

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 13<sup>th</sup> day of Apr 2011

Original Application No. 1067 of 2002

Hon'ble Mr. S.N. Shukla, Member (A)  
Hon'ble Mr. Sanjeev Kaushik, Member (I)

Rameshwar, S/o Shri Hulab Mahato, working as Postal Assistant at Mughalsarai Sub Post Office, Mughalsarai.

... Applicant

By Adv : Sri Anand Kumar

**V E R S U S**

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, New Delhi.
2. The Director of Postal Services, Allahabad Region, Allahabad.
3. The Senior Superintendent of Post Offices, East Division, Varanasi.

... Respondents

By Adv: Shri R.K. Srivastava

O R D E R

Delivered by Hon'ble Mr. S.N. Shukla, Member (A)

This OA is filed seeking the following reliefs:-

- "i. *The Hon'ble Tribunal may be pleased to issue a writ, order or direction in the nature of certiorari quashing the impugned charge sheet dated 21.05.1998 (Annexure A-7) as well as orders dated 22.08.2001 and 19.02.2002 (Annexure Nos. A-1 & A-2 respectively) with all consequential benefits.*
  - ii. *The Hon'ble Tribunal may be pleased to issue a writ, order or direction in the nature of mandamus directing the respondents to refund the recovered amount which has been recovered from the salary of the applicant with 18% interest.*
  - iii. .....
  - iv. ....."
2. The brief facts of the case are that the applicant while working as Postal Assistant at Mughalsarai Sub Post Office was

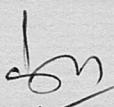


suspended on 04.12.1997 on an FIR lodged by Assistant Superintendent of Post Offices, Mughalsarai.

3. It appears that FIR was lodged on account of diversion and defalcation of six cheques amounting to ₹ 1,29,000/- issued by Unit Trust of India (UTI) in favour of one Km. Ritu Singhal word of Smt. Vimla Devi. The applicant was one of the employees allegedly involved in the said diversion and defalcation. For the purpose of deciding this OA it will suffice to say that as an aftermath of fraud disciplinary proceedings were initiated against certain employees and verifying actions were taken. The details available at para 7, 8 and 9 of the Supplementary counter affidavit filed on 28.02.2011. The details are reproduced below:-

"7. *That, only ₹ 1,29,000/- has been recovered from the officials at faulted against the total loss of ₹ 1,29,000/- Sustained by the Government. Detailed of punishment awarded to the officials are as under:-*

- i). *Shri Rameshwar PA Moghal Sarai was proceeded against under Rule 14 of CCS (CCA) Rules 1965 under this office memo no. F4/Misc-3/97-98/Disc 1 dated 21.5.98 and awarded punishment of reduction of pay by three stage in the pay scale of ₹ 4500-125-7000 from ₹ 4875/- to 4500/- for two years without cumulative effect w.e.f. 1.9.2001 and recovery of ₹ 88500/- in 59 instalment of ₹ 1500/- each vide memo no. F4/Misc.3/97-98/Disc 1 dated 22.8.2001. His appeal dated 13.10.2001 stands rejected under DPS Allahabad Memo No. Vig/1-48/2001/1 dated 19.2.2002.*
- ii). *Shri Budhiram Prasad Asstt. Sub Postmaster Moghal Sarai was proceeded against Rule 14 of CCS (CCA) Rule, 1965 vide memo no. F4/Misc3/97-98 Disc II dated 21.5.98. He was awarded punishment of reduction of pay by 4 stages from ₹ 6800/- to ₹ 6200/- in the pay scale of ₹ 5000-150-8000 for 2 years with cumulative effect and recovery of Pay ₹ 40500/- under DPS Allahabad Memo No. Vig/6-1/2001/I dated 4.4.2001. His appeal stands rejected vide PMG Allahabad memo no. Vig/1-31/2001/I dated 29.7.2001.*
- iii). *Shri Md. Hafiz SPM Moghal Sarai was proceeded under Rule 16 of CCS (CCA) Rules 1965 under memo no. F4/Misc-3/97-98/Disc. III dated 31.5.98 and awarded punishment of recovery from pay ₹ 36000/-. His appeal was rejected by DPS Allahabad memo no. Vig/1-66/98/1 dated 04.1.99. On petition the punishment order was set aside vide Directorate New Delhi Memo No. 02/183/98-V.P. dated 31.5.2000.*
- iv). *Shri Ravindra Nath Srivastava PA Moghal Sarai was proceeded under Rule 16 of CCS (CCA) Rules 1965 vide*



memo no. F4/Misc-3/97-98 Disc IV dated 21.5.98 and the proceeding was dropped vide memo dated 30.11.98.

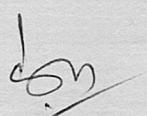
8. That, Shri Ravindra Nath Srivastava SPM Kaithi Varanasi was proceeded under Rule 14 of CCS (CCA) Rules 1965 under this office memo no. F4/9/94-95/Kaithi/DP dated 9.3.1999 regarding fraudulent payment of KVP at Kaithi P.O. Varanasi. In this charge sheet charge no. 3 was also included for issue of ACG-67 Receipt No. 14 dated 25.7.97 for deposit of cheque ₹ 1,29,000/- in single S.B. Account. He was awarded punishment of reduction of pay for 5 years at the stage of ₹ 4000/- in the pay scale of ₹ 4000-100-6000 with cumulative effect and recovery from pay ₹ 48,000/- vide memo no. dated 30.1.2001. His appeal was rejected vide DPS Allahabad Memo No. Vig/1-24/2001 dated 25.5.2001. On making petition the punishment order dated 30.1.2001 was struck down and awarded punishment of removal from service vide CPMG UP Circle Lucknow memo no. Vig/p-26/2001/5 dated 5.8.2004.
9. That, thus total recovery was made ₹ 1,29,000/- against the loss of ₹ 1,29,000/-

1).	Rameshwar P.A.	₹ 88500.00
2).	Budhiram APM	₹ 40500.00
Total		₹ 129000.00

4. Earlier submissions were made on behalf of the applicant that a double jeopardy has been caused to him by awarding two punishments for the same offence i.e. reduction in pay etc. and in addition recovery of the alleged loss. It was submitted that even while the alleged loss is limited to an extent of ₹ 1,29,000/-, the total recovery effected against the charged employees amounted to ₹ 2,13,000/-. Therefore, in any event the excessive amount has been recovered. It was also submitted that the applicant has been charged under Sub Rule 3 of Rule 11 of CCS (CCA) Rules, 1965 which reads as under:-

*"11 (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders."*

5. In the instant case it is claimed that no pecuniary loss has been caused to the 'Government' par se. If any loss has been caused it is either to the private party who was the intended recipient of cheques sent by the UTI and, therefore, provision of



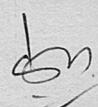
Sub Rule 3 of Rule 11 of CCS (CCA), Rules, 1965 are not applicable.

6. From the Supplementary counter affidavit dated 18.02.2011 was filed, extract reproduced in para 3 above. It is clear that total recovery effected is limited to ₹ 1,29,000/- only. This position has not been refuted by applicant through any Supplementary rejoinder affidavit or otherwise.

7. In the same supplementary counter affidavit it has been submitted that neither the cheques of ₹ 1,29,000/- were received by the real beneficiary person i.e. Km. Ritu Singhal nor any amount was paid to her. Further that Sri Dharam Dev, Assistant General Manager (Legal), UTI, Assistant Management Company Private Limited, New Delhi-2 vide letter No. UTI/NDMBO/F-439/2366/02-03 dated 26.02.2003 has complained about missing cheques. By implication, the postal department remains liable to compensate the beneficiaries/UTI.

8. Heard learned counsel for the parties and perused the pleadings on record. We are firmly of the view that no double jeopardy has been caused to the applicant. Penalties in the nature of reduction of scale etc. are in relation to misdemeanour and covered under Sub Rule iii (a) of Rule 11 of CCS (CCA) Rules, 1965, whereas, the amount recovered is for the pecuniary loss caused to the government covered Sub Rule iii of Rule 11 of CCS (CCA) Rules, 1965.

9. The moot point, however, is whether the amount allegedly defalcated by the applicant is loss accrued to government as

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contemplated under Sub Rule (iii) of Rule 11 of CCS (CCA) Rules, 1965. Therefore, while we have no knowledge whether technically direct loss has crystallised against the government. We are firmly of the view that only on technical grounds of the language used in Sub Rule 3 of Rule 11 of CCS (CCA) Rules, 1965 the amount in question can not be refunded to applicant. The facts remains that the amount has been defalcated while in the custody and trust of the Central Government during transit through its agency i.e. Post Office in this case and will ultimately have to be owned up as liability of the Government of India through Postal Department should the UTI or the beneficiaries of the cheques succeed enforcing their claim in appropriate forum. In other words contingent liability of the government will remain alive.

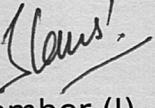
10. In our considered view the applicant cannot be allowed to escape with the defalcated amount taking shelter behind the narrow meaning of the expression "government" as used in Sub Rule 3 of Rule 11 of CCS (CCA) Rules, 1965. In our opinion the applicant has miserably failed to make out a case in respect of any of the reliefs claimed by him. His prayers, therefore, do not deserve any sympathetic consideration.

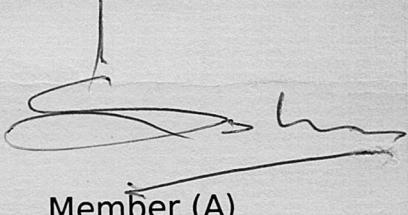
11. From the pleadings before us we are not aware of the status of the case in as much as whether the funds represented by defalcated cheques has been made good to the beneficiaries. At the same time we are aware that this is not one of the disputed before us. However, we would also like to observe in passing that in all fairness to the victims of defalcation, now that the government has recovered the defalcated amount they

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should initiate appropriate steps to make good the loss, if not already done, of principal amount as also loss of opportunity cost suffered by the beneficiaries of the cheques at the earliest point in time in accordance with law. No. undeserving party, including Government, should profiteer at the cost of the victims.

12. With the above observations, the OA is dismissed. No cost.

  
Member (J)

  
Member (A)

/pc/