

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 01st day of APRIL 2005.

Original Application NO. 1114 of 2002.

Hon'ble Mr. D.R. Tiwari, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

Man Mohan Lal, S/o Sri Ram Bahore,
Working as Assistant Post Master
at Head Post Office,
ALLAHABAD.

.....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,
Govt. of India,
NEW DELHI.
2. The Director of Postal Services,
Allahabad Region,
ALLAHABAD.
3. The Senior Superintendent of Post Offices,
Allahabad Division,
ALLAHABAD.

...Respondents.

By Adv : Sri S. Singh

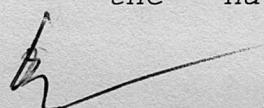
O R D E R

By K.B.S. Rajan, Member-J

The applicant, through this O.A. prayed for,
inter-alia the following relief(s):-

"(i) The Hon'ble Tribunal may graciously be pleased
to issue a writ, order or direction in the
nature of certiorari quashing the chargesheet
dated 7.8.2000 (Annexure no. A-3) and the
impugned orders dated 31.1.2001 and 27.11.2001
(Annexure Nos. A-1 & A-2 respectively) with all
consequential benefits.

(ii) The Hon'ble Tribunal may further graciously be
pleased to issue a writ, order or direction in
the nature of mandamus commanding the



respondents to refund the deducted amounts which has been recovered from the salary of the applicant with 18% interest."

2. The applicant at the material point of time (August, 2000) was functioning as Asst. Post Master, Allahabad, when he was served with a chargesheet under Rule 16 of the CCS (CCA) Rules, 1965. The charge relates to "that the petitioner while working as Assistant Postmaster SB-II (S.O. Group) in Allahabad Head Post Office during the period from January, 1999 to June 1999 failed to absolute devotion of duty and acted in violation of Rules, 61, 62, 68 13(3) 85 and 5 of the Post Office S.B. Manual Volume I which resulted the heavy loss to the department to the tune of Rs. 4,57,800/- only."

(As extracted from para 5 of the counter).

3. The applicant, while denying the charges requested for making available certain relevant documents and **further requested that an inquiry under Rule 14 of the CCS (CCA) Rules, 1965 be conducted, so that full opportunity would be available to him.** Representation dated 22.11.2000 (Annexure A-8) refers. The Disciplinary authority in response to the above representation only rejected the request saying that his request is not acceptable. Thereafter, the disciplinary authority passed the impugned order dated 31.1.2001, holding the applicant guilty of misconduct and imposing a penalty of recovery of Rs. 83,400/- from the pay of the applicant and also stoppage of one increment for



one year without cumulative effect. Against the said penalty order, the applicant had moved an appeal on 20.4.2001 wherein also, the applicant had taken a ground that rejection of the applicant's request for holding an inquiry without sufficient reasons is illegal. In addition, he had also raised the ground that when he was not directly responsible for the misappropriation of the amount involved, recovery from him of the amount of loss to the government is illegal. The appellate authority by its order dated 27.11.2001, however, upheld the penalty order and rejected the appeal, hence this O.A.

4. The respondents have filed their counter, which is more conventional and customary in nature. As to the contention of the applicant that there has been breach of the principles of natural justice, all that the respondents stated in the counter was that the action of the disciplinary authority was within the provisions of the Rules.

5. Arguments were heard and the documents perused. We have given our anxious consideration. The contention of the applicant is primarily and principally is that there is a thorough infraction of the principles of natural justice inasmuch as when the applicant requested for holding a full fledged inquiry, without sufficient reasons, the same has been rejected. He has, in support of his

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contention, referred to DOP&T O.M. dated 28.10.1985, which reads as under:-

"Holding of an inquiry when requested by the delinquent: Instructions.- The staff side of the committee of the National Council (JCM) set up to consider revision of CCS (CCA) Rules, 1965, had suggested that Rule 16 (1) sgiykd be anebded so as to provide for holding an inquiry even for imposition of minor penalty, if the accused employee requested for such an inquiry.

2. The above suggestion has been a detailed consideration. Rule 16 (1-A) of the CCS (CCA) Rules, 1965, provides for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed Rule 16 (1) ibid leaves it to the discretion of Disciplinary Authority to decide whether an inquiry should be held or nor. The implication of this rule is that, on receipt of representation of Government servant concerned on the imputations of misconduct or misbehavior communicated to him, the Disciplinary Authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In a case where a delinquent Government servant has asked for inspection of certain documents and cross-examination of the prosecution witnesses, the Disciplinary Authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an inquiry is not mandatory. If the record indicate that, notwithstanding the points urged by the Government Servant , the Disciplinary Authority could, after due consideration, came to the conclusion that an inquiry is not necessary, it should say so in writing indicting its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its

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mind to the request, as such an action could be construed as denial of natural justice."

6. As the respondents have not given any cogent reasons for not conducting the inquiry as requested for despite the fact that even according to them vide para 14 of the Counter that the mistake committed by the petitioner " resulted in the huge lose of Rs. 4,57,800/- to the department", there is a clear violation of the order dated 28.10.1985.

7. The counsel for the applicant has relied upon the following judgments:-

- (a) Order dated 4.9.2001 in O.A. 750/98 in re. J.M. Makwana Vs. Union of India & Others 2002 (1)ATJ 283.
- (b) Order dated 2.4.2002 in O.A. no. 923/99(Allahabad) in re. J.P. Singh Vs. Union of India & Others.

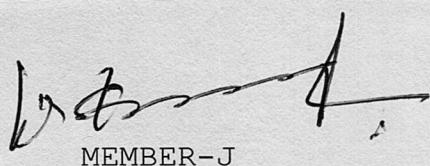
8. The above two citations have been referred to by the applicant to press into service his contention that when the applicant is not directly responsible for the mis-appropriation of the amount, in question, the recovery of the loss could not have been made from him and the same should have been made from the person directly responsible for the mis-appropriation. The said judgments have also been relied upon in support of the contention that inquiry under Rule 14, despite request, was not



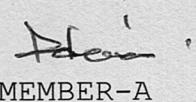
conducted. The two precedents fit in all the squares with the facts of the instant case.

9. On the other hand, the counsel for the respondents reiterating the contents of the Counter, contended that the disciplinary authority and the appellate authority were well within their powers to impose the penalty. This argument, however, does not meet the decisions of the Tribunal as cited above and thus, the applicant has certainly made out a cast iron case in his favour.

10. In view of the above, the O.A. succeeds. The impugned orders dated 31.1.2001 and 27.11.2001 respectively Annexure A-1 & A-2 are hereby quashed and set-aside. The applicant is entitled to all consequential benefits including refund of amount recovered from him and also payment of withheld increment. If the applicant's promotion was either deferred or denied on account of his penalty, he is entitled to such promotion, if otherwise considered suitable. The refund of recovered amount and payment of arrears of pay and allowances by releasing the withheld increment for one year shall be made within a period of three months from the date of communication of this order. No costs.



MEMBER-J



MEMBER-A

GIRISH/-