

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.149/2003

Thursday, this the 20<sup>th</sup> day of October, 2005.

CORAM:

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER  
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

M.P.Poulose  
Sub Postmaster, Parur P.O.  
Residing at : Mullaseedath House  
Marottichuvadu.  
Kalady P.O., Aluva – 685 574 : Applicant

(By Advocate Mr.P.C.Sebastian )

Versus

1. The Chief Postmaster General  
Kerala Circle  
Thiruvananthapuram
2. The Director of Postal Services  
Central Region, Kochi 682 006
3. The Senior Superintendent of Post Offices  
Aluva Division, Aluva – 683 101
4. Union of India represented by its Secretary  
Ministry of Communications  
Department of Posts  
New Delhi : Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

The application having been heard on 27.09.2005, the Tribunal on 26<sup>th</sup> Oct., 2005 delivered the following:

OR D E R

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant was working as Sub Postmaster Angamally Post Office in Aluva Division from 13.05.1998 to 03.05.2002. A burglary occurred at Angamally Post Office some time between 5.12.2000 to 07.12.2000, during which period the entire postal staff were on strike. The office cash safe was broken open forcefully and cash worth Rs.86,364.85 stolen. The charge sheet, Annexure A-4 dated 30.04.2001 was issued to the applicant alleging contributory negligence to the loss of cash. Applicant submitted a reply

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(Annexure A-5) to the charge memo but Annexure A-1 punishment order was awarded to the applicant ordering recovery of Rs.50,364.85 from his pay in 36 instalments. Applicant filed Annexure A-6 appeal against the punishment to the 2<sup>nd</sup> respondent which was rejected by Annexure A-2 Appellate order. The applicant submitted Annexure A-7 representation to the 1<sup>st</sup> respondent on 13.04.2002 which was rejected by Annexure A-3 Revisional order. Impugning the said orders and the action of the respondents, the applicant has filed this O.A seeking the following main reliefs:

- i. To call for the files leading to the issue of Annexures A-3, A-2 and A-1 and quash them.
- ii. To declare that the action on the part of the respondents in recovering the loss of money caused due to the burglary of Angamally Post Office from the pay of the applicant is illegal.
- iii. To direct the respondents not to recover any money from applicant's pay pursuant to Annexure A-1 and to refund the amount already recovered.
- iv. To grant such other relief which may be prayed for and which this Hon'ble Tribunal may deem fit and proper to grant in the facts and circumstances of the case.

2. The case of the applicant is that Angamally Post Office is a Lower Selection Grade Sub Post Office under the accounts jurisdiction of Aluva Head Post Office with 17 staff members. Having direct transaction with the State Bank of Travancore Angamally, for supply of funds for day to day cash transaction and for remittance of surplus funds, under the provisions of Rule 7 (2) of the Postal Manual Vol.VI Part III and receiving the surplus funds from this Branch offices, this office is also required to function as a cash office for six other neighbouring Sub Post Offices as per the consolidated memo of authorised balances issued by the 3<sup>rd</sup> respondent. In view of the fact that cash is received from Branch offices after banking hours, this office was constrained to keep cash in the office cash safe and the office used to retain excess cash in the office. The cash balance and the stamps are kept locked up in the embedded iron safe under the joint custody of the Sub Postmaster and Treasurer under the double locking facility. The key of the body lock of the safe is with the Postmaster and that of another Godrej Navatal lock with 8 levers used as 2<sup>nd</sup> lock is with the Treasurer which can be opened by the said custodians

jointly. One Smt. P.Premalatha was working as Treasurer and joint custodian. On 07.12.2000 when the applicant came to office at 10.30 hours he found that the office was burglarized sometime between 05.12.2000 and 07.12.2000. The matter was immediately reported to the 3<sup>rd</sup> respondent and a complaint was launched with the Police. The Treasury cage was broken and the cash safe was broken open by force. The Godrej lock was found to be cut and the door of the cash safe opened by using some force. The cash balance was missing. The drawer of the table was also found to be broken and a sum of Rs.905.25 kept in the drawer was also stolen. The police charged a criminal case under Section 457, 461 and 380 of IPC which is pending. The burglars could not be identified and caught. The department under Rule 16 of the CCS (CCA) Rules, 1965 issued charge sheet alleging that the applicant failed to ensure safe custody of the entire cash balance on 04.12.2000. and to remit the cash balance to H.O contributed to the loss of Rs. 87,270.10 and thus committed the misconduct under Rule 3 (I) (ii) of the CCS (Conduct) Rules, 1964. (Annexure A-4) . The charge sheet was issued to him identical to that of Smt. P. Premlatha. The applicant submitted a detailed representation (Annexure A-5). The punishment was imposed and the appeal and revision petitions were rejected.

3. The learned counsel for respondents filed a detailed reply statement contending that during the period between 05.12.2000 and 07.12.2000 when the burglary was suspected to be taken place, the entire staff members were on strike . It was found that the burglars opened the door of the office and breaking the iron cash safe the entire cash balance to the tune of Rs.86,364.85 was stolen. The police registered a case which is still pending. The applicant in his statement dated 08.12.2000 before the Sub Divisional Inspector (P) Parur Sub Division stated that after closing and tallying the accounts on 04.12.2000. We kept the entire cash balance in the iron safe which was locked with a body lock, pad lock etc. He left the keys with the Treasurer and asked the Treasurer to lock the safe. He did not personally verify whether the safe had actually been locked by using his key. The Postmaster instructed to remit the entire cash in bank. The applicant arranged the cash remittance and the balance amount of Rs.86,364.85 was the money received from the neighbouring post offices after remitting the cash to the Bank. The applicant neither arranged special remittance of the cash to Aluva Head Post Office nor did he inform the Head Post Office or Divisional Office about the retention of the excess cash. He

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was charge sheeted under Rule 16 of the CCS (CCA) Rules, 1965 and the responsibility was fixed for the loss of cash to the extent of Rs.50,364.85 on the applicant and Rs.36,000/- on the Treasurer in separate proceedings. Since it is found that the applicant himself did not lock the iron safe who was the custodian of the key led to the loss of cash. Violation of rule to this extent was established and he was liable to make good the loss. The applicant did not ensure safe custody of the entire cash balance on 04.12.2000 as envisaged in the procedural rules and he did not remit the cash balance to the Head Post Office as per instructions. The above acts contributed to the loss of cash. Since there is clear negligence on the part of the applicant the punishment was imposed on him.

4. Mr. P.C. Sebastian, learned counsel appeared for the applicants and Mr. Thomas Mathew Nellimoottil and Mr. Varghese John learned counsel appeared for the respondents.

5. I have given due consideration to the arguments, material and evidence placed on record. The learned counsel for applicant argued that as per Rule 106 of the P&T Manual Vol. III it is stipulated that the punishment of recovery can be imposed only when it is established that the Government servant is responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach of orders caused the loss. Since there is no negligence on the part of the applicant the recovery cannot be initiated without proper fact finding inquiry. There is no detailed inquiry in this case.

6. The learned counsel for respondents on the other hand persuasively argued that the applicant as per provisions of Rule 3(1) (ii) of CCS (CCA) Rules, 1965, did not remit the entire cash balance to the Head Post Office or bank as instructed, resulting to the loss of cash. Therefore, the applicant is responsible for the loss of cash.

7. The crux point to be decided in this case is that whether the loss on account of burglary is due to the negligence of the applicant or not ? The learned counsel for applicant has brought to my notice Rule 106 of the P&T Manual Vol. III stipulating that recovery can be imposed only when the

Government servant is responsible for a particular act. The spirit and the purpose of the said rule has been succinctly electorated in DGP&T letter No.3/313/70-Disc I dated 13.12.1981, the relevant portion of which is quoted below :-

“As is well known the penalty of recovery from pay is a special type of penalty which cannot be awarded in all types of misconduct..... It should be clearly understood by all disciplinary authorities that while an official can be punished for good and sufficient reasons the penalty of recovery can be awarded only if the lapses on his part have either led to the commission of the fraud or misappropriation or frustrated. The enquiries as a result of which it has not been possible to locate the real culprit. It is therefore obligatory that the charge sheet should be quite elaborate and should not only indicate clearly the nature of lapses. On the part of the particular official but also the modus operandi of the frauds and their particulars and how it can be alleged that but for the lapses on the part of the official the fraud or misappropriation could be avoided or successful enquiries could be made to collate the stage at which the particular fraud has been committed by a particular person. ....”.

8. It is an admitted fact that “ burglary occurred some time between 5.12.2000 to 07.12.2000, during which period the entire postal staff were on strike. The embedded iron safe has a body lock and a pad lock. The pad lock was seen cut and removed with hacksaw blade and the safe was found open. The levers were all in open condition and the cash was missing which leads to a doubt whether it was locked by the applicant at the close of business hours at 04.12.2000. Even assuming it is not so, the burglars had cut open the lock, safe pad lock and iron safe, the applicant's contended that in all possibility the burglary would have taken place has got great force. The non closing of the safe with double lock cannot be contributory or a direct reason for burglary and stealing of money. Negligence cannot be attributed to the applicant. The police is investigating the matter which is still pending. The applicant also contended that “ regarding non remittance of entire cash by the delinquent has not been established.” Moreover Annexure A-1 report of the Disciplinary Authority it is observed as under :-

“Regarding non remittance of entire cash balance of the office the alleged violation of instructions by the delinquent is not established. It was alleged that at the time of remitting Rs.2,93,000/- to the bank on 04.12.2000 there was a cash balance of Rs.17,118.55 left in the office. A perusal of the treasurer's cash book reveals that there were payments in subsequent transactions, the same day. Retention of this amount therefore was fully justified. There was no specific instruction to SPM as



to the disposal of cash which accumulated between bank time and the closing time."

9. The respondents have brought to my notice two decisions reported in 2002 SCC L&S 413, Haryana Urban Development Authority Vs Devi Dayal canvassing for a position that "negligence in duty may amount to misconduct in certain cases where consequence may be directly attributed to the negligence resulting in heavy losses." He further argued that disciplinary action can be taken if negligence resulted in loss. In the case reported in 2000 SCC L&S 144, High Court of Judicature at Bombay Vs. Shastikanth S Patil, the Hon'ble Supreme Court held that "settled legal position is that if there is some legal evidence, on which findings can be based, then adequacy or even reliability of that evidence is not a matter of canvassing before the High Court in a writ petition." From the findings of the disciplinary authority and the materials available on record, negligence cannot be attributed against the applicant and the alleged loss incurred to the Government has also not been proved by an enquiry. The Hon'ble Supreme Court in O.K.Bhardwaj Vs. Union of India and others reported in 2001 (9) SCC 180, held that if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for even in case of minor penalty and that this is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with. Admittedly, there is no enquiry conducted by the respondents to the loss incurred and negligence aspect, apportionment etc. therefore, the impugned action cannot be said to be reasonable.

10. The learned counsel for the applicant has also brought to my notice the decision in OA No.721/2002 dated 07.12.2004 in which the Treasurer, P. Premlatha, another custodian allegedly responsible has assailed the same imputation and similar order apportioning the remaining amount to her share. The order impugned in that case ~~was ordered which~~ was quashed and set aside by this Tribunal on the ground that disciplinary proceedings were vitiated as no enquiry was held ~~to~~ to establish the charge against her which was entirely factual and also finding that there was gross procedural irregularity.. The copy of the order furnished by the learned counsel for applicant will be kept on record.

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11. In the conspectus of facts and circumstances, the orders of the Revisional Authority (Annexure A-3), Appellate Authority (Annexure A-2) and Disciplinary Authority (Annexure A-1) are quashed and set aside. The amount, if any, recovered from the applicant consequent on the aforesaid orders will be refunded him forthwith.

12. The O.A is allowed as indicated above. No order as to costs.



**N.RAMAKRISHNAN**  
**ADMINISTRATIVE MEMBER**

**K.V.SACHIDANANDAN**  
**JUDICIAL MEMBER**

vs