

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 1st day of Sept., 2005.

QUORUM : HON. MR. A.K. BHATNAGAR, J.M.

HON. MR. D. R. TIWARI, A.M.

O.A. NO. 819 OF 1995

Mohd. Asghar Farooqui, son of Late Sri Mohd. Raza Farooqui, R/O 74/1, Beli Road, Allahabad.

At present working as Postal Assistant, Head Post Office, Kutchery, Allahabad.

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.....Applicant.

Counsel for the applicant : Shri M.K. Upadhyay.

Versus

1. Union of India, through the Director General (Posts), Dak Bhawan, New Delhi.
2. The Director of Postal Services, Office of the Post Master General, Allahabad.
3. The Senior Superintendent of Post Offices, Allahabad Division, Allahabad.

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.....Respondents.

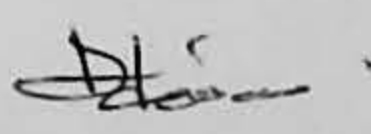
Counsel for respondents : Sri S. Singh.

ORDER (Oral)

BY HON. MR. D.R. TIWARI, A.M.

By this O.A. filed under Section 19 of the A.T.Act, 1985, the applicant has prayed for the following reliefs :-

- "a) To call for the record, peruse the same and after declaring the order dated 22.6.1995 passed by respondent No.2 (Annexure-A1), and the order dated 13.5.1994 (Annexure A2) passed by respondent No.3 as illegal and may be quashed.
- b) to direct the respondents, that the entire amount deducted from the pay and recovered illegally as a measure of penalty be refunded to the applicant along with 15% interest on the amount so recovered."



2. Briefly stated, the facts of the case are that the applicant was working as Sub-Post Master, Post Office Rajapur, Allahabad. He was charge-sheeted under Rule 16 of the CCS(CCA) Rules, 1965 vide charge memo No.F5//2/DISC dated 27.8.1993 (Annexure A-3). The main charge against the applicant was that he discharged a six year N.S.C. 6/NS/F/5/507382 for Rs.5000/- registered under No.165 on the basis of identity slip. This N.S.C. was issued from Thakuriya Post Office, Calcutta on 30.3.1984. It was alleged that he did not confirm whether duplicate N.S.C. has been issued and also did not notice difference between signatures of the investor made on the identity slip and that on the N.S.C. which resulted in loss of Rs.10075/- to the department. Thus, he violated Rule 21(1) and 23(1)(e)(f) of Postal S.B. Manual, Vol.II and Rule 3(i)(ii) of the CCS(Conduct) Rules, 1964. After the receipt of the charge-sheet, the applicant submitted a representation dated 6.9.1993 (Annexure A4) to the Disciplinary Authority to supply the following documents, which were necessary to prepare his effective defense and prove innocence :-

- "I) Original application form dated 30.3.84 of 6 year NSC No.6NS/F/5/507382 for Rs.5000/- and registered at Sl.No.165 at the office of its issue and duly signed by the investor. Sri Kalidass Bhattacharya (Thakuria P.O., Calcutta).
- II) Original duplicate certificate alleged to have been issued and paid to the investor after the reported loss of original certificate No.6 NS/F/5/507382 for Rs.5000/-
- III) Indemnity Bond if executed between the parties if the investor really reported the loss of the original certificate in question.
- IV) NSC in question paid on 26.5.90 at Rajapur P.O. Allahabad and the identity slip bearing the signature of its investor.

[Handwritten signature]

V) Copy of the FIR lodged at P.S. New Cantt, Allahabad against Sri Kalidass Bhattacharya."

He was informed by the office of the Respondent No.3 that the applicant may inspect the record on any working day vide letter dated 2.3.1994 (Annexure A5). When he attended the office, he got an opportunity to inspect only the documents mentioned at Sl.Nos.4 and 5 and he was neither get a copy of the document shown at Sl.No.1,2 and 3 despite oral request for the same. However, the applicant submitted a reply in defense vide his letter dated 15.3.1994 (Annexure A-6). On receipt of the same, the Disciplinary Authority, after considering his reply, imposed upon the penalty of recovery of Rs.10075/- in 36 installments. The order also stated that the recovery would be @ Rs.280/- p.m. for 35 installments and for the last installment, a sum of Rs.275/- will be recovered (Annexure A2). Against this order, the applicant filed an appeal memo pointing out the irregularities committed by the Disciplinary Authority regarding non-supply of essential documents and requested for setting aside the punishment of recovery of Rs.10075/- after quashing the order dated 13.5.1994 passed by the Disciplinary Authority. However, the Appellate Authority by his order dated 22.6.1995 (Annexure A1) rejected the appeal and upheld the punishment.

3. Aggrieved by the above order, the instant O.A. has been filed and it has been pleaded that the applicant has acted in accordance with the instructions contained in Letter No.61-2/86-SB dated 1.9.1986 issued by the D.G. which provides that the saving certificates accompanied with identity slip should not be delayed as prior verification from the office of registration is not necessary. It has also been vehemently pleaded that refusal to furnish relevant documents amounts to denial of reasonable opportunity to make his adequate defense. It is against the principles of natural justice as he has done the work according to the instructions issued by the D.G. vide letter dated 15.3.1994 and he was

[Signature]

authorized to pay the NSC amount on the basis of original identity slip duly attested under the seal and signature by the Post Master which issued original NSC. It has also been submitted that the payment side signature tallied and there was no reason to disbelieve and applicant made the payment to the bonafide holder in accordance with the instructions on the subject already quoted. In view of this, the applicant has prayed for allowing the O.A.

4. The respondents, on the other hand, have contested the O.A. and filed a detailed Counter Affidavit denying the contention made by the applicant. It has been submitted that papers were not supplied which were not relevant to the case. They have also denied existence of the circulars quoted by the applicant. In view of this they have submitted that the O.A. is devoid of merit and may be dismissed. They have further added that the applicant has failed to verify whether the duplicate NSC was issued from the office issuing the certificate and failed to compare signature pasted on the identity slip.

5. During the course of the argument, counsel for the applicant as well as counsel for the respondents reiterated the facts and the legal pleas mentioned in the O.A. and the counter affidavits respectively. Counsel for the applicant, however laid great stress on the point that the discharge of the NSC in question was done on 26.5.1990 and this has been asserted in para 4.7 of the O.A. and in reply, in para 10 of the C.A., respondents have said nothing on this point. He has further stated that the same N.S.C. was encashed after two years at Calcutta and hence, he cannot be held responsible. About the non-supply of the relevant documents, the respondents have filed a letter wherein it has been stated that the discharged N.S.C. vouchers cannot be produced as the preservation period of the said N.S.C. has already been expired. Accordingly, the same has been destroyed. In reply to this, the applicant has filed objection and vide paras 7, 8 and 9 he has shown that

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the relevant documents, which were stated to be destroyed, were made use by the Disciplinary Authority as well as the Appellate Authority while punishing the applicant.

6. We have heard counsel for the parties very carefully and perused the pleadings.

7. The only point which requires adjudication is whether the punishment imposed on the applicant by the respondents is justified. From the above, it should not be difficult to observe that the NSC was encashed in Allahabad in the year 1990 and subsequently, it was again encashed after two years in the office of its origin in Calcutta. There does not remain any doubt in this that the applicant cannot be held responsible in view of the differences of time in discharge of the NSC. The involvement of the applicant is not proved. Another point to be considered in this regard is that non-supply of the documents which were relevant has prejudiced the case of the applicant. Even in minor penalty proceedings when the facts are disputed, it is necessary to hold the regular inquiry and in this case no regular inquiry was held. The Hon'ble Apex Court in the case of O.K. Bhardwaj Vs. U.O.I. - 2002 SCC (L&S) 188 has clearly held that once the facts are disputed, the basic minimum requirement is to hold a regular inquiry in the disciplinary proceedings even if it is with regard to the minor penalty. In this case, we find that no such inquiry has been held and no opportunity was provided to the applicant even for inspection of the relevant documents much less supplying of the photo copy of the documents of the applicant. Even the instructions below rule 16 of the CCS(CCA) Rules, 1965 provide clearly for supply of necessary documents in case of minor penalty proceedings. In the instant case, nothing has been done and the application is bound to succeed.

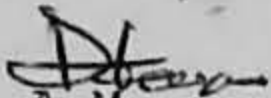
8. In view of the facts and circumstances, mentioned above, the O.A. Succeeds on merits and is

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accordingly, allowed. The impugned orders dated 22.6.1995 and 13.4.1994 are quashed. The respondents are directed to refund the amount already recovered from the applicant. They are further directed to pay the interest @ 8% per annum.

No order as to costs.


A.M.


J.M.

Asthana/