

OPEN COURT.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH; ALLAHABAD.**

ORIGINAL APPLICATION NO. 1341 of 2003.

ALLAHABAD THIS THE 05TH DAY OF APRIL 2005.

Hon'ble Mr. D.R. Tiwari, Member-A

O.P Singh

S/o Shri Murari Singh,

R/o Mohalla Govind Nagar Katghar, Allahabad.

.....Applicant.

(By Advocate: Sri Avnish Tripathi)

Versus.

1. Union of India through
Its Secretary, Department of Post, Ministry
of Communication, Dak Bhawan, Sansad Marg,
New Delhi.
2. Director Postal Services,
Bareilly Region, Bareilly.
3. Senior Superintendent of Post Offices,
Moradabad Division, Moradabad,

.....Respondents.

(By Advocate: Sri Saumitra Singh)

O R D E R

By this O.A. filed under section 19 of the A.T. Act, 1985, the applicant has impugned the punishment order dated 31.03.2003 passed by respondent NO.3 and the appellate order dated 19.09.2003 passed by the respondent NO.2 by which the recovery of Rs.6000/- has been ordered at the rate of Rs.500/- per month from the pay of the applicant (Annexure Nos.A-1 and A-2). He has

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further prayed for issuance of direction to the respondents not to give effect to the penalty of the recovery of said amount of Rs.6000/- from the salary of the applicant at the rate of Rs.500/- per month.

2. Briefly stated, the applicant at the relevant time was posted as Assistant Post Master (Savings Bank) at Station Road, Moradabad from May 1999 to August 1999. He was served with the minor penalty charge sheet under Rule 16 of C.C.S (C.C.A) Rule 1965 on 10.02.2003 (Annexure A-3). The article of charge and imputation of misconduct and misbehaviour as contained in the charge sheet is extracted below:-

"उपडाकपाल स्टेशन रोड, मुरादाबाद उपडाकघर के विरुद्ध विरारु अवचार अथवा कदाचार के लांछनों को विवरण।

यह कि उक्त श्री ओ० पी० सिंह ने मुरादाबाद एचओ में गई, ९९ से अगस्त ९९ की अवधि के दौरान सहायक डाकपाल एसबी-१ एस ओ ग्रुप के पद पर कार्य करते हुए शाखा डाकघर देवीपुरा के ऐसे बचत बैंक खातों की सूची जिनकी पासबुकें ब्याज हेतु प्राप्त नहीं हुई थी, तैयार कराकर सहायक अधीक्षक डाकघर उत्तरी मुरादाबाद को नहीं भेजी जिससे श्री आनन्दपाल सिंह शाखा डाकपाल देवीपुरा द्वारा बचत बैंक शाखा संख्या १९०५५६० एवं १८०५५६१ से गबन करने का मामला तत्काल प्रकाश में नहीं आया। यदि अनुसार समय से सूची भिजवाई होती तो गबन का मामला प्रकाश में आ जाता तथा श्री आनन्दपाल सिंह द्वारा अन्य खातों से किये गबन को रोका जा सकता था। उक्त श्री ओ० पी० सिंह के द्वारा उक्त कार्यवाही न करने से श्री आनन्दपाल सिंह शाखा डाकपाल देवीपुरा अंकन ४१५३५/- का गबन करने में सफल हुआ और विभाग की क्षति पहुँचायी।

अतः आरोपित है कि उक्त श्री ओ० पी० सिंह ने उक्त पद पर कार्य करते हुए डाकघर बचत बैंक नियम पुस्तक खण्ड-१ के नियम-७५ में दिये प्रावधानों का उल्लंघन करते हुए कर्तव्यपरायणता बनाये नहीं रखी तथा ऐसे ढंग से कार्य किया जो एक सरकारी कर्मचारी से अपेक्षित नहीं है। साथ ही अपने अधीनस्थ कार्यरत कर्मचारी से भी कर्तव्यपरायणता बनवाये रखने में अक्षम रहे। ऐसा करके उन्होंने केन्द्रीय सिविल सेवा (आचरण) नियमावली १९६४ के नियम ३ (१) (२) (३) व ३ (२) (१) का भी उल्लंघन किया।"

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On receipt of the charge sheet, the applicant submitted the statement of defence by his letter dated 17.03.2003 and denied the charges leveled against him (Annexure A-4).

3. On receipt of the statement of defence from the applicant, the Disciplinary Authority imposed the penalty of recovery of Rs.6000/- as mentioned above. The applicant preferred an appeal to the Appellate Authority (Director, Postal Services) pointing out the irregularities committed by the Disciplinary Authority vide memo of appeal dated 09.04.2003. The appeal was also rejected and the penalty imposed by the Disciplinary Authority was confirmed.

4. Aggrieved by the above order, the applicant filed the instant O.A. and has challenged the impugned orders on various grounds mentioned in para 5 of the O.A. The first ground of challenge is that the applicant is being punished for alleged misconduct for which he is not at all responsible and the order is wholly illegal, arbitrary and against the disciplinary Rules. Charges are vague, baseless and does not disclose the evidence on the basis of which the charges were framed. The second ground relates to non-supply of relevant documents so as to enable him to defend his case effectively. Thirdly it has been pleaded that the order of the Disciplinary Authority is perverse and there is no basis to impose the penalty. The appellate order is equally arbitrary, illegal as it has not taken into account the grounds mentioned in memo of appeal and it does not disclose any cogent reason for rejecting the appeal.

5. The respondents, on the other hand, have resisted the O.A. and have filed a detailed

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counter affidavit wherein it has been submitted that the applicant failed to submit the pass book for interest posting upto 20th July and his failure on this account facilitated the GDSBPM Devipura in committing the fraud and Govt. sustained a loss to the tune of Rs.41, 535/-. Had he followed the Departmental instructions and provisions of Rule 75 of the Post Office Savings Bank Manual Vol-1, the fraud could have been deducted earlier. It has further been argued that date of defalcation spanned from 16.05.96 to 29.01.2000 and the applicant worked during the period May 1999 to August 1999. Accordingly, the petitioner was rightly chargesheeted for non-submission of list of such S.B Account from G.D.S BPM Devipura, which pass book were not received for posting of interest thus he failed to do so and did not follow the provision of Rule 75 of Post Office Saving Bank Manual Vol.-1. Had he done it the fraud could have been detected and the department would not have suffered the loss. They have submitted that the respondents allowed the applicant to inspect the documents but some of the documents demanded by the petitioner have already been weeded out and could not be made available. It has accordingly been submitted that the O.A. lacks in merit and may be dismissed.

6. During the course of the argument, the learned counsel for the applicant submitted that the applicant worked as Assistant Post Master between 18th May 1999 and 19th August 1999. He submitted that the fraud was committed by the G.D.S.B.P.M. Devipura between 1996 and 1998. He argued that the fraud had already taken place before he joined as Assistant Post Master in the year May 1999. Even if he had called for the Savings Bank pass book from the G.D.S.B.P.M. Devipura and had sent it for posting of interest thereon the fraud could not

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have been prevented as it has already taken place. He also produced before the Court the charge sheet issued against the G.D.S.B.P.M Devipura in which the S.B. Account Number mentioned in his charge sheet does not figure in the charge sheet of the main culprit who committed the fraud. He also pointed out that Savings Bank Account No. 1805561 and 1805560 contained the amount of Rs.519/- and Rs.937/- respectively which is clear from CA-4 and CA-5. By this, he refuted the contention of the respondents that the amount misappropriated was to the tune of Rs.41, 535/- and it clearly shows that the defalcation has taken from other accounts including recurring deposit amount. In so far, the applicant has been chargesheeted for fraud in respect of Savings Bank Account NO.1805560 and 1805561. He further submitted that the vital relied upon documents could not be provided to the applicant which is clear from para 25 of the C.A. when the respondents have submitted that they could not be given to the applicant because they were weeded out. In order to support his arguments, he has placed reliance on the case of J.M. Makwana Vs. Union of India and others 2002 (1) A.T.J C.A.T 283 and C.N. Hariharnandan Vs. Presidency Post Master, Madras G.P.O. (1988) 8 A.T.C. 673. Relying on these cases, he has submitted that the applicant cannot be punished for the misconduct committed by some other official. He has stated that the fraud was committed by G.D.S. B.P.M. Devipura in this case and recovery had been ordered from his salary, it is against the decision in the case of J.M. Makwana (supra). He has further submitted that it is also against the provisions contained in Rule 11 (III) of Rules ibid.

7. The respondents, on the other hand, have endeavoured hard to counter the claims made by the

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counsel for the applicant and have argued that had the applicant followed the Rules in letter and spirit, the fraud could have been detected earlier and Govt. would not have sustained the loss. As such, he is subsidiary in the commission of fraud and he is bound to share the responsibility and accordingly he has been rightly punished for recovery of the amount. The impugned orders are legal and valid.

8. I have heard very carefully the rival submissions of the counsel for the parties and perused the pleadings.

9. The only question which falls for consideration and decision is the validity of impugned order dated 31.03.2003 and the order dated 19.09.2003 by which the penalty of recovery of Rs.6000/- at the rate of Rs.500/- per month from the salary of the applicant has been imposed. In order to appreciate the issue, I would like to extract provisions of 11 (iii) of the Rules *ibid*:-

"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"

The perusal of the Rule would show that any pecuniary loss is to be caused by the employee by negligence or breach of orders. The point to be considered here whether the applicant has worked negligently or he has breached any order. Whether the applicant was personally responsible for the loss caused to the Government or somebody else is responsible for this loss. The contention of the respondents is that he is subsidiary of offender in the misappropriation of money (para 5 of the C.A. refers). This shows that he was not directly involved in the misappropriation of money and reliance in the case of J.M. Makwana (*Supra*) by

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the counsel for the applicant is very much valid wherein it has been held as under:-

"Rule 11(iii)- Recovery-Fraud committed by another employee-Applicant found responsible for the same on the ground that by his negligence the fraud was not detected earlier- There is no charge that due to his negligence any pecuniary loss was caused to Govt.-Impugned order withholding one increment and recovery of loss caused to Govt., rejected".

From the above, it is clear that one cannot be made to suffer for the commission of offence by somebody else. In the fact situation of the instant case, the contention of the respondents cannot be accepted as the fraud had already been committed even before the applicant assumed charge of A.P.M. Station Road, Moradabad. Even if he had shown due diligence the fraud could not have been prevented or detected as the G.D.S.B.P.M Devipura had already misappropriated the money. It is also strange that he has been chargesheeted for misappropriation from the Savings Bank Account Nos. 1805561 and 1805560 and it is undisputed that the fraud was committed by G.D.S.B.P.M. Devipura and these account Numbers do not find place in the chargesheet against G.D.S.B.P.M. Devipura. Thus I find that he is being made scapegoat in this case and he is made to pay for the loss of Revenue caused to the Department. It is not kept in mind by the Disciplinary Authority as well as Appellate Authority that the Rule providing for imposing penalty i.e Rule 11 (iii) of the Rules ibid cited supra lays down that the recovery can be imposed from the pay of the Government Servant if the pecuniary loss is caused by him to the Government by negligence or breach of orders. I fail to understand how the penalty of recovery of Rs.6000/- could have been imposed by the Disciplinary Authority on the applicant and

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confirmed by the Appellate Authority when he was not directly responsible for the misappropriation of the amount. I get support for my view from the case of C.N. Hariharnandan (Supra). There also in the similar situation the employee was sought to be made responsible for the pecuniary loss caused to the Government on the ground that he was negligent in performing his duties. Quashing the recovery order, the Madras Bench observed the applicant was not directly responsible for causing any pecuniary loss to the Government and at the best he can be said to be technically responsible. I am in respectful agreement with the decision in C.N. Hariharnandan case (supra).

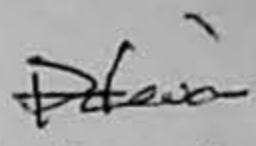
10. I want to examine this case from another angle also whether the Disciplinary Authority or the Appellate Authority were correct in following the procedure for imposing the penalty. I find that the chargesheet was issued to the applicant and by way of statement of defence the applicant submitted a detailed representation refuting the claim made in the chargesheet. The Disciplinary Authority after discussing some points, imposed the penalty. By now the legal position has been settled that once there is refutation of the charges even in the minor penalty, the Disciplinary Authority should hold full fledged disciplinary proceedings under Rule 14 of the Rules *ibid*. I get support for my view from the decision of the Apex Court in the case of O.K. Bhardwaj Vs. Union of India- 2002 SCC L&S (188) wherein the Supreme Court has held that when the facts are disputed a detailed enquiry is the minimum requirement even in the case of imposition of minor penalty. The respondents have failed to follow the procedure. The appellate order also does not take into account the points raised by the applicant in his memo of appeal. I am of the

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considered view that on these grounds the impugned orders are liable to be quashed.

11. In the result, the O.A. succeeds on merit and impugned orders are quashed. Respondents are directed to refund the amount if recovered from the applicant. This exercise should be completed within a period of three months from the date of receipt of this order.

12. There shall be no order as to cost.


Member-A

Manish/-