

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION no. 604 of 1992.

Date of decision: 15.12.1993

M.Mohan Rao ... Applicant.

Versus,

Union of India and others. Respondents.

(For instructions)

1. Whether it be referred to the reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No.

Recd 15/12/93.
(K.P. ACHARYA)

VICE-CHAIRMAN.

15/12/93
(H.RAJENDRA PRASAD)

MEMBER (ADMINISTRATIVE)

15 DEC 93

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 604 of 1992.

Date of decision: 15.12.1993

M.Mohan Rao Applicant.

Versus,

Union of India & others. Respondents.

For the Applicant: Mr.P.C.Acharya, Advocate.

For the Respondents Mr.Ashok Mishra,
No.1 to 3 : Senior Standing Counsel.
(Central)

For the Respondent No.4:- M/s.P.V.Ramdas,
K.C.Sahu
P.V.Balakrishna Rao, Advocates.

C O R A M :

THE HON'BLE MR.K.P.ACHARYA, VICE-CHAIRMAN.

AND
THE HON'BLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN.)

J U D G M E N T.

1. In this application Shri M.Mohana Rao, Sub-Postmaster, Kodala Tahsil Colony Sub-Post Office, Ganjam Division, has prayed for the quashing of orders of recovery of Rs.15,400/- from his pay, passed by Senior Superintendent of Post Offices, Berhampur, vide Memo No.L-40/34(G) dated 31.1.1992.

2. The applicant, while working as Sub-Postmaster, Kodala Tahsil Sub-Post Office, Berhampur Division, during 1986, sold (18)Eighteen NSCs (VI Issue) of the total

1.50/-

value of Rs.50,000/- to one Shri Bhagirathi Sahoo of the same town. The break-up of the NSCs sold was as under:

- i) 8 NSCs of Rs.5,000/- each = Rs.40,000
- ii) 10 NSCs of Rs.1,000/-each = Rs.10,000
Total : Rs.50,000

According to the terms of issue, these certificates were not encashable prior to 4.6.1992, i.e., before the expiry of six years, otherwise known as 'lock-up period,' as the facility of premature encashment (available in respect of some of the earlier series of certificates) stood withdrawn by the Government.

3. However, on 19.12.1989, i.e., a little over only three years and six months after the purchase, the applicant allowed a premature encashment of eight of the said certificates valued at Rs.40,000/- plus Rs.15,400/- as interest thereon, to the investor. Thus the Government, according to the Departmental authorities, was put to an avoidable loss of Rs.15,400/- which represented the interest payable on maturity of the said certificates at the end of six years in June, 1992.

4. On this serious irregularity coming to notice, the explanation of the applicant was called for and finding his response unsatisfactory, action was initiated under Rule-16 of the CCS(CCA) Rules for the recovery from the applicant's pay of the loss caused to the Government by way of the irregular payment of unearned interest.

— T. S. Jadhav

The applicant replied to the charges on 24.12.1991, and this was duly considered by Sr. Superintendent of Post Offices, before the impugned orders were passed.

5. The applicant thereafter submitted an appeal to the Director of Postal Services, Berhampur, against the said orders of recovery. The appeal had not been disposed of until 20.11.1992, on which date the applicant filed the present application (It was revealed that the Director of Postal Services subsequently rejected the appeal on 14.12.1992).

6. The applicant submits that the penalty of recovery imposed by the Department is illegal and cites the following reasons by way of explanation:

- i) The decision of the Government regarding withdrawal of the facility of premature encashment of certificates was not communicated to him. And, therefore
- ii) He was ignorant of the said restrictions on premature encashment.
- iii) The impugned order violates Rule 23(5) of the Postal Savings Bank Manual.
- iv) Alternate modes of recovery of the loss caused to the Department are available to the authorities under the Indian Post Office Act.
- v) Imposing the entire burden of loss on him is iniquitous.

Signature

7. The Respondents in their reply to the application maintain that the recovery ordered by the Senior Superintendent of Post Offices was quite in order, and it was in fact the most logical avenue open to the ^{avoidable} Department to recover the loss sustained by the public exchequer. In this connection they cite Rule 21 of General Financial Rules which places the responsibility for any loss sustained by the Government, through fraud or negligence, squarely on the officer/official concerned, who is required to act with caution and alertness, and within rules in such matters, to prevent needless loss of public moneys.

8. As regards the applicant's plea that he was not really aware of the withdrawal of premature encashment facility of NSCs (VI issue), the Respondents point out that the applicant had himself admitted in a communication on 19.4.1990 that he indeed knew of the change in rules introducing the said restriction.

9. The applicant has nevertheless argued that the changes in rules were not notified to him in time by the Divisional Office. Counteracting this, the respondents have produced a copy of the Chief Postmaster General's circular letter No. SB/1-27/RLG/CORR/Ch.V. dated 13.4.1987 communicating the relevant orders of the DG, Posts, in this regard. This letter was, in turn, circulated to all Sub-Postmaster/Postmasters in Berhampur Division by the Senior Superintendent of Post Offices on 15.4.1987, as seen by

T.G.J.

the endorsement on Annexure R/1. The Respondents explain that the defence of ignorance of rule put forward by the applicant is, under the circumstances, not tenable.

10. As regards the applicant's contention that the recovery is against Rule 23(5) of Savings Bank Manual, it is explained by the Respondents that the said Rule pertains to purchase of NSCs by an investor in excess of the prescribed limits, or in contravention of rules. This rule, they state, is not at all applicable ^{the} to the facts of ^{the} present case, and does not confer any protection on him.

11. Another plea taken by the applicant is that the said certificates had not been overprinted or stamped by any instructions to the effect that premature encashment facility was not available in respect of these certificates. In reply to this, the respondents point out that if the certificate in question had been supplied by Chatrapur Head Office, which is the source of their supply to Kodala Tahasil Sub-Post Office, before 1.4.1986, there was no scope at all for impressing such a stamp or instruction; in such a situation, the specific written instructions separately and specifically issued in the form of a circular were more than adequate, and that these were quite enough to enable the applicant to act correctly in the matter.

12. Incidentally, the counter-affidavit points out that the applicant did not wait for the

15/Jan/1986

- 6 -

disposal of the appeal submitted by him to the appellate authority, viz., Director of Postal Services, whereafter, if aggrieved, he could have gone in a further appeal. This O.A., on that score, according to the respondents, is premature.

13. In a separate counter affidavit filed by him, Respondent No.4, argues that: firstly, the application is not maintainable because it contains a prayer for two separate kinds of relief; secondly any recovery from him of interest paid, allegedly irregularly, by the department, cannot be ordered by this Tribunal since the same is outside its jurisdiction. He contends further that there was absolutely no indication at the time of their purchase that premature encashment of the said NSCs was not permitted; the Respondent adds that he would never have invested any amount at all on the purchase of the said certificates if he had at all been made aware that their premature encashment would not be permitted. The respondent further submits, somewhat gratuitously, that the applicant should have awaited the disposal of his appeal by the Director of Postal Services instead of rushing to the Tribunal with this application. He finally insists that the interest paid to him was not irregular.

14. We have given a close consideration to the facts of the case. The fact that the certificates in question were allowed to be encashed prematurely is beyond dispute. It is equally clear that such premature encashment was not permissible. It is also not denied

15

that the full amount of interest that would have become payable at the end of six years on these certificates was paid at the end of merely a half of the lock-up period. To that extent, the government has sustained a loss in the shape of an inflated rate of interest irregularly paid much before such interest became due.

15. The following are our findings on the various points raised on applicant's behalf:

- a) It is seen that the Government's decision to withdraw the facility of premature encashment was communicated/circulated in time by the authorities, as seen from the record produced before us. His plea on this score is unacceptable.
- b) There is no strength in the argument that he was unaware of the change in rules, viewed specially in the light of his own statement that he duly consulted some of his colleagues in other post offices on this aspect of the matter. Ignorance, even if true, of such important change in regulations, cannot constitute a justification. It is also significant, as brought out by the respondents, that he earlier had duly admitted being aware of the restrictions in this regard.
- c) Rule 23(5) of Savings Bank Manual, we are satisfied on its perusal, is in no way related to the facts of this case in that it deals with situations totally unconnected to the one obtaining in this case.

for any subsequent lapse.

1. gopal

d) The aspect of alternate modes of recovery are discussed elsewhere in this judgment.

16. Notwithstanding any thing asserted or pleaded to the contrary, it is thus obvious that the said loss occurred due to the negligence of the applicant. No one else has any role or responsibility for the lapses. The Head Post Office was also in no way involved in this irregularity. To that extent the punishment imposed on the applicant by his departmental superiors is in order and it is neither illegal nor is it arbitrary in any manner, as has been asserted by the applicant.

17. Be that as it may, it is also noticed that the investor/purchaser of certificates in this case has been the sole undeserving recipient of an impermissible interest which was not due to him in any way. Inasmuch as he received moneys to which he was not entitled, no matter owing to whose fault, he is liable to be proceeded against for the recovery of the said amount. Provisions are known to exist for such a course of action. While this is so, there is no indication that the authorities have initiated, or even explored, any action on these lines. In the interests of common justice, it is entirely necessary that no one is allowed to retain an irregularly-accrued gain against all rules. Under such circumstances, we would, therefore, expect the department to move suitably in the matter, if only, firstly, to ensure that no ^{legitimate} avenue is left unexplored to make good the loss caused to the exchequer, and, secondly, also to endeavour to prevent

Signature

an unentitled person from retaining an irregular gain, and, thirdly, to prevent, if possible, a single person from bearing the entire brunt of such loss even if, admittedly, he is guilty of negligence in the performance of his ^{fully and meaningfully} duties. Unless these alternatives are ^{fully and meaningfully} explored, the burden would unfairly fall on one individual while the real unentitled beneficiary remains unaffected.

18. It has incidentally come to our notice from the documents produced before us, as also from the rejoinder filed by Respondent No.4, that 10 NSCs for a total value of Rs.10,000/-, plus the usual interest thereon, are lying undischarged with the postal authorities although the maturity period of these certificates is said to be over. Apart from this lone disclosure, aired primarily as a grievance, we find nothing worthy of note, credence or acceptance in the pleas advanced by Respondent-4. It is unnecessary for a private person to explain to this Tribunal the limits of its own jurisdiction, just as it is equally presumptuous of him to say what a government servant ought or ought not to do in relation to his departmental authorities or to this Tribunal. We have, therefore, decided to ignore altogether the counter-affidavit filed by Respondent-4.

19. In the light of what has been stated in the preceding paras, and specially in paragraph-17 above, we hereby order that the proceedings initiated by the Senior Superintendent of Post Offices, Berhampur Division, vide

1.5.5.1...

-10-

his Memo No.L-40/34(G) dated 31.1.1992, directing the recovery of Rs.15,400/- from the pay of the applicant, Shri S.Mohan Rao, be held in abeyance for the present. The stay against the said recovery, earlier granted by this Tribunal on 3.12.1992, is accordingly extended. This order (of stoppage of recovery) will be in force until such time that the departmental authorities are able to initiate, and to bring to a meaningful conclusion, action to explore other logical avenues of recovery of loss sustained by the Government from the recipient who has unlawfully gained and retained it. We now expect Respondent Nos.2 and 3 to move in the matter expeditiously, under the existing provisions of law, enforceable through the appropriate governmental authorities. Only when this alternative mode of recovery has been fully availed of can the respondents contemplate recovery of the remainder (if any) of the total loss or part thereof from the applicant. The department shall, of course, be free to direct suitable notice against the applicant, or/ and also order recovery of appropriate amount, if necessary, but only at an appropriate juncture as indicated above. This order is primarily passed in view of the glaring revelation that- although the applicant is clearly guilty of negligent performance of his duties, and therefore, answerable for the lapses - the unlawful gainer has been someone else who has gone scot-free so far. If such an illegal gain is permitted to be retained by an unentitled person, the entire resultant strain would inevitably fall

125.1.1

(20)

-11-

unfairly on the present applicant. This cannot be permitted. This is the rationale of our present direction.

19. Thus the application is disposed of. No costs.

VICE-CHAIRMAN.

15-12-93.

MEMBER (ADMINISTRATIVE)

15 DEC 93

Central Administrative Tribunal,
Cuttack Bench, Cuttack. Hossain./

15-12-93