

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 2nd day of April 2002

Original Application no. 923 of 1999.

Hon'ble Maj Gen K.K. Srivastava, Member A  
Hon'ble Mr. A.K. Ghatnagar, Member J

J.P. Singh, S/o Late S.B. Singh,  
R/o 223 Allahpur, Allahabad.

... Applicant

By Adv : Sri B. Ram

V E R S U S

1. Union of India through the Secretary (Posts),  
Ministry of Communication, Dak Bhawan,  
Sansad Marg, New Delhi.
2. Director Postal Services,  
Allahabad Region,  
Allahabad.
3. Senior Superintendent of Post Offices,  
Allahabad Division,  
Allahabad.

... Respondents

By Adv : Sri D.S. Shukla

O R D E R

Hon'ble Maj Gen K.K. Srivastava, AM.

In this OA, filed under section 19 of the A.T. Act, 1985, the applicant has challenged the order dated 9/10.11.1998 passed by respondent no. 3 (Ann A-1) imposing the penalty of recovery of Rs. 28,080/- monthly instalment of Rs. 780/- in 36 instalments and withholding of increment for one year without cumulative effect. Against this order the applicant preferred an appeal which was rejected by appellate authority vide order dated 1.7.1999. This order has been challenged. The applicant has prayed that both the orders be quashed and respondents be directed not to

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give effect to the penalty of withholding of next increment of pay for <sup>by him</sup> 2 years<sup>by him</sup> without cumulative effect and also not to recover the amount of Rs. 28,080/- from the applicant's salary.

2. The facts giving rise to this OA in short, are that the applicant was appointed as Postal Assistant (in short PA) on 3.7.1983 . He has been working in Allahabad Head Post Office in SB Branch w.e.f. 16.5.1997 to 11.2.1997 as Misc Clerk I. During 1996-1997 there was a huge 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 detected 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 encashment were done during December 1996 and January 1997. Since the applicant was working as PA in the seat of SB Misc branch of Head Post Office Allahabad he was issued with a charge sheet under rule 16 of CCS (CCA) Rules 1965 on 4.6.1998. The impugned punishment order dated 9/10.11.1998 was issued by respondent no. 3 imposing the penalty of withholding one increment of the official for 1 year without cumulative effect and recovery of Rs. 28080/- in 36 instalments. The applicant preferred an appeal against this order on 28.12.1998 and the applicant's appeal was rejected by appellate order dated 1.7.1999. Hence this OA which has been contested by the respondents by filing counter affidavit and suppl counter affidavit.

3. Heard Sri A Tripathi brief holder of Sri B Ram,

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learned counsel for the applicant and Sri D.S. Shukla learned counsel for the respondents and perused records.

4. Sri A Tripathi, learned counsel for the applicant invited our attention to charge sheet dated 4.6.1998 and submitted that the charge against the applicant was that he failed to submit the KVP discharge returns timely for the month of February 1997 and March 1997 to Director of Accounts Lucknow (in short DAP) and these were submitted as late as on 23.5.1997 and 5.8.1997 respectively. Rest of the returns could not be submitted upto 11.9.1997 and delay in submission of returns resulted in non detection of fraud timely. Learned counsel for the applicant submitted that the applicant was simply discharging the duties of NSC Misc -I and he had no means of know about the fraud which was committed by Sub Post Master at Manauri P.O. He worked with utmost devotion and the charge levelled against the applicant is a mere surmise that if returns were submitted to DAP Lucknow on time the fraud of Rs. Rs. 6290560/- could have been detected earlier. The second submission of learned counsel for the applicant is that on receipt of charge sheet the applicant demanded the inspection of documents vide his letter dated 15.6.1998 (Ann A-4) on the basis of which the respondents had framed the charge against him. The respondents vide their letter dated 16.8.1998 (AnnA5 asked the applicant about the details of such documents which he wanted to examine. The applicant again sent a representation to the disciplinary authority on 29.9.1998 (Ann A6) requesting the disciplinary authority to initiate the disciplinary proceedings against the applicant under rule 14 so that he could get opportunity to defend himself during enquiry proceedings. The respondents instead considering request of the applicant treated this letter dated 22.9.1998

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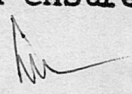
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as reply i.e. defence statement and illegally imposed the penalty upon the applicant.

5. Another submission made by learned counsel for the applicant is that the orders of the disciplinary authority as well as appellate authority are not reasoned orders and they have not applied their mind while issuing the charge sheet and imposing the punishment. Learned counsel for the applicant finally submitted that the applicant, in no way, can be made a party to this fraud as it was committed by an official of the department in a different office i.e. Sub Post Office Manauri. The applicant should not have been held responsible for the loss to the department committed by another Govt. Servant. In support of his arguments the learned counsel for the applicant placed reliance on the judgment of Madras Bench of this Tribunal in CN Hariharan Nandanan Vs. Presidency Post Master, Madras G.P.O. & Others (1998) 81ATC 673 in which it has been held that non following of departmental instructions is non deduction of fraud committed by another Govt. servant is not such a negligence for which one is punished for recovery of pay of the pecuniary loss caused by the fraud. Learned counsel for the applicant also cited the judgment dated 4.9.2001 of this Tribunal, Ahmedabad Bench, in I.M. Makwana Vs. U.O.I. & Ors 2002 (1) ATC Vol 36 Pg 283 by which the impugned order withholding one increment and recovery of loss caused to the Govt. was set aside holding that of the applicant the fraud was not detected earlier and it was no charge that due to applicant's negligence and pecuniary loss was caused to the government.

6. Contesting the claim of the applicant Sri D.S. Shukla, learned counsel for the respondents submitted that if the applicant had ensured timely return of the discharged

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KVPs the fraud could have been detected and the department could have been saved from the loss to the tune of Rs..6290560/-. He has also submitted that the applicant was afforded full and adequate opportunity and the orders were passed after the charges were fully proved. An averment has been made to this effect in para 9 of the counter affidavit. Sri Shukla further submitted that though Manauri Air Force Sub Post Office is an independent unit for discharge of NSCs/KVPs the Head Post Office is responsible to check day to day vouchers, account for them and submit monthly returns to the Director Postal Services, Lucknow, which was not done by the applicant. Learned counsel for the respondents further submitted that though the applicant requested for disciplinary proceedings under rule 14 of CCS (CCA) Rules 1965, it was not considered necessary by the disciplinary authority as the intention of the disciplinary authority was not to award any major penalty and, therefore, he decided to continue to disciplinary proceedings under rule 16. The applicant was entrusted to work of completing returns and submitting the same to DAP, Lucknow, <sup>the</sup> ~~the~~ applicant failed to discharge his responsibility. The orders of punishment have been passed in accordance with rules after following the proper procedure. Learned counsel for the respondents invited our attention to para 8 of Suppl. counter affidavit and submitted that as per rule 108 of P & T Manual Vol. III the disciplinary authority is empowered to impose other statutory penalty in addition to penalty of recovery of loss caused to the department.

7. We have considered the submissions of learned counsel for the parties and perused records. The charge against the applicant is that had he submitted the discharge NSCs/KVPs return of February 1997 and March 1997 and other

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return timely to DAP, Lucknow, the fraud to the tune of Rs. 6290560/- could have been detected. In our opinion the charges are based on surmise only. It is admitted fact that there was a delay in submitting the return to DAP Lucknow, but that does not mean that the applicant was in any way involved in the fraud committed at the end of Manauri Air Force Sub Post Office. The fraudulent payment of KVPs was made by Post Master, Manauri, Air Force Sub Post Office during December 1996 and January 1997 and even if the returns were sent timely to DAP, Lucknow in the following months surely the fraud could not have been averted as it had already been committed. The applicant was one of the PAs working in SB Branch of Head Post Office, Allahabad and there would have been supervisors too. Hence in our view it was a bigger responsibility of supervisors to have checked that the returns were prepared on time and sent to DAP which obviously was not done by the supervisors. However, nowhere the respondents have been able to prove that the applicant was negligent in his work except that he was given an over time duty to complete and submit the returns to DAP, Lucknow.

8. It has been averred by the respondents in para 17 of the counter affidavit that particularly of the lost of stolen certificates were always circulated from time to time to all the concerning POs and this is the duty of the staff of the SB Branch P.O. to prepare and maintain the register of such certificates to which the applicant was also part but he failed to do so which resulted into heavy loss to the department. We find no substance in this submission because payments were done at Manauri Sub Post Office and it was the duty of Sub Post Master, Manauri



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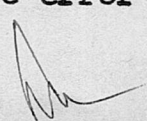
Air Force Post Office to have checked from the list supposed to be maintained in that office if the KVPs/NSCs presented for encashment were genuine or not. Our answer to this is categorical 'NO'. Therefore, holding the applicant responsible for the loss due to fraud committed in another office is totally unwarranted. In this connection we would like to cite the relevant para of the judgments relied upon by the applicant. In CN Hariharn Nandan case (supra) it has been held :-

"The above analysis of the charge sheet and the orders passed by the Disciplinary Authority and the Appellate authority make it very clear that the applicant was not personally responsible for causing any pecuniary loss to the government. He was as stated by the appellate authority, only technically responsible due to his non compliance of the instructions issued by the D.G.P. & T. by not getting every sixth transaction entry properly verified. We have also perused the judgment passed by the another Bench of this Tribunal in OA no. 295 of 1987. The aspect of recovery from a government servant's pay of the whole or part of any pecuniary loss caused by him to the government by negligence or breach of order, with reference to Rule 11 of CCS (CCA) Rules 1965, has not been gone into. We are satisfied that in this case the applicant was not directly responsible for causing any pecuniary loss to the government, and that no such finding has been arrived at. As stated by the appellate authority in his proceedings No. B. 4/16/86-87 dated 21.4.1987, at best he can be held technically responsible. Accordingly we set aside the proceedings of the second respondent No. F. 1/2-IV/85-86 dated 26.11.1986 and the first respondents in No. B. 4/16/86-87 dated 21.4.1987."

In JM Makwana case (supra) this Tribunal Ahmedabad Bench held :-

"Even if, for a moment we believe that applicant was negligent in not posting the entries of the pass book in the error book, then also this negligence

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was not such that it would be a cause for punishing the applicant with recovery of loss sustained by the department as well as withholding of one increment. The applicant obviously is not directly responsible for the misappropriation of this amount and therefore the recovery if any was to be made for the loss of the amount ought to have been made from the person directly responsible for the misappropriation. Merely because the department found that it was not possible to recover the amount from the main culprit, some other scapegoat cannot be found out and cannot be levied with the punishment of recovery of the loss."

We are in respectful agreement with the above decisions and the ratio laid down in the above judgments are squarely applicable in the instant case and we hold that the applicant, in no way, is responsible for the criminal act of some one else. The order of recovery cannot be sustained.

9. By representation dated 22.9.1998 the applicant requested for proceedings against the applicant under Rule 14 of CCS (CCA) Rules 1965 so that the detailed enquiry could be held and he could get opportunity to defend himself. We are constrained to point out that the respondents have erred in the eyes of law in treating this letter as a defence statement. It was incumbent upon the respondents to have conveyed their decision regarding the request of the applicant that he should be tried under Rule 14 of CCS (CCA) Rules 1965 so that the applicant could, if he so wished, submit a proper defence. The action of the respondents in our opinion is not in accordance with law.

10. In the facts and circumstances and our aforesaid discussion, we have no doubt that the applicant is entitled for relief. The O.A. is allowed. The impugned punishment order dated 9/10.11.1998 (Ann A1) and appellate order dated

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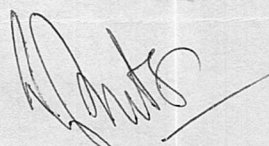


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1.7.1999 (Ann A2) are quashed. The applicant is entitled for all consequential benefits. Recovery made under this order from the applicant will be refunded within a period of 3 months from the date of communication of this order. The O.A. is decided accordingly.

11. There shall be no order as to costs.

  
Member (J)

  
Member (A)

/pc/