

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 21st day of MAY 2002

Original Application no. 863 of 1999.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J).

Prem Shanker Dubey, S/o Sri K.N. Dubey,
R/o 241-B, Shankar Colony, Phulwaria Road,
Daranganj, Allahabad.

... Applicant

By Adv : Sri B. Ram

Versus

1. Union of India through Secretary, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Director Postal Services, Allahabad Region, Allahabad.
3. Senior Supdt. of Post Offices, Allahabad Division, Allahabad.

... Respondents

By Adv : Sri M.B. Singh

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member A.

In this OA, filed under section 19 of the A.T. Act, 1985, the applicant has challenged the order dated 8.9.1998 (Ann A1) imposing the penalty of recovery of Rs. 26,000/- from the applicants in 26 monthly instalments of Rs. 1000/- each and stoppage of one increment for 6 months without cumulative effect. Against this order the applicant filed an appeal which was rejected by order dated 8.6.1999. The applicant has prayed that the impugned order

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dated 8.9.1998 (punishment order) and order dated 8.6.1999 (appellate order) be quashed and not to give effect to the penalty of withholding of next one increment of pay for six months without cumulative effect and also not to recover the amount of Rs. 26,000/- from the salary of the applicant.

2. The facts, in short, giving rise to this OA are that the applicant was working as Postal Assistant (in short PA) in Head Post Office, Allahabad. While working as PA, he was ordered to prepare K.V.P. discharge returns on Over Time Allowance on several dates between 2.2.1997 to 27.7.1997. During December 1996 and January 1997 there was huge ^{fraudulent in} ~~fraudulent~~ payment of KVPs and NSCs at Manauri Air Force Sub Post Office, Allahabad, an office which is in account with Allahabad Head Post Office and the fraud to the tune of Rs. 6290560/- was committed. It was ^{not detected in} ~~deducted~~ by the authorities concerned in 1998 that there was a racket operating who got hold of the certificates which were reportedly lost in course of transmission from Govt. Security Press Nasik to Patna and the racketeers got them encashed at various places. This ^{fraudulent in} ~~fraudulent~~ encashment were done during December 1996 and January 1997. Since the applicant was working as PA in Head Post Office Allahabad and he was required to work on OTA to prepare KVPs discharge returns, he was issued with the charge sheet under rule 16 of CCS (CCA) Rules 1965 on 21.5.1998. The impugned punishment order dated 8.9.1998 was issued by the respondent no. 3 imposing the penalty of withholding one increment for six months without cumulative effect and recovery of Rs. 26,000/- in 26 instalments. The applicant preferred appeal against this order on 12.10.1998 and the applicant's appeal has been rejected by the appellate order dated 8.6.1999 (Ann A2). Aggrieved by this the applicant has filed this OA which has been

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contested by the respondents by filing counter affidavit.

3. Heard Sri A. Tripathi brief holder of Sri B. Ram, learned counsel for the applicant and Sri M.B. Singh learned counsel for the respondents and perused records.

4. An OA no. 922 of 1999 having similar controversy has been decided by this Tribunal's order dated 2.4.2002. Arguments advanced by the learned counsel for the applicant are the same and he has submitted that since the applicant is in no way connected with committal of fraud which took place in Manauri Air Force Sub Post Office, the action of the respondents is arbitrary and illegal. The applicant cannot be held in any way responsible for the loss suffered by the department of post.

5. The respondents have pleaded in para 6 of their counter affidavit that the applicant was paid over time allowance to complete the work of preparing KVP discharge returns and submit the same to Director Accounts (Postal), Lucknow in the first week of the following months. But the applicant did not complete the work, resulting into huge loss to the department. Therefore, the punishment awarded is correct. The learned counsel for the respondents argued that the applicant submitted his written representation on 28.5.1998 which was received by the respondents on 29.5.1998. The point raised by the applicant, were duly considered and were not found satisfactory. Therefore, the impugned order of punishment dated 8.9.1998 was passed.

6. Another argument advanced by the respondent's

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counsel is that the orders for lost/stolen certificates are always circulated from time to time and this is the duty of staff working at Head Post Office, S.B. Branch to maintain the register of such lost/stolen certificates to which the applicant was also a part.

7. We have considered the submissions of learned counsel for the applicant and have perused records and pleadings. We have also gone through the charge sheet. The main charge levelled against the applicant is that the delay in submission of KVP discharge returns from December 1996 to August 1997 resulted in commission of fraud at Manauri Air Force Sub Post Office to the tune of Rs. 6290560/-. In our view the charge is vague. This point has also been decided by this Tribunal in OA 922 of 1999 and the decision therein is squarely applicable in this case also. The applicant cannot be held at all responsible for the loss caused due to fraud committed in another office and by another person. The action of the respondents is assailable on this ground alone. We find force in submission of learned counsel for the applicant who has relied upon the judgment of Madras Bench of this Tribunal in CN Hariharan Nandanam Vs. Presidency Post Master, Madras G.P.O. & Others (1998) 8 ATC 673, in which it has been held that non following of departmental instructions in non detection of fraud committed by another Govt. servant is not such a negligence for which one is punished for recovery of the pay of the pecuniary loss caused by the fraud. We are also in respectful agreement with the decision of this Tribunal Ahmedabad Bench, dated 4.9.2001 in IM Makwana Vs. U.O.I. & Ors 2002 (1) ATC Vol 36 page 283 by which the impugned order withholding one increment and recovery of loss caused to the Govt. was set aside

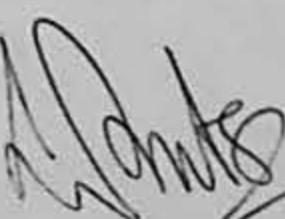
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not held
holding that it was incorrect to hold that due to negligence on the part of the applicant the fraud was not detected earlier and it was no charge that due to applicant's negligence any pecuniary loss was caused to the government.

8. In the facts and circumstances and our aforesaid discussion, we are of the view that the applicant is entitled for relief. The OA is allowed. Punishment order dated 8.9.1998 (Ann 1) and appellate order dated 8.6.1999 (Ann 2) are quashed. The applicant is entitled for all consequential benefits. Recovery made under these orders from the applicant will be refunded within a period of three months from the date of communication of this order. The OA is decided accordingly.

9. There shall be no order as to costs.


Member (J)


Member (A)

/pc/