

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD**

**ORIGINAL APPLICATION NO. 394 OF 2008**

Dated this *Friday* the *29*th day of April , **2011**

**CORAM:**

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J**

Onkar Nath Tripathi,  
S/o late Sri Brij Lal Tripathi,  
r/o 28B/118 B, Rama Nand Nagar,  
Allahpur, District Allahabad.

.....Applicant.

(By Advocate : Shri M.K. Upadhyay,)

**V E R S U S**

1. Union of India through  
Secretary of Posts, Ministry of Communication, Dak Bhawan,  
Sansad Marg, New Delhi 110 001.
2. Chief P.M.G. U.P. Circle Hazratganj,  
Lucknow.1.
3. Post Master General,  
Allahabad Region, Allahabad.
4. The Sr. Superintendent of Post Offices,  
Allahabad Division, Allahabad.

.....Respondents

By Advocate : Shri H. Singh, Counsel for Union of India.

**O R D E R**

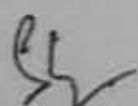
By way of the instant Original Application filed under Sec. 19 of the Administrative Tribunal's Act, 1985 the applicant seeks quashing of order dated 13.09.2005 passed by respondent No.5 for alleged mispayment of Rs. 37,400/- in lieu of Kisan Vikas Patra (for brevity "KVP) (Annexure A.I) and also seeking quashing of order dated

Sl.

O.A.NO.394/2008

7.6.2007 passed by Respondent No.2 whereby his statutory appeal against the order (Annexure A.1 ) has been rejected.

2. The brief facts of the case are that the applicant was posted as Assistant Post Master and retired on attaining the age of superannuation on 30.9.2005. While the applicant was working as A.P.M. Allahabad on 19.5.2005 two KVPs bearing No. 66CC 465489 and 465490 for Rs. 10,000/- each were presented by one Shri Abhay Tiwari for pre-mature payment. After verifying from the counter Assistant, the necessary payment was given to Shri Abhay Tiwari. It is submitted that since the amount is over Rs.20,000/- a cheque was prepared in the name of the KVP holder but he refused to collect the same on the pretext that he is in dire need of money, therefore, the cash payment be made to him. Accordingly, the payment was made in cash on 26.5.2005. On 10.8.2005, the applicant was summoned to attend the office of the Post Master General, Allahabad (Respondent No.1) in connection with some enquiry relating to discharge of KVP. The applicant is stated to have appeared before the officer at that time it came to the notice of the applicant that the said KVP have already lost from the custody of the investors as a complaint was made on 29.6.2005. It is stated in the complaint that the said KVP have been lost from their custody before date of maturity i.e. 14.6.2005 (Annexure A.4). Investigating Inspector (Vigilance) from the office of the respondent No.3 was deputed to look into the matter who recorded the statement of the applicant in which the applicant has clearly stated that the said KVPs have already been presented before him and the same was encashed by one Abhay Tiwari, one of the investors prematurely.





**O.A.NO.394/2008**

Vide order dated 13.9.2005 the Senior Post Master, Allahabad i.e. Respondent No.5 held the applicant and one Shri J.P.Singh, the Counter Assistant responsible for mispayment of discharge value of the said KVPs. Against the order dated 13.9.2005 the applicant submitted a representation on 17.9.2005 before respondent No.5 itself wherein he pleaded that he is having unblemished service record and the payment was made on presentation of KVPs to one of the Co-investor viz. Abhay Tiwari. It is further submitted that without affording an opportunity the order dated 13.9.2005 has been passed whereby the order of recovery has been passed against the applicant. Since the applicant is due for retirement therefore the applicant deposited a sum of Rs.18,700/- as half of the amount of KVP. On 20.1.2006 the applicant filed appeal before the Chief Post Master General, U.P. Circle, Lucknow against the order dated 13.9.2009 (Annexure A.11) when the respondents did not decide the appeal then the applicant forced to approach this Tribunal by way of Original Application No. 705/2006 which was disposed of on 30.3.2007 with a direction to respondent No.2 to decide the pending appeal against the order dated 13.9.2005 within a period of two months from the date of receipt of a certified copy of the said order (Annexure A.12). On 14.4.2007 the applicant submitted a representation along with the certified copy of the order passed by this Tribunal. On 7.6.2007, the respondent No.2 rejected his appeal on the ground that the applicant himself accepted negligence/fault on his part in making payment of discharge value of KVP when the applicant was working as APM (Annexure A.2). It is alleged that while considering his appeal the respondent No.2 has not considered the relevant provisions



O.A.NO.394/2008

contained in Post Office (SB) Manual II, cryptic and non speaking order has been passed. Hence the present Original Application.

3. Upon notice respondents filed reply and contested the case. In the preliminary submission, it is stated that on 22.6.2005 application was received in the office of Post Master General Allahabad which was supplemented by another application dated 29.6.2005. Upon which an enquiry was conducted wherein the applicant and one Shri Jwala Prasad, Postal Assistant (Counter Clerk) were found responsible for payment of more than Rs.20,000/- of the discharge value of both the KVPs encashed in spite of making payment through cheque and that too without getting identification. It is averred that the signature of the holder Shri Abhay Tiwari was not matching with the same available on NC 69. and accordingly on 6.9.2005 a direction was received from the Post Master General Allahabad to get the discharge value of Rs. 37,400/- deposited in Govt. Account from the above Postal Officials. As such Respondent No. issued a letter on 17.10.2005 by which the applicant as well as Shri J.P. Singh was directed to deposit Rs. 18,700/- each against the maturity amount of the said KVPs. Since the applicant have violated the rules which resulted into loss to the Govt. therefore, the faulty officers were directed to make good the loss.

4. I have heard Shir M.K. Upadyay, Learned Counsel for the applicant and Shri H. Singh, Learned Counsel for the respondents.

5. The Learned Counsel for the applicant has vehemently argued that the impugned order dated 13.9.2005 (Annexure A.I) has been passed without affording an opportunity of hearing to the applicant. He further argued that by the impugned order a direction has been given to

52 -



O.A.NO.394/2008

the applicant to deposit a sum of Rs. 37,400/-. Since the applicant was not afforded an opportunity to put forth his defence before passing the impugned order therefore, the same is in violation of principle of natural justice and thus liable to be set aside. He further argued that even the order passed by the appellate authority on 7.6.2007 is also non speaking as it does not consider the provisions which specifically states that the post office shall not be responsible for any loss caused to a holder by any persons obtaining possession of a certificate and fraudulent encashment.

6. On the other hand, the Counsel for the respondents has submitted that the applicant has already admitted his fault and he has already deposited a sum of Rs. 18,700/- with the respondents. Therefore, later on he cannot be allowed to agitate the same once the matter has been settled. He further submitted that while making the payment the applicant has not deposited the same under protest as alleged by the applicant that since he is due for retirement, therefore, to save himself from any disciplinary action or from stoppage of the retiral benefits he has deposited the same.

7. I have considered the rival submissions and have gone through the records. Admittedly, the Kisan Vikas Patras (KVPs) were got encashed by presenting on 26.05.2005 by one of the co-purchaser. A complaint was received on 29.6.2005 alleging therein that the said KVPs have been lost from their custody. Before 29.6.2005 there was no complaint received in the office it is only after the date of maturity i.e. 14.6.2005. Even the said complaint was also not made to the Post Office from where the KVPs were purchased. Simply on the complaint

15

O.A.NO.394/2008

the alleged Enquiry was conducted by Investigating Inspector and held the applicant and one Jwala Prasad guilty of making payment to person other than the original purchaser. It is nowhere stated by the respondents that in the so called enquiry the complainant was called or not. Therefore the said Enquiry cannot be termed as an Enquiry in the eye of law. Moreover, while inflicting the punishment the respondents have not considered Rule 15 of the Kisan Vikas Patra Rules which mandates that Post Office shall not be responsible for any loss caused. The same reads as under:

**"15. Responsibility of the Post Office: the post office shall not be responsible for any loss caused to a holder by any person obtaining possession of a certificate and fraudulently encashing it. "**


In view of the foregoing discussion, I am of the considered view that the impugned order is not sustainable in the eye of law and the same is set aside. Certainly the applicant has violated Rules 269 (T) of the I.T. Act 1961 by making payment in cash above 20,000/- for which the respondents are at liberty to proceed against the applicant with departmental action in accordance with law for non compliance of the instructions. But for that fault he cannot be penalised for the loss of KVPs and its amount. Therefore, the matter is remanded back to the authorities for reconsider the matter in terms of the observations made hereinabove by passing appropriate order. This exercise shall be completed preferably within a period of two months from the date of receipt of a certified copy of this order.

*Sh.*



O.A.NO.394/2008

9. The OA. is accordingly, disposed of on the above terms. No order as to costs.

  
(Sanjeev Kaushik)  
Member (J)

sj\*