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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

ORIGINAL APPLICATION NO. 74/2009

Date of order: 18-3-2010

HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.

Bhatmal Goyal, S/o Shri Maloo Ram Goyal, aged about 50 years, r/o Goyallan Mohalla, Napasar, Bikaner. Office Address: Assistant Post Master Bikaner. H.O.

: applicant.

Rep. By Mr. S.P. Singh : Counsel for the applicant.

Versus

1. Union of India through Secretary to Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur.
3. The Post Master General, Western Region, Jodhpur.
4. Superintendent of Post Office, Bikaner.
5. Head Post Master, Bikaner Head Post Office, Bikaner.

: Respondents.

Rep. By Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur : Counsel for the respondents.

ORDER

Per Mr. V.K. Kapoor, Administrative Member.

Shri Bhatmal Goyal has filed present O.A challenging the order of respondents dt 31.01.2005 (Ann.A-1), 17.8.2005 (Ann.A-2) & 07.9.2007 (Ann.A-3a). The applicant has sought the following reliefs:

- "(i) The impugned order dt 31-01-2005 (Ann. A-1), 17-8-2005 (Ann. A-2) and 07-9-2007 (Ann.A-3a) may be declared illegal & the same may be quashed.
- (ii) The respondents may kindly be directed to declare the 10 instalment for recovery of pecuniary loss, illegal, reason being not calculated in accordance with law and recovered amount may be refunded.
- (iii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) That the cost of this application may be awarded."

V.K. Kapoor

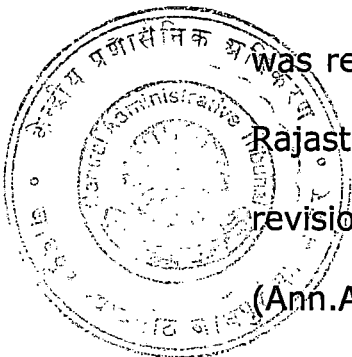
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2. The factual matrix of the case in brief is that the applicant was working as Dy. PM- NSC/KVP, Bikaner, head office during the period in 2003 & 2004, he was to maintain receipts and returns of cash certificates from sub post offices. During this period, he could not ensure maintenance of stock register of NSCs/KVPs (NC-12A) in contravention of rule 5 (2) of SB Manual Vol. II. This laxity on his part facilitated a fraud worth Rs.2,04,500/- at TSO Pawanpuri. Under these circumstances, a fraud committed by Shri Ashok Kumar Bhil, Sub Post Master, Pawanpuri was brought to notice by the applicant, who was held responsible for negligence. The respondent 4 started disciplinary proceedings against him vide memo F-5-1/04-05 dated 31.01.2005, after taking into account his representation dated 24.01.2005. The respondent 4 as disciplinary authority ordered an amount/loss of Rs.40,000/- to be recovered from him vide order dt 31.01.2005 (Ann.A-1). The applicant moved in appeal to the Director Postal Services, Rajasthan, Western Region, Jodhpur, who after hearing him rejected his appeal vide order dt 17.8.2005 (Ann.A-2). The applicant moved a petition to respondent 3 who after going through his representation rejected his petition vide order dt 07.9.2007 (Ann.A-3a). As per applicant, the relevant documents were not provided to him as per demand and punishment was imposed in absence of supportive evidence, the respondents' action is against the principle of natural justice (Ann.A-4, A-5). The respondent 3 has calculated this loss at Rs.1.95 lacs, whereas as per charge sheet, the pecuniary loss is terms as Rs. 2,04,500/- The applicant is asked to make payment of Rs.4,000/- p.m. in 10 instalments; whereas rule 11 of CCS (CCA) Rules, 1965 & Sec.60 of CPC state that pecuniary loss

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caused by a govt. servant by negligence or breach of orders should not exceed 1/3rd of his basic pay. Thus, the applicant has prayed to declare the orders dt 31.01.2005 (Ann.A-1), 17.8.2005 (Ann A-2) and 07.9.2007 (Ann.A-3a) illegal and same be quashed & set aside.

3(a) The respondents in reply filed on 20.7.2009 has stated that the applicant was working as Dy. Post Master NSC/KVP HO Bikaner during some spells in 2004-2005, he failed to maintain the stock register of NSC/KVP in contravention to rule 5 (2) of PO SB manual Vol.II. This laxity on applicant's part facilitated fraud of Rs.2,04,500/- at sub postoffice, Pawanpuri, resultantly vide order dt 31.01.2005, (Ann.A-1) recovery of Rs.40,000/- from him was ordered. His appeal was rejected by Director of Postal Services, Western Region, Jodhpur Rajasthan vide order dt 17.8.2005 (Ann.A-2). Applicant preferred a revision petition to CPMG, Jaipur which was rejected on 07.9.2007 (Ann.A-3 a). It is averred by the respondents that it was applicant's duty to maintain stock register of NSCs/KVPs in NC 12 (A) in his jurisdiction and to ensure that stock of cash certificates were correct and the cash certificates issued and credited to govt account in time. The applicant's grounds of heavy work, shortage of staff are not an excuse for non-maintenance of said records. By lack of supervision, the fraud of Rs.1.95 lacs by SPM Pawanpuri was brought to SPO's notice. The maintenance of stock register NASC/KVP in the form of NC-12A was one of the duties of Deputy Post Master; the negligence on applicant's part gave a chance to SPM Pawanpuri to commit fraud. It was applicant's duty to supervise the work of subordinate post offices accounts and ensure timely deposit of money in govt



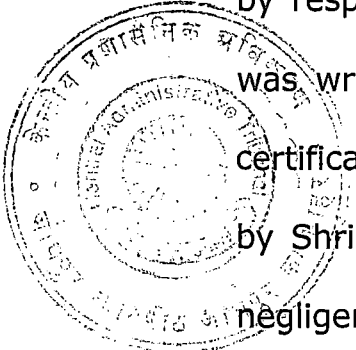
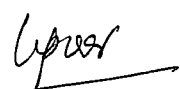
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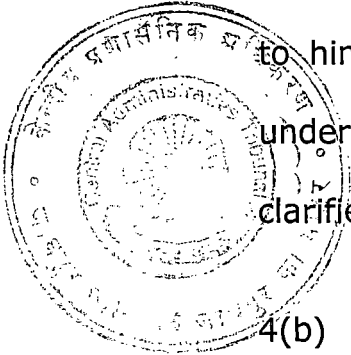
accounts. The Supdt of Post Offices is not responsible for supervision of daily functioning of subordinate post offices. For loss of Rs.1.95 lacks approx, 20% of the pecuniary loss was ordered to be recovered from the applicant and 80% from other officials in postal department held responsible for loss. There is no time limit for recovery, penalty imposed on applicant is just, commensurate with negligence, inaction & laxity on his part. The applicant has since retired on 31.8.2006.

3(b) The applicant in rejoinder explained the delay of 02 months and 20 days for consideration of this Tribunal. It is averred that maintenance of stock register is the duty of Postal Assistant admitted by respondent 4 in memo dt 31.01.2005 (Ann.A-4). The applicant was writing to authorities for providing staff, return of unsold cash certificates etc but nothing was provided. The fraud was committed by Shri Ashok Kumar Bhil, applicant cannot be held responsible for negligence, he was not directly involved. The Supdt Post Offices is responsible for facilitating this fraud along with some other officials of postal department. The applicant demanded 07 documents relevant in this case but only one document was supplied to him.

4(a) The learned counsel for applicant in arguments narrated the factual details. The fraud of Rs.2.00 lacs was committed by Shri Ashok Kumar Bhil, SPM Pawanpuri. Applicant was posted as Deputy Post Master in the head post office at Bikaner during 2003-2004 & 2004-2005; he was supposed to maintain accounts of NSC/KVP in form NC 12A. The applicant wrote several letters to head office for posting of staff, supply of registers etc for record maintenance. There was an acute shortage of staff. The applicant had to work

under extenuating conditions; there was no negligence or breach of duty on his part. The record maintenance of NSC/KVP was the duty of the postal assistant (PA), mentioned in Ann.A-1 itself. There was no involvement of applicant in this fraud; he should not be awarded punishment. In imputation statement dt 06.12.2004, details about loss in NSC & KVP are given; applicant was on leave during some period. Applicant demanded 07 documents, but one such document was supplied. The details of loss are not clear, whether it was Rs.1.95 lacs or Rs.2,04,500. As per rule 3 (2) of CCS rules all steps were taken by applicant to ensure safety of records; even information about fraud was given by him. No reasonable opportunity was given to him as per r.16 of CCA (CCA) Rules, 1965. The circumstances under which he was working were not considered; it was also not clarified as to how applicant was responsible for loss caused to deptt.



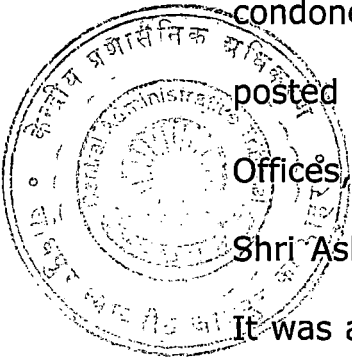
4(b) The learned counsel for the respondents in arguments has stated that fraud was committed by the then SPM, Pawanpuri, applicant was posted in the office of Superintendent of Post offices, (HO) Bikaner as Dy Post Master to maintain records of NSC/KVP, deposit cash in the office chest in time. He was supposed to supervise and maintain the documents/accounts properly in time. The applicant did not pay heed to these details, otherwise the misappropriation could have been checked at an early stage. The applicant cannot shift his responsibility on some other official/staff, there is no excuse for discharging supervisory duties. The fraud was committed by two persons; they were charged/held responsible for 40% each for loss of Rs.2-00 lacs approx. Because of his negligence, applicant was

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penalized to the extent of 20% loss. The action taken by disciplinary authority was just and proper; this caused prejudice against delinquent employee/officer. The applicant did not act as per rule 5 (2) of the post offices SB manual (Vol.II) for proper supervision and maintenance of records like NSC/KVP etc. He was given sufficient opportunity to defend his cause. It is basically negligence in discharge of his duties and laxity in supervision over the subordinate staff that made him responsible for imposition of this punishment.

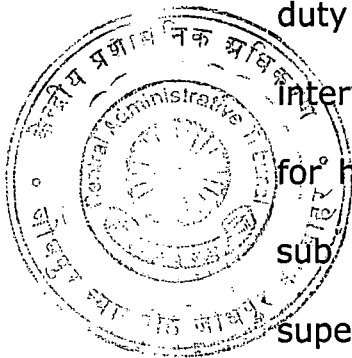
5. The respondents have raised an objection as regards delay in filing the present OA. After going through records, the Tribunal has condoned this delay vide order dt 04.8.2009. The applicant was posted as Deputy Post Master in the office of Superintendent of Post Offices, Bikaner during calendar years the 2003 & 2004. At that time Shri Ashok Kumar Bhil was posted as Sub Post Master, Bikaner HO. It was applicant's duty as Deputy Post Master to maintain accounts & records of NSC/KVP and deposit the amount accounted for in time as per POSB Manual (Vol.II). As per records, the applicant worked as Deputy Post Master, Bikaner HO during the period 15 Dec. to 29 Dec 2003, 01 March to 08 March 2004, 15 March to 29 March 2004 and for 10 days in May 2004, continuously during June, July, August and September 2004 and 01 Oct, 2004 to 21 Oct 2004. The duty of maintaining the register was that of Postal Assistant, but as Deputy Post Master, it was applicant's duty to ensure maintenance & accounting of records like NSC/KVP etc. The fraud of Rs.2,04,500/- was committed by Shri Ashok Kumar Bhil, the then sub Post Master, Pawanpuri and one more person. The enquiry was conducted in this



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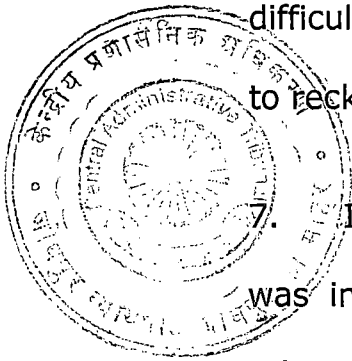
matter and charge sheet was given to all concerned including the applicant. It was his duty to maintain the register NC 12 A under rule 5 (2) of Post Offices SB manual (Vol. II). This register NC 12 A is maintained in which invoice supplied to SOs and daily issue of journal is received from them. The register/records are maintained by the postal assistants, supervisory responsibility is that of Dy. Post Master as per rule 5 (2) of PO SB Manual (Vol.II). Applicant worked as Deputy Post Master for a quite long time, during that period he failed to get register NC 12 A maintained. When the Postal Assistants did not make proper/timely entry in record/register, it was applicant's duty to conduct inspections and monitor the schedule at various intervals. The correspondence relates to unsold memo; it was difficult for him to check or verify the correctness of memos received from sub offices. Under postal rules, it was obligatory on his part to supervise and guide the actions of postal assistants in regard to making entries in NC-12A; the activities of omissions or commissions are not to be ruled out, as transpired in the present case.



6. The applicant has taken recourse to extenuating circumstances, heavy work load, shortage of staff. He is said to have written many letters for demand of extra staff, record etc to update the documents. But this is not acceptable that these circumstances made him for non-ensuring maintenance of stock register and non-signing of important forms like NC-12A etc. The applicant cannot shift blame on others' heads; his failure in discharge of duties and negligent actions facilitated fraud committed by persons like Shri Ashok Kumar Bhil, SPM, Pawanpuri. When it was known to him that Shri Ashok Bhil, SPM

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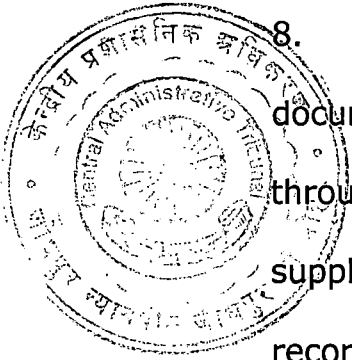
was of a dubious & unreliable character, he was to be all the more vigilant in periodical verifications and inspections of important records to ensure timely accounting & deposit of money in govt exchequer. The applicant was not directly involved in misappropriation but undue laxity on his part, gave long rope to the delinquent staff to commit serious pecuniary loss. The inaction or negligent behaviour on his part was partly responsible for such a gross error that caused loss to dept to the tune of Rs.2.00 lacs approx. The fraud is shown in 02 parts i.e. for issuance of NSC VIII for Rs.94,500/- & in KVP Rs.1,10,000; total loss Rs.2,04,500/-. There could be some difficulties in calculations but this overlapping is not a major ground to reckon with as contended by applicant.



7. In view of fraud & gravity of situation, a departmental enquiry was initiated against the applicant; the charges were framed that relate to non-performance and non-maintenance of record/registers (NC-12A) in various intervals of 2003-2004 & 2004-2005. Applicant has stated that he was on leave during the period in question for quite some time. The fraud is committed during the financial years 2003-2004 & 2004-2005, certain spells of period are given when this incident took place. Applicant was on C.L. for small periods, this does not absolve him of allegations & punishment inflicted upon him in view of gravity of situation. He is held responsible for inaction and laxity on his part that culminated into misappropriation of NSC/KVP to the tune of Rs.2.00 lacs approx. He was incharge maintenance of important documents, he faltered for taking the matters lightly; thus no relief deserves to be given to him on this point. After going

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through his representation, the disciplinary authority respondent 2 on finding his guilt/offence proved, ordered recovery of Rs.40,000/- from this pay etc vide order dt 31.01.2005 (Ann.A-1). An appeal was preferred by him before Director, Postal Services, Rajasthan, Western Region, Jodhpur; after affording an opportunity of being heard and perusal of documents submitted by him, appellate authority upheld punishment given by respondent 2 thereby rejecting the appeal vide order dt 17.8.2005. The applicant went in revision to the Chief Post Master General, Raj. Circle, Jaipur, who after peeping into various facets of this case, rejected his petition vide order on 07.9.2007.

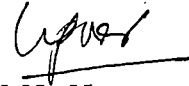


8. The applicant has raised a point that he demanded 07 documents, out of which only one was given to him. On going through these records, it was apparent that relevant documents were supplied to him and punishment awarded to him in the light of these records. The disciplinary authority and appellate/ revision authorities allowed him to go through the record minutely; punishment was inflicted upon him later. Though he is not implicated in commission of this fraud/offence, lack of supervision and non-maintenance of required registers/record etc facilitated this fraud; looking to gravity of situation, this is indeed a moderate punishment. The applicant has relied on *Pepsu Road Transport Corporation vs Lachhman Dass Gupta & anr.* 2002 SCC (L&S) 61: natural justice, opportunity to defend the termination proceedings not provided termination order set aside. In the present case, suitable & proper opportunity was given to him, action is taken after going through the representation. Thus, right to natural justice was not violated, the dictum as regards affording

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opportunity to him is complied with; no relief is called for in this case as per this citation of the apex court. There is no question of limiting to 1/3rd of the basic pay; there is no limitation for recovery. The circular of GoI, DoPT, O.M. no.11012/1/2000-Estt.(A) dt 06.09.2000 corroborates version of respondents. On perusal of record, no prima facie case is made out on applicant's side, nor balance of convenience lies in his favour, thus he is not entitled to get relief from this Tribunal, in matter of fraud or misappropriation of govt funds.

9. In view of the deliberations/observations made above, no interference is called for in orders dated 31.01.2005 (Ann.A-1), 17.8.2005 (Ann.A-2) and 07.9.2007 (Ann.A-3a). As a result, this O.A is dismissed with no order as to costs.



[V.K. Kapoor]
Administrative Member.

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दिनांक 17/11/15 के आदेशानुसार
मेरी उपस्थिति में दिनांक 10/11/16
को भाग-II व III रद्द किए गए।

अनुपाय अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर

Keerthi
Sharma
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