S.S.P.Os. The attention is also invited to the letter of Directorate dated 30.06.87 to Head of the Circle Post Master General stating that it was primary duty of the inspection staff to prevent fraud and contributory negligence. The Divisional Heads were also directed by a letter of P.M.G U.P. Circle dated 05.02.88 to conduct drive to verify the balances of all types of S.B. account/accounts in EDBO/EDSO. It is stated that the issue of charge sheet after two years was belated and the charge sheet, fabricated based on concealment of information and manipulation. It is also stated that the applicant after handing over charge was not responsible for non maintenance of old records in proper manner. At the time of awarding punishment, S.S.P.O added two fresh charges that the applicant failed to maintain register of Pass Books and Guard file was not maintained as required under Rule 68(4)g. Thus the finding were recorded against the charges not made earlier and are liable to be quashed. The conclusion of S.S.P.O that the register was maintained is also an opinion without any evidence. The disciplinary authority took it as a ground of punishment that no receipt from the

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depositor for the delivery of the pass book was obtained and kept on record. The allegation that the application for duplicate pass book was not available in Head Post Office was falsified when the applicant referred to the photo copy supplied by the respondents to the ledger clerk and the application was traced out by the respondents. Thus, according to the applicant the bias of the respondents is also established. The appellate authority has also alleged not to have performed its duties properly as it did not apply its mind to the question whether the findings of the disciplinary authority were warranted from the evidence on record. The appellate authority merely considered justification of adequacy of punishment. The revision which was to have been dealt with as if it was an appeal under rule 29 (iii) of CCS (CCA) Rules 1965. The revisional authority also did not consider as to how the provisions contained in the rule 27(2) of CCS (CCA) rules have been observed/disciplinary and appellate authorities. The revisional authority has held the applicant accountable for non-availability of the application for duplicate pass book without realising that the charge was handed over by the respondents two years back and proper maintenance of 'Guard File' was no longer the responsibility of the applicant. No action was taken to recover the embezzlement amount from the Branch Post Master under the rules framed under the Indian Post Office Act. The failure on the part of inspecting authority is also not been considered by the revisional authority.

counsel for the applicant and Km. Sadhana Srivastava brief holder of Sri N.B. Singh learned counsel for the respondents were heard.

5. The respondents have mentioned that the review was also decided after the applicant's appeal was decided. Since the applicant was not challenging the order of review the present application is not maintainable. It has been mentioned that the duplicate pass book in respect of S.B. account no. 22041093 was issued by Muzaffarnagar Head Office on 18.05.89 but depositors application was not available at Muzaffarnagar Head Office and the original pass book was available with the depositor. Besides, the receipt of the depositor for receiving duplicate pass book was not obtained. Attention is also invited to the admission of the applicant made to S.D.I. East Muzaffarnagar in a statement on 03.10.91 to the fact that application for duplicate pass book was not available on the 'Guard File' / Folder.

6. The first issue raised by the respondents is that review has been decided and the applicant ought to have challenged the review to be entitled to any relief in his application. The respondents have not mentioned either date of disposal of review application nor brought a copy of the order in review on the record of this case. The applicant has categorically stated in his rejoinder that he had never filed any review petition. It is seen from the record of the case that the applicant has challenged the order of disciplinary and appellate authorities as well as

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the order of Member, P & T Board in revision. Therefore, this ground of the respondents is not valid.

7. The basic issue raised by the applicant against the order of punishment is the variance between the imputations as made and the findings of enquiry on which the punishment has been awarded. The memorandum of charge under rule 16 of the CCS (CCA) Rules, 1965 are (i) that the applicant failed to get prepared and despatched to concerned S.D.I (P) in duplicate the list of S.B. Accounts no. 22041038 and 22041093 standing at Sherpur Branch Office in account with purkazi S.O. because of which fraud committed by E.D.B.P.M of Sherpur could not come to light, and (ii) the application for issuance of duplicate pass book given by the depositors is not available in Muzaffarnagar, Head office, and therefore, reasons for issuance of pass book could not be ascertained especially when the original pass book is available. The applicant by this lapse is alleged to have facilitated fraud. The disciplinary authority has awarded recovery of Rs. 3780/- on the ground that although the list of S.B. account no. 22041038 was despatched to the concerned S.D.I(P) in duplicate but account no. 22041093 is not mentioned which suggests that no register required under rule 75 (iii) has been maintained. The applicant's explanation of appeal that account no. 22041093 was not mentioned because duplicate pass book was issued and interest has been allowed in that pass book has not been considered at all. In the second charge too the application for issuance duplicate pass book was traced but the findings on which punishment is based was that guard file was not maintained under Rule 68 (4) of

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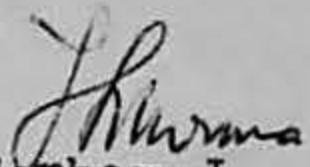
the Manual Vol I. The appellate authority introduced the element of delay in sending the list of S.B. Accounts and not keeping the depositor's application for duplicate pass book but also receipt of duplicate pass book in the Guard File. Thus, both the disciplinary and appellate authorities have displayed perverseness in arriving at findings which are at variance with the imputations made. The applicant did not get an opportunity to explain as to whether register of S.B. Accounts was maintained and why the application was not available in the Guard File. The applicant has mentioned that he had relinquished charge in October, 1989, while the charge sheet was issued in November 1991 when he was no longer responsible for maintenance of office records. In any case, the orders of disciplinary, appellate and revisionary authorities can not be allowed to stand in view of the reasons stated in this paragraph.

8. The application is, therefore, allowed. Order no. 4-3/4/90-91/ M.R. Garg dated 31.12.91 of the disciplinary authority, No. Vig/D-113/92/6 dated 16.07.92 of the appellate authority and no. 2/121/93-V.P dated 15.10.93 of the Revisionary Authority are set aside and the Respondents are directed to refund the amount recovered from the applicant with a interest of 12% for the period the amount remained with the Respondents and consider the applicant for promotion by means of a review D.P.C from 01.10.91. The respondents shall have four months for compliance of this order from the date of its communication to them by the applicant.

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9. There shall be no order as to costs.

  
Member-A

  
Member-J

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