

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 937 OF 1999  
ALLAHABAD THIS THE 19TH DAY OF APRIL, 2004

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A  
HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

Kripa Shankar Raj Murty Pandey,  
S/o Sri Raj Murty Pandey,  
R/o 174 Y/1B, New Mehdauri,  
Teliarganj, Allahabad.

.....Applicant

( By Advocate Sri M.K. Upadhyay & Sri R.D. Singh)

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 Superintendent of Post Offices,  
Allahabad Division, Allahabad.

.....Respondents

( By Advocate Shri M.B. Singh )

ORDER

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

In this O.A. filed under section 19 of Administrative  
Tribunals Act 1985, the applicant has prayed for quashing the  
impugned punishment order dated 26/27.10.1998 passed by  
respondent no.3 (Annexure A-1) by which the applicant has  
been awarded the punishment of withholding of his one



increment for two years without cumulative effect apart from recovery of Rs.56160/- in 36 monthly instalments of Rs.1560/-. The applicant has also prayed for quashing the appellate order dated 17.05.1999 by which the punishment awarded by the disciplinary authority has been upheld and the appeal of the applicant rejected. The applicant has prayed that after quashing both the orders the respondent be directed not to give effect to the penalty of withholding of next increment of pay for one year without cumulative effect and also not to recover an amount of Rs.56160/- from the applicant's salary.


2. The facts, in short, giving rise to this O.A. are that applicant was appointed in the Department <sup>on the post</sup> of Postal Assistant initially <sup>at</sup> Maharashtra and thereafter he was transferred to U.P. Postal circle. The applicant has worked as Postal Assistant in several post offices in Allahabad. The applicant was working as Postal Assistant Allahabad Head Post Office as NSC KVP Return Assistant, S.B. Branch Allahabad from 16.05.1997 to 19.10.1997. During 1996 and 1997 there was a huge fraudulent payment of KVPs and NSCs at Manauri Sub-Post Office, Allahabad, which is in connection with Allahabad Head Post Office and fraud to the tune of Rs.6290560/- was committed. The fraud was detected by the authorities concerned in 1998 and it was found that there was a racket operating who got hold of the certificates which was reportedly lost in course of transmission from Government Security Press, Nasik to Patna and the racketeers got them encashed at various places. This fraudulent encashments were done during <sup>in the period from</sup> December 1996 to January 1997. Since the applicant was working as P.A. in <sup>Misc</sup> S.B./Branch and Head Post Office Allahabad <sup>he</sup> was issued with a chargesheet under Rule 16 of CCS(CCA) Rules 1965 on 18.03.1998. The impugned punishment order dated 26/27.10.1998



withholding one increment was passed by respondent no.3 imposing the penalty of <sup>As stated</sup> in the previous para. The applicant preferred appeal against the punishment order dated 26/27.10.1998 and the applicant's appeal was rejected by the impugned appellate order dated 17.05.1999. Hence this O.A. which has been contested by the respondents by filing CA.

3. Shri B.K. Upadhyay, learned counsel for the applicant submitted that the charge against the applicant was that he failed to submit the KVP Discharged Returns in the month of March 1997 timely to Director of Accounts (Lucknow) (in short DAP) and these were submitted as late as on 05.08.1997. The Returns for April 1997 and onwards were not submitted at all upto 11.09.1997, <sup>My</sup> thereby contributing in the commission of fraud <sup>totally</sup> ~~in~~ <sup>installing</sup> to the tune of Rs.62,50,560/-. The learned counsel for the applicant submitted that the applicant was simply assisting one Shri J.P. Singh who was a regular Misc-I Assistant and Shri C.L. Bind who was Misc-II Assistant in NSC/KVP Returns branch. In fact the main duty of submitting due returns to DAP Lucknow was of Shri J.P. Singh. Besides he had no means of knowing <sup>about</sup> the fraud which was committed by sub-Post Master at Manauri Post Office. He worked with utmost devotion and the charge levelled against the applicant is a mere surmise as the delay in furnishing the returns to DAP, in no case, could have stopped the fraud which <sup>had</sup> already been committed.


4. The learned counsel for the applicant further submitted that the applicant submitted a representation to the disciplinary authority on 22.10.1998 (Annexure A-4) requesting the disciplinary authority to order for open enquiry under Rule 14 of CCS(CCA) Rules 1965 so that he could get opportunity to defend



himself during the enquiry proceedings. The disciplinary authority instead of considering the request of the applicant did not take any action and passed the impugned punishment order.

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.

6. 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 Nandanam Vs. Presidency Post Master, Madras G.P.O. & Others (1998) STATC 673 in which it has been held that non following of departmental instructions is non detection of fraud committed by another Govt. servant in 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.D.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 it was no charge that due to applicant's negligence pecuniary loss was caused to the government.



7. Contesting the claim of the applicant Shri G.R. Gupta, learned counsel for the respondents submitted that if the applicant had ensured timely return of the discharged KVPs the fraud could have been detected and the department could have been saved from the loss to the tune of Rs. 6290560/-. Shri Gupta further submitted that through 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 DAP, Lucknow, which was not done by the applicant.

8. 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 disciplinary proceedings under rule 16. 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 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.

9. We have considered the submissions of the learned counsel for the parties and perused records. The charge against the applicant is that he did not submit the discharge NSCs/KVPS return of March 1997 and April 1997, and other return timely to DAP, Lucknow. 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.

10. It has been averred by the respondents in para 17 of the counter affidavit that particulars of the lost 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, 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. ~~Due 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 Harihar Nandan and another Vs Presidency Post Master Madras GPO & Ors (1998) STATC 673 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 O.A. 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 1955, 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."

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 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 <sup>in the eyes of law</sup>.

11. By representation dated 22.10.1998 the applicant asked for certain documents so that he could send reply in his defence. We are constrained to point out that the respondents have erred in the eyes of law in not taking any decision on the



same. It was incumbent upon the respondents to have conveyed their decision regarding the request of the applicant. The action of the respondents in our opinion is not in accordance with law.

12. In the facts and circumstances and our aforesaid discussions, we have no doubt that the applicant is entitled for relief. The O.A. is allowed. The impugned punishment order dated 26/27.10.1998 (Annexure A-1) and appellate order dated 17.05.1999 (Annexure A-2) are quashed. The applicant is entitled for all consequential benefits. Recovery made under ~~this order~~ <sup>in the impugned order</sup> from the applicant will be refunded within a period of three months from the date of communication of this order. The O.A. is decided accordingly.

13. There shall be no order as to costs.

  
Member-J

  
Member-A

/Neelam/