

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 31st day of MARCH 2005

Original Application No. 330 of 2003

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

Gareeb Das, S/o Late Sri Suraj Deen,
R/o Vill Visendi,
Tehsil Babaru, Distt. Banda.

...Applicant

By Adv : Sri A. Srivastava

V E R S U S

1. Union of India through Secretary,
Ministry of Communication, Department of Post,
Dak Bhawan,
NEW DELHI.
2. Director Postal Services,
Kanpur Region,
KANPUR.
3. Superintendent of Post Offices,
Banda Division,
BANDA.

....Respondents

By Adv : Sri D.K. Dwivedi & Sri V.V. Mishra.

O R D E R

By K.B.S. Rajan, JM

Thy cry of the applicant in this application is that for no fault or part of his in a dacoity that had taken place on 24/25-01-2002 in the Head Post Office, Banda, when an amount of Rs 2,95,826.15 was taken away, the applicant is penalized to the tune of Rs 40,000/- recoverable in 40 instalments of Rs 1000/- each. The legal question involved is whether the applicant could at all be subjected to recovery.



2. A relevant diary of facts and dates will help focus attention on the primary legal question. The applicant is functioning as a packer in the office of the Superintendent of Post Office, Banda and his main function is to carry the luggage carrier (Thailia) for taking the Mail from the Office of RMS Banda to Head Post Office Banda. On 25th January, 2002, as usual when he visited the Office of Respondent No. 3 at 5.30 a.m. he found that the Gate of the office of Head Post office was closed from inside and the applicant could find the Chowkidar Shri Gaya Prasad with his hands tied up and the applicant came to know that in the wee hours on that day, some dacoits had entered and tied the chowkidar and decamped with certain amount. The chowkidar wanted the police to be informed and till then he was not to permit his tied up hands to be released. When the applicant tried to make a phone call to the police, he only found that the dacoits had disconnected the telephone line. As it was time for the applicant to reach the Railway station to collect the mail, he first rushed to the station and did his stipulated function and it was thereafter that he could tell the officials at Banda. Police reached the spot at 6.00 a.m.

3. The applicant was, on 7-11-2002, served with a charge sheet (Annexure A-1) under Rule 16 of the CCS (CC&A) Rules, 1965 to the effect that he had failed to inform the police about the dacoity on account of which the dacoits could not be traced and there was a loss to the tune of Rs 2,95,826.55 to the Government. The applicant gave his reply on 25-02-2002 explaining his position that he could not afford to miss the train where from he had to collect necessary mail bag. The applicant had also prayed for an open inquiry under Rule 16(1)(A).


Instead of conducting an open inquiry as prayed for, the

applicant was served with a penalty order of recovery of Rs 40,000/- vide order dated 29-01-2003. The order emphasized the view of the respondent that since the applicant was the first to reach the post office after the dacoity, it became his primary responsibility to inform the police as the Chowkidar could not move because his hands were tied.

4. The petitioner filed an appeal dated 15-02-2003, clearly spelling out the position of the applicant that his primary responsibility was to pick up the mail bags from the Railway Station at the fixed time when the Mail reached the station and that failure on the part of the disciplinary authority from holding the open inquiry is against the provisions of the rules. Again, as per the statement of the Chowkidar the dacoits entered the premises at midnight on 24/25-01-2002 and after tying the hands of the Chowkidar, they looted the money and had already left the scene. The appeal was not disposed of till the filing of the O.A.

5. Respondents have contested the O.A. They have denied the request of the applicant for holding the inquiry and also of the contention that appeal was filed. The counter was more conventional and customary in nature. The contention raised in the counter is that the applicant was punished for the act of his negligence and 'irregularity'.

6. We have heard the counsel for the parties, gone through the entire pleadings and gave our anxious consideration. The legal issue involved is whether the respondents are under an obligation to conduct an open inquiry when the same was demanded. (though the respondents denied the receipt of the



request, a perusal of the record reflects the dispatch of the request for holding an inquiry contained in the representation dated 29th November, 2002. This has been reflected in the appeal preferred by the applicant. The Rule on the subject is contained in the Govt. of India Instructions below Rule 16 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, come 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 mind to the request, as such an action could be construed as denial of natural justice."

7. It would therefore, be seen that holding of inquiry at the request of the applicant is a must unless for plausible reasons there is a conscious decision by the disciplinary authority to decline the request for holding the inquiry.

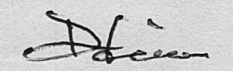


8. Again, the primary duty of the applicant was to perform his daily routine duty and assuming that he had informed the police but missed to collect the mail from RMS, he would have been charged for misconduct of dereliction to duty. To avoid the same the applicant had first performed his duty. And soon after completing the job, he had ensured that the police arrived at 6.00 a.m. Thus, the applicant did act swiftly after performing his daily routine duties. No fault could be found in the act of the applicant. Nothing more could be possible for him to do at that stage.

9. Under the above circumstances, the OA succeeds. The impugned order dated 29-01-2003 (Annexure A-6) is quashed and set aside. The respondents are directed to refund the amount so far recovered from the applicant in pursuance of the aforesaid order dated 29th January, 2003. This should be complied with, within a period of three months from the date of communication of this order.

10. Under the circumstances, there shall be no order as to cost.


Member (J)


Member (A)

/pc/