

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 302/2008

Dated this the 17th day of August 2009

C O R A M

HON'BLE MRS.K.NOORJEHAN, ADMINISTRATIVE MEMBER
HON'BLEDR. K.B.SURESH, JUDICIAL MEMBER

V.S. Satheesa Chandrakumar
Treasurer I
Thiruvananthapuram GPO-695 001

..Applicant

By Advocates M/s Nagaraj Narayanan, Saijo Hassan, Sabu Sreedharan & A.G.
Girishkumar

Vs

1 Union of India represented by the
Secretary to Government
Department of Posts & Telegraph
Central Secretariat,
New Delhi.

2 Department of Posts represented by the
Senior Superintendent of Post Offices
Thiruvananthapuram North Division
Thiruvananthapuram-695 001

3 The Tahsildar (R.R.)
Thiruvananthapuram.

4 The Village Officer
Vanchiyoor
Thiruvananthapuram.

.. Respondents.

By Advocate Mr. TPM Ibrahim Khan, SCGSC for R 1 & 2
Mr. R. Premsankar for R 2 & 4

The Application having been heard on 17.7.2009 the Tribunal delivered the
following

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant challenges Annexure A-4 notice dated 21.4.2008 and A-5 letter dated 5.5.2008 issued by the 3rd respondent for revenue recovery of Rs. 14,74,238/- from him.

2 The applicant while working as Treasurer-I of Thiruvananthapuram General Post Office, was suspended pending enquiry w.e.f. 19.6.2007 in connection with loss of money to the tune of Rs. 14,74,238/- from the post office. The suspension was extended from time to time. A criminal case was also registered against the applicant. According to the applicant, the enquiry has not commenced and the memo of charges and statement of allegations not served on him so far. While so, he was required to appear before the 2nd respondent on 15.5.2008 for inquiry in to the issue of defalcation of government money of Rs. 14,74,238/- (A-3). But the applicant informed his inability to attend as he has to attend the Vanchiyoore Police Station as ordered by the AJM, Trivandrum on the same day. But to the surprise of the applicant he received Annexures A-4 and A-5 revenue recovery notice for recovery of Rs. 14,74,238/- The grievance of the applicant is that the departmental inquiry has not been completed, the liability has been fixed before completion of the inquiry and he was not heard before fixing the liability on him. Hence he filed this O.A. mainly to quash Annexure A-4 and A-5.

3 The respondents 1 & 2 filed reply opposing the averments in the O.A. They submitted that while the applicant was working as

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treasurer No.1 Thiruvananthapuram GPO, Dy Supdt. Of Post Offices Thiruvananthapuram North Division visited GPO on 18.6.2007 and found that there is huge difference in the closing balance which worked out to Rs. 14 lakhs. The applicant admitted that there was actually a cash shortage but requested for one day's time to find out the mistake if any in the accounts. Further verifications were also made on the next day when he again admitted in his statement given before the Dy. Supdt. that he owned the full responsibility for the shortage of cash to the tune of Rs. 14 lakhs. The case was reported to the Police and a criminal case was registered against the applicant. He was arrested and was granted bail. The Police enquiries have been completed but no charges have so far been laid before the Court as the Forensic Expert's opinion with regard to some documents is yet to be received. As such, revenue recovery proceedings were sought to be initiated under the Public Accountants Deault Act 1850 through the District Collector, Thiruvananthapuram. The applicant did not cooperate with the department in the enquiry conducted against him, he did not attend as directed on 21.6.07, 9.5.08 and 5.6.08 and that he has already admitted shortage of Rs. 14 lakhs in the cash balance. He has given his statement on 19.6.2007 before the Dy.Supdt. and that the shortage had occurred only after 1.6.2007 in the course of transactions done by him. Hence, revenue recovery proceedings have to continue so as to ensure attachment of the immovable property owned by the applicant in order to prevent alienation of the property so as to facilitate the recovery of the huge loss sustained to the department. They also submitted that the OA is premature the applicant was free to approach the Collector/Tahsildar giving reasons if any.

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4 The respondents 3 & 4 filed separate reply statement opposing the averments in the O.A. stating that the revenue recovery proceedings have been initiated based on valid requisition received from Senior Supdt. Of Post Offices, Thiruvananthapuram North Division on 15.1.2008.

5 The applicant filed rejoinder to the reply statements filed by the Respondents 1 & 2 and Respondents 3 & 4 separately. He stated that the alleged difference in cash noticed may be due to some irregularities in the accounting. He denied the allegation of the respondents that he is not co-operating with the enquiry and submitted that he gave statement on 19.6.2007 at the residence of the Deputy Supdt. under threat of arrest by police, that no notice directing him to attend office on 21.6.2007 was received by him and that he gave statement before the Deputy Supdt. Of Post Offices at his own house on 11.6.2008.

6 We have heard learned counsels appearing for the parties and perused the documents produced before us.

7 As regards jurisdiction of the Tribunal on the issue raised in this case it is seen that when the applicant had approached the High Court of Kerala through WP(C) No. 15406 of 2008 the High Court in its judgment dated 26th May, 2008 observed as follows:

"Admittedly the petitioner is a staff of Post and Telegraph Department. Though the challenge in the Writ Petition is against the notice issued by the Tahsildar, it obviously is in consequence of the action directed to be taken by the Department of Post and Telegraph. The cause of action is cognizable by the Central Administrative Tribunal.

Writ Petition is therefore dismissed without prejudice to the right of the petitioner to move the Tribunal under the Administrative Tribunals' Act."

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In view of the above, there cannot be any dispute regarding the jurisdiction of the Tribunal.

8 The learned counsel for the applicant argued at length that as the enquiry proceedings on the charge memo are not completed it cannot be contended that the applicant is guilty, the statements during the preliminary enquiry were not voluntary or true as they were taken under extreme threat of arrest by the police, he was suspended from service w.e.f. 19.6.2007 as such he could not attend office, all files documents and registers handled by him and the keys of the almirah/safe were taken possession by the Dy. Supdt. on 18.6.2007 and that the requisition for revenue recovery has been made by the Senior Supdt. without due enquiry and fixation of liability.

9 The learned counsel for the respondents on the other hand argued that the applicant has admitted that there is a shortage of cash balance of Rs. 14 lakhs and owned the responsibility for the shortage. The learned counsel further submitted that as far as the department is concerned the departmental enquiry has been completed. Therefore there is nothing illegal in the request made to the District Collector under Section 5 of the Public Accountant's Default Act, 1850 for recovery of the amount of loss sustained to the department through revenue recovery proceedings. The respondents have produced the preliminary enquiry files relating to the misappropriation of Govt. money by the applicant.

10 It is seen from the enquiry file that the shortage in cash balance to the tune of Rs. 14 lakhs was detected during the half yearly verification by the Dy. Supdt. Of Post Offices, Thiruvananthapuram North Division. There are 5 Treasurers in GPO treasury branch, entrusted with various duties connected with cash transaction. The

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applicant being the Treasurer-I, was responsible for maintenance of correct cash balance. He was expected to consolidate the accounts reflected in the cash books of the four Treasurers and strike a closing balance which has to be tallied with the cash balance of Head Office summary, maintained in another branch. The inspecting officer noticed that the applicant has not closed his cash book on 16.6.2007 and there were many corrections and overwritings. He was the joint custodian, along with his immediate supervisor, the Deputy Postmaster No. II. The latter by her statement accepted that cash book of the applicant was not closed and hence the closing balance could not be verified with that shown in the HO Summary on 16.6.2007. The cash balance was not physically checked, either, by the supervisor since closing balance was not struck. Even after cross verification of the receipts and payment for three days, the applicant could not come up with a plausible explanation for the disappearance of an amount of Rs. 14 Lakhs from the closing balance of Rs. 2,42, 06,307.30, of the HO Summary. He could strike a closing balance of only Rs. 2,28,06,307.30 in his cash book. Since he alone dealt with cash in view of failure of his supervisor officer to verify the correctness of cash balance on 16.6.2007 a prima facie case for shortage of cash is established against the applicant. Therefore the Senior Counsel for the respondents argued that the next logical step for the administration was to get the amount from the applicant to make up the loss sustained by GPO as, the loss was directly due to the failure/negligence of the official in the discharge of his duties, in a manner prescribed in the memo of distribution of work assigned to him. It is the public money which is held in trust in the post offices and the amount is generated through the Post Office Savings Bank, Postal Life Insurance, money transfer and various other

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mail related services. The Postal Customer can approach the post offices to redeem their deposits at short notice. The Post Offices have to pay them back promptly irrespective of the fact that difference in balance, as happened in GPO on 16.6.2007 cannot be accounted for. To avoid a tendency on the part of the staff to leave their accounts, untallied at the end of the day, the shortage is made up by the concerned officials then and there to arrive at the correct closing balance. It is done voluntarily by many. In this instance, the erring employee is not willing to credit the amount to Govt. which is accounted for as unclassified payment by the GPO to strike the closing balance, in tune with that in the HO Summary. The respondents apprehend that with the passage of time, till the prosecution is over, it may become impossible to recover the amount along with penal interest from the applicant. Hence, the calculated move is made under PAD Act to make up the loss and to safeguard the interest of the Government from sustaining such a huge loss to the exchequer. The respondents cannot be faulted for acting under the instruction received from the Postal Directorate on such issues.

11 However, the short question that comes up for consideration is whether the action of the respondents is justified in taking recourse to the revenue recovery of the loss of the department from the applicant before finalisation of the departmental proceedings/criminal case initiated against him.

12 According to us, the departmental and the criminal cases filed by the Department against the applicant in connection with misappropriation of Rs. 14,74,238/- are not over and before completion

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of the departmental proceedings/criminal case, initiation of revenue recovery of the amount under "The Public Accountants Default Act, 1850" from the applicant is bad in law. However, prima facie it appears that the applicant has admitted responsibility for the misappropriation of the amounts in question. Therefore, as a safety measure it is the responsibility of the Department in public interest, to take appropriate action to prevent any property owned by the applicant is not alienated so as to facilitate recovery of the huge loss sustained by the department. Therefore, we direct the third respondent to obtain sufficient security from the applicant in case the applicant is desirous of having his property released from revenue recovery in the meantime.

13. Having heard the learned counsel for the parties and after going through the records produced before us carefully, we are of the view that the recovery proceedings should be kept in abeyance till the disciplinary / criminal case is finalized. But, at the same time, it appears to us that prima facie, the applicant is liable to make good the loss. It should not be that after lengthy penal procedures are over, the Government should suffer an undesirable loss. Accordingly the respondents are directed to finalise the departmental proceedings as early as possible and on finalization of the disciplinary proceedings take appropriate action in accordance with law. Till finalization of the departmental / criminal proceedings and such action in accordance with law is taken by the department, the recovery proceedings initiated as per Annexure A-4 and A-5 orders are stayed in case, the applicant files an undertaking not to alienate his properties along with sufficient security before the third respondent within a period of one month.

No costs.


K.B.SURESH
JUDICIAL MEMBER


K. NOORJEHAN
ADMINISTRATIVE MEMBER