

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 209 of 2001

Wednesday, this the 13th day of November, 2002

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. Molly Joseph,
Postal Assistant,
Head Post Office, Vaikom,
W/o Thomas, Puthenchira, Vaikom PO,
Kottayam District.Applicant

[By Advocate Mr. O.V. Radhakrishnan]

Versus

1. Senior Superintendent of Post Offices,
Kottayam Division, Kottayam - 686 001
2. Director of Postal Services,
Central Region, Office of the Postmaster General,
Kochi - 682 016
3. C.J. John,
ASP, Kottayam East Sub Division & Inquiring Authority,
Now ASP (BD), Ernakulam Division.
4. Union of India,
Represented by its Secretary,
Ministry of Communication, New Delhi.Respondents

[By Advocate Mr. R. Madanan Pillai, ACGSC (R1, R2 & R4)]

The application having been heard on 13-11-2002, the
Tribunal on the same day delivered the following:

O R D E R


HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The order dated 31-12-1999 (Annexure A-17) of the 1st respondent imposing on the applicant, Postal Assistant, Vaikom, a penalty of recovery of a sum of Rs. 30,000/- from the pay and allowances of the applicant in 30 monthly instalments of Rs.1000/- commencing from January 2000 and the order dated 28-10-2000 (Annexure A-20) of the 2nd respondent rejecting the

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applicant's appeal are mainly challenged in this application filed under Section 19 of the Administrative Tribunals Act, 1985, although the applicant has also, inter alia, challenged the memorandum of charges (Annexure A-3) and the enquiry report (Annexure A-15). Shown of details which are not absolutely necessary for disposal of this application, the facts can be stated as follows.

2. While the applicant was working as SPM, Thalayolaparambu, she had ordered one Shri K.E.Ismail, PA, Thalayolaparambu to draw and bring cash of Rs.1,00,000/- from SBT Thalayolaparambu escorted by Shri A.N.Rajappan, PA. Shri K.E.Ismail, though withdrew the money from the bank, failed to give it to the SPM, viz. the applicant. The applicant reported non-receipt of the sum of Rs.1,00,000/- from Shri K.E.Ismail to the Divisional Office. The matter was reported to police also. Shri K.E.Ismail was prosecuted for offence under Section 409 of the Indian Penal Code for breach of trust. Alleging that the applicant failed to provide police escort for conveyance of a sum of Rs.1,00,000/- as required in terms of Rule 9 of the Postal Manual Vol.VI Part III read with the Directorate's letter dated 19-11-1985, resulting in a loss of Government money to the tune of Rs.1,00,000/-, the applicant was served with Annexure A-3 memorandum of charge. The applicant denied the charge and submitted an explanation. An enquiry was held against the applicant. The enquiry officer submitted Annexure A-15 report holding that the charge was established. The applicant was afforded an opportunity to make a representation regarding the acceptability of Annexure A-15 report. The Disciplinary Authority after considering the report Annexure A-15 as also the representation submitted by




the applicant found the applicant guilty of the charge and by the impugned order Annexure A-17 imposed on the applicant the penalty of recovery of a sum of Rs.30,000/-. Aggrieved by the impugned order Annexure A-17, the applicant submitted an appeal, which was rejected by the Appellate Authority, the 2nd respondent, by Annexure A-20 order. Alleging that the enquiry was held not in conformity with the rules, that the applicant was not supplied with certain documents which she required for her defence, that the finding that the applicant was guilty was perverse and that the penalty of recovery of loss could not have been ordered as none of the acts or omissions on the part of the applicant has directly resulted in loss to public exchequer, the applicant has filed this application seeking to have the impugned orders set aside.

3. Respondents 1, 2 and 4 have filed a reply statement.

4. We have gone through the materials placed on record and have heard Shri O.V.Radhakrishnan, learned counsel of the applicant and Shri R.Madanan Pillai, learned ACGSC appearing for the respondents 1, 2 and 4.

5. Shri O.V.Radhakrishnan referred us to the Rule 9 of the Postal Manual Vol.VI Part-III as also the Directorate's letter dated 19-11-1985 and argued that the Rule 9 as also the letter refer only to the 'Remittance of Cash' and do not relate to 'Withdrawal of Cash' for which there is a separate rule, i.e. Rule 13. He argued that there has not been any violation of the rules for which the applicant can be held liable. He further argued that no rule or instructions mandates the SPM to provide police protection while withdrawing cash and,



therefore, the charge based on violation of the rules is unsustainable. Shri O.V.Radhakrishnan further argued that the applicant as SPM had taken care to provide escort to Shri K.E.Ismail by ordering that Shri Ismail would bring the money escorted by Shri A.N.Rajappan. Since Shri Ismail went to the bank without being accompanied by Shri Rajappan without informing the applicant, it is wrong to say that the applicant did not provide escort, argued the counsel.

6. Shri R.Madanan Pillai, learned counsel of respondents 1, 2 and 4, on the other hand, argued that although 'remittance' and 'withdrawal' are covered by Rules 9 and 13 respectively, since both these transactions would involve conveyance of cash, the applicant should have seen that Shri Ismail was actually provided with police escort and therefore, it cannot be said that the omission on the part of the applicant did not result in loss of the money. The impugned orders are, therefore, perfectly justified, argued the counsel.

7. Although it is alleged in the memorandum of charges that the applicant has not taken care to provide police escort as prescribed under Rule 9 of the Postal Manual Vol.VI Part-III and in the Directorate's letter dated 19-11-1985, the Disciplinary Authority itself has in paragraph 7 of Annexure A-17 order held that a violation of Rule 13 has not been alleged in the memorandum of charges and against point No.16 held that Rule 13 did not mandate that there should be police escort for withdrawing the money. Therefore, in the impugned order Annexure A-17 itself there is a finding that the applicant has not been guilty of violation of any rules. Then the only question is, whether there was any omission on the

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part of the applicant to take any precaution which she as a responsible officer should have taken and whether such omission has directly resulted in the loss of Rs.1,00,000/-.

8. Annexure A-21 is an order dated 31-12-1999 of the 1st respondent himself in proceedings against Shri K.E.Ismail for the misconduct of failing to handover a sum of Rs.1,00,000/accepted by him from SBT Thalayolaparambu on 1-10-1996 to the SPM. The statement of imputations of the misconduct against Shri K.E.Ismail has been incorporated in his order. It is worthwhile to quote from the statement of imputations the following:-

"... Sri Ismail went to the bank at about 1130 AM without any escort, even though Sri.K.G.Rajappan, PA was ordered to accompany him as escort. Sri Ismail did not hand over the amount drawn from the bank to the Sub Postmaster on his return from the bank. In his statement dated 1.10.96 before Smt.K.S.Saramma, Sr. Supdt. of Post Offices, Kottayam, Sri K.E.Ismail, Postal Assistant Thalayolaparambu has admitted that cheque No. C 718012 for Rs.1,00,000/- was accepted by him from Sub Postmaster, Thalayolaparambu under acquittance on the counterfoil of the cheque leaf. He has also admitted that the sum of Rs. one lakh was received by him from the bank. He has further stated that the amount brought from the bank was placed on the Treasurer's table alongwith the Treasury pass book and then occupied his seat thinking that the Sub Postmaster would take the money from there, and then went to the western courtyard to wash his shirt which was found dirtied by human excrets. ..."

It is evident from what is quoted above that Shri K.E.Ismail went to the bank without the escort of Shri Rajappan and without informing the applicant that he was going without the escort and that the sum of Rs.1,00,000/- brought safely by him from the bank to the Post Office and the same was kept on the table. This shows that for the reason that Shri K.E.Ismail was not escorted either by police or by Shri Rajappan, the amount was not lost in transit. The money did not reach the hands of

the SPM because Shri Ismail, the Postal Assistant, although received money from the bank and carried it to the Post Office failed to give it to the SPM. The alleged loss of money from the Post Office is something for which the applicant cannot be held responsible.

9. In paragraph 7 of Annexure A-21 order the Disciplinary Authority, who is the Disciplinary Authority in this case also, has stated as follows:-

".. There is no doubt that it was the responsibility of the SPM to arrange police escort. According to the CGS the loss occurred after placing the cash on the table of the Treasurer. In that case police escort would not have helped in anyway in avoiding the loss. The charge in this case is regarding failure of the CGS to hand over the amount to the SPM under receipt. Hence the argument of the CGS that the loss was due to non-provision of police escort as envisaged in the rules is not based on facts. ..."

From what is stated by the same Disciplinary Authority in its order in the case of Shri K.E.Ismail, it is evident that the lack of police escort or any escort for that matter had nothing to do with the loss of the money.

10. Rule 106 of the P&T Manual Volume-III reads as follows:-

"106. In the case of proceedings relating to recovery of pecuniary losses caused to the Government by negligence, or breach of orders by a Government servant, the penalty of recovery can be imposed only when it is established that the Government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach caused the loss."

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11. The instructions contained in the D.G., P&T's letter No.114/176/78-Disc.II dated 13th February, 1981 are as follows:-

"(b) Manner in which charge-sheet to be framed.--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. Rule 11(3) of the CCS (CCA) Rules, 1965, clearly prescribes that the penalty of recovery from pay of the whole or part of the loss caused by the Government servant to the Government by negligence or breach of orders on his part can be awarded to him. Thus, the rule itself makes it clear that this penalty can be awarded only in a case where it has been established that the negligence or breach of orders on the part of a Government servant has led to the loss to the department. Instructions were also issued in the past bringing the special provision of the rule to the notice of all concerned, but it has been observed that the requirement of the rule could not be properly appreciated by most of the disciplinary authorities. In a recent Court case, an order of penalty of recovery has been set aside on the ground that the disciplinary authority merely established certain lapses on the part of the Government servant without explaining the facts leading to the loss and the manner in which the lapses on the part of the Government servant had a link with the loss sustained by the department. No appeal has been filed in this case as it was found that it would not be possible to sustain the order of the penalty of recovery which was not consistent with the rule referred to above. A number of frauds or misappropriations are committed and it is not always possible to recover the entire amount of loss from the real culprit. In some cases, it is not even possible to locate the real culprit and accordingly it becomes impossible to take action against the subsidiary offenders with primary object of recovering loss sustained by the department. It should be clearly understood by all the 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 indicate 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 officials, the fraud or misappropriation could be avoided or that successful enquiries could be made to locate the stage at which the particular fraud had been committed by a particular person. This will enable the accused not only to submit a defence against the allegation brought against him but also to explain how

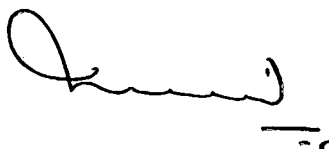
the lapses had not contributed to the loss in any manner. The Disciplinary Authority is also required to give a clear finding in the punishment order on both these points. If it is not done, the order, awarding the penalty of recovery will be liable to be set aside. The Heads of Circles and Administrative Offices, etc., are requested to bring these instructions to the notice of all concerned so that the disciplinary proceedings for a penalty of recovery may not suffer from a procedural flaw."

12. In the light of the provisions contained Rule 106 of the P&T Manual Volume-III and the instructions contained in the letter of the DG (Posts) quoted above, without establishing that the Government servant had been guilty of violation of any rules or was negligence and that such negligence had resulted in a loss to the Government, the penalty of recovery of the alleged loss of the Government cannot be awarded to the Government servant. We find that it has not been established in this case that the applicant has violated any of the rules and that any act on the part of the applicant has actually resulted in a loss to the Government. The loss to the Government was occasioned by the failure on the part of Shri K.E.Ismail to handover the cash received by him from the bank and brought to the Post Office and not on account of any act or omission on the part of the applicant. We are informed that Shri Ismail is facing a prosecution on the complaint that he failed to give the money to the SPM. It is seen from Annexure A-21 order that, although Shri K.E.Ismail, the person responsible for the loss, offered to make good the loss by paying in instalments from his pay and allowances, the Disciplinary Authority, who happens to be the Disciplinary Authority in this case also, generously decided to recover only a sum of Rs.48,000/- from the pay and allowances of Shri K.E.Ismail, but took the harsh stand of making recovery from the pay and allowances of the applicant a sum of Rs.30,000/-,

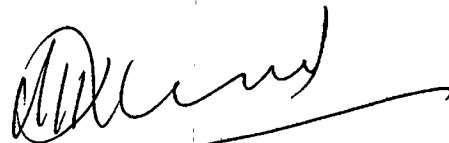
eventhough it has not been alleged or proved that the applicant was responsible for the loss. We find no way to sustain the decision taken by the Disciplinary Authority. The Appellate Authority also has not considered the contentions raised by the applicant in this regard in the right perspective. In the light of what is stated above, we find that the impugned orders Annexure A-17 and Annexure A-20 are unsustainable in law and therefore, these orders are required to be set aside.

13. In the result, the application is allowed. The impugned orders Annexure A-17 and Annexure A-20 are set aside with all consequential benefits to the applicant. We direct the respondents to refund to the applicant the amount recovered from her pay and allowances on the basis of the impugned orders Annexure A-17 and Annexure A-20 within a period of one month from the date of receipt of a copy of this order. No costs.

Wednesday, this the 13th day of November, 2002



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the Memo No.F7/02/96-97 dated 5.3.97 of the 1st respondent.
2. A-2: True copy of the Order NO.ST/7-16/97 dated 25.4.97 of the 2nd respondent.
3. A-3: True copy of the Memo No.F7/02/96-97 dated 24.4.97 of the 1st respondent.
4. A-4: True copy of the Memo No.F7/02/96-97 dated 14.5.97 of the 1st respondent.
5. A-5: True copy of the Memo No.F7/02/96-97 dated 14.5.97 of the 1st respondent.
6. A-6: True copy of the Proceedings dated 30.8.97.
7. A-7: True copy of the submission of the applicant dated 7.9.97 before the 3rd respondent.
8. A-8: True copy of the proceedings dated 12.12.97 of the 3rd respondent.
9. A-9: True copy of the proceedings dated 17.2.98 of the 3rd respondent.
10. A-10: True copy of the proceedings dated 31.3.98 of the 3rd respondent.
11. A-11: True copy of the proceedings dated 9.6.98 of the 3rd respondent.
12. A-12: True copy of the written statement of the applicant dated 19.6.98 to the 3rd respondent.
13. A-13: True copy of the written brief dated 17.8.98 of the Presenting Officer.
14. A-14: True copy of the written brief dated 9.9.98 of the applicant.
15. A-15: True copy of the enquiry report dated 26.2.99 of the 3rd respondent with covering letter No.F7/02/96-97 dated 3.3.99 of the 1st respondent.
16. A-16: True copy of the written submission dated 27.3.99 of the applicant.
17. A-17: True copy of the Memo No.F7/02/96-97 dated 31.12.99 of the 1st respondent.
18. A-18: True copy of the Appeal dated 19.1.2000 of the applicant before the 2nd respondent.
19. A-19: True copy of the petition dated 19.1.2000 of the applicant to the 2nd respondent.
20. A-20: True copy of the Order No.ST/7-12/2000 dated 28.10.2000 of the 2nd respondent.
21. A-21: True copy of the Memo No.F7/02/96-97 dated 31.12.99 of the 1st respondent.
22. A-22: True copy of the Memo No.F7/02/96-97 dated 19.5.97 of the 1st respondent.

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