

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA No. 882/ 1996

Present: Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member
Hon'ble Mr. M.K. Mishra, Administrative Member

SHRI BIBEKANANDA MAZUMDAR

Vs

1. Union of India, Service through the Secretary, Ministry of Communications, Department of Posts, Dak Bhavan, New Delhi.
2. Chief Postmaster General, West Bengal Circle, Yoga-yog Bhavan, Calcutta - 12.
3. Senior Postmaster, Alipore H.O., Calcutta - 12.

For the applicant : Mr. N. Bhattacharyya,
Counsel - Not present.

For the respondents : Mr. S.P. Kar, Counsel

Heard on : 6.12.2004 Date of Order: 4.02.05

O R D E R

Mr. Mukesh Kumar Gupta, JM:

Validity of Annexures A-2 and A-5 being the penalty order dated 15.12.95 as well as upholding the said punishment vide appellate order dated 14.6.96, respectively, is questioned in the present OA, besides direction to respondents to refund a sum of Rs.10,675/recovered from the applicant with interest @ 18% per annum.

2. The facts which are required to be noticed are that the applicant, Assistant Treasurer - III, Alipore Head Office was proceeded with memorandum dated 30.8.95

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under Rule 16 of CCS (CCA) Rules, 1965 alleging that on 21.2.94, 34 number of bags containing stamps and stationeries closed by CSD, Calcutta were received by him from P.A. Mail at 16.50 hours under acquittance and the applicant kept those bags without examining the condition of bags, label, cord, seals etc. immediately after receipt in the Treasury Branch in violation of the provisions of Rule 97 (2) of the Postal Manual. It was also alleged that the applicant kept those bags unopened overnight on 21.2.94 without noting any error showing reasons for non-opening of those bags or without obtaining any written order from the competent authority. It was also alleged that because of the action of the applicant, the department had to sustain a loss of Rs.22,050/-. Since the said charges and allegations were denied, the applicant was given an opportunity to make representation, which he availed of, and after considering the applicant's submissions, Senior Post Master, Alipore Head Office, Calcutta vide order dated 15.12.95 imposed the penalty of recovery of Rs.10,675/-, to be recovered in 36th installment commencing from the pay for the month of December 1995 in equal monthly instalment at Rs.300/- per month and residual amount of Rs.175/- in 36 installments towards partial adjustment of the loss sustained by the department. An appeal submitted by the applicant on 17.1.96 was rejected by passing a speaking order and as such penalty was upheld, vide order dated 14.6.96.

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3. The contentions raised were that the Postal Directorate communication dated 23.11.87 on the subject of special bags containing stamps/ stationeries to be treated as insured bags at all stages was not communicated to the applicant and as such he could not have been made responsible for violation of the said communication; the charge was vague; there was no weight noted on the label of outer bags; not recording error in the Error Book or not taking prior permission for keeping the bags in the Treasury etc. may be minor lapses on the part of the applicant but it could not be treated as misconduct in terms of the law declared by the Hon'ble Supreme Court in A.L. Kaira Vs. The Project & Equipment Corp., AIR 1984 SC 1361 and M/s Glaxo Industries (I) Ltd. Vs. Presiding Officer, Meerut AIR 1984 SC 505; there had been a vindictive attitude on the part of the disciplinary authority; the quantum of loss was imaginary in as much as the service stamps were almost liquid in encashment; unless abused or fraudulent use of those stamps was established no loss could be worked out; the disciplinary authority as well as appellate authority did not apply their mind to the submissions made by him and acted in a manner prejudicial to him.

4. The respondents contested the applicant's claims stating that in terms of the Postal Directorate's communication dated 23.11.87, circulated under PMG, West Bengal Circle dated 11.2.88, the special bags containing

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stamps and stationeries closed by the CSD, Calcutta for all purposes were required to be treated as insured bags as per the provisions contained in Rule 92 and 97 of the Postal Manual, but the applicant did not follow the said provisions of Rule. He failed to check the label, cords and seals of the bag No.33 closed by the CSD, Calcutta and also failed to carry out the examination and weigh the said bag No. 33 before opening as required under the aforesaid communication. The pleas raised by the applicant in his defence/ representation were duly considered before passing final order of penalty dated 15.12.95. The applicant was fully aware of the position and he also used to keep those bags over night in the Treasury. On opening bag No. 33, he found 650 grams short in the weight. The applicant was on duty from 1000 hours to 1800 hours, while he received the bag at 16.50 hours and as such should have opened the bag on 21.2.95 itself instead of keeping the bag unopened. The quantum of loss was not imaginary as the service stamps were part of cash. The applicant was afforded a reasonable opportunity of hearing before passing the impugned orders. The appellate authority considered all aspects of the applicant's appeal but did not find any reasons and justification to accept his contentions.

5. The applicant filed his rejoinder disputing the contentions raised by the respondents, while reiterating his submissions made in the OA.



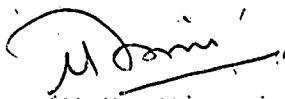
6. We heard learned counsel for the respondents at length and perused the pleadings carefully. None appeared for the applicant on 6.12.2004 as well as on earlier date, i.e. 24.8.2004, & the present OA being of the year 1996, we decided to proceed on merits under Rule 15 (1) of C.A.T. (Procedure) Rules, 1987.

7. The basic ground which seems to had been the bone of contention was that the applicant did not follow the mandate of Directorate communication dated 23.11.87, which according to him was not communicated/ circulated. On perusal of Annexure R-1, we find that the Postal Directorate communication dated 23.11.87 was endorsed to all concerned by the Post Master General, West Bengal Circle, Calcutta on 11.2.88 including all Head Post Masters in West Bengal Circle besides various other authorities. The said communication deals with the subject of procedure for despatch of CSD bags containing postal stamps and stationery to post offices in the Circle. The said communication is detailed and prescribed elaborate procedure to be followed in preparing and transmitting special bags containing the postal stamps and stationery. It is well settled law that Court/ Tribunals have limited power of judicial review, particularly when there exists some evidence on record to show the misconduct committed by the delinquent official. On perusal of the Postal Directorate communication we are of the considered view that the applicant was guilty of not following the said

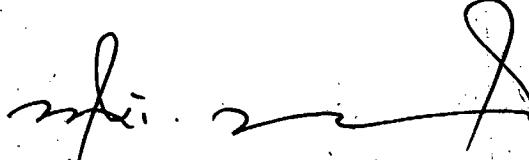
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procedure prescribed therein & his contention that the aforesaid communication was not circulated is not tenable. We are also of the view that loss sustained by the respondents was not imaginary, as contended. We find justification in the contentions raised by the respondents' counsel that what should be the punishment imposed upon the delinquent official is within the domain of the concerned disciplinary authority as held by the Hon'ble Supreme Court in Union of India & others Vs. Pt. Parmanand Katara - 1989 (3) SCR 997. We further find that the disciplinary authority as well as the appellate authority orders are reasoned, speaking and analytical order which took into consideration the submissions made by the applicant. As such, we do not find any illegality, arbitrariness or violation of procedure in awarding the said punishment.

8. In view of the discussion made hereinabove, we find no merits in the present application and accordingly, the OA is dismissed. No costs.



(M.K. Misra)
Admn. Member



(Mukesh Kumar Gupta)
Judicial Member

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