

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 56 of 2006

Reserved on 19.2.2014

Pronounced on 24th March, 2014

Hon'ble Mr. Navneet Kumar, Member-J

Hon'ble Ms. Jayati Chandra, Member-A

Pyare Lal Verma, aged about 49 years, S/o Sri Neenja, R/o Village Digdiga, Vishal Khand-I, Gomti Nagar, Lucknow (present working as Postal Assistant in General Post Office, Lucknow.)

.....Applicant

By Advocate : Sri Prashant Kumar Singh

Versus.

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, New Delhi.
2. Director Postal Services, Office of the Chief Post Master General, U.P. Circle, Lucknow.
3. Chief Post Master, General Post Office, Lucknow.

.....Respondents.

By Advocate : Sri Praveen Kumar for Sri G.K. Singh

ORDER

Per Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking following relief(s):-

- “(a) issuing/passing of an order or direction setting-aside the impugned punishment order dated 27.9.2003, passed by the respondent no.3 and the impugned appellate order dated 13.1.2006 passed by the respondent no.2 (as contained in Annexure nos. A-1 and A-2 to this Original Application), after summoning the original records.*
- “(b) issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- “(c) Allowing this Original Application with costs.”*

2. The facts of the case are that the applicant while working as Counter Clerk in the CTD Section, Saving Bank Branch, GPO, Lucknow certain withdrawals were allowed by the Assistant Post Master on 23.9.1998 from the joint account in Monthly Income Scheme in respect of Sri Rajendra Kumar Awasthi and others. The

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applicant had made payment on the withdrawal form (SB-7) as per the verification of signature made by the Assistant Post Master. However, a show cause notice was issued to the applicant by respondent no.3 dated 7/10.7.2001 wherein the charge leveled against the applicant was to the effect that he had been allowed payment of Rs. 2,43,920/- from the joint Saving Bank Account of Rajendra Kumar Awasthi and others on the basis of forged signatures. The applicant gave his reply to the chargesheet denying the charges leveled against him by his letter dated 11.8.2001 stating that there is no rule to ban closure of SB account before maturity and that the account was closed by the signatories as certified by the Assistant Post Master. Prior to such closure, he had found that the signature of third signatory was not in accordance with the specimen signature available and, therefore, he had sent the same to the Assistant Post Master, who had certified the same. It is averred that after certification given by the Assistant Post Master, the applicant has no jurisdiction to question the same. Disregarding the rule position, the disciplinary authority passed the order dated 28.1.2002 inflicting the penalty of recovery to the tune of Rs. 78,307/- (being the proportionate amount) from the salary of the applicant. Being aggrieved, the applicant filed an appeal on 4.2.2002 before the appellate authority. Since the appeal of the applicant was not decided, as such the applicant rushed to this Tribunal by filing O.A. no. 129 of 2002, which came to be disposed of vide judgment and order dated 4.3.2002 with a direction to decide the appeal of the applicant within a period of three months and till the disposal of appeal, the recovery proceedings was stayed. In compliance of the order of this Tribunal, the appeal of the applicant was decided vide order dated 29.8.2002 by remanding the matter back to the respondent no.3 for de-novo inquiry, with the result, a fresh show cause notice was issued to the applicant on 1.9.2003 as to why the proceedings may not be initiated under Rule 16 of CCS (CCA) Rules, 1965. The applicant submitted his reply on 12.9.2003 on the same grounds as was taken by him earlier. It is alleged that without considering his reply the same punishment has been inflicted upon him by the disciplinary authority as was done vide order dated 28.1.2002. The applicant again preferred an appeal on 3.11.2003 before the appellate authority and since the appeal of

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the applicant was not decided, the applicant filed O.A. no. 57 of 2004 before this Tribunal challenging the recovery proceedings. The said O.A. was disposed of vide judgment and order dated 25.11.2005 with a direction to the appellate authority to decide the appeal of the applicant and the recovery proceedings was directed to be stayed till the disposal of appeal. Thereafter, the applicant filed Review Application No. 74 of 2005, which came to be dismissed vide judgment and order dated 12.1.2006; hence this O.A. In this O.A, the applicant has challenged the impugned order mainly on two grounds namely (a) the disciplinary authority has no jurisdiction as the appointing authority is Deputy Chief Postmaster Group 'B'; and (b) the ledger clerk who was an co-accused has been exonerated.

3. The respondents have filed Counter Reply denying the averments made in the O.A. Their contention is that there has been fraudulent withdrawal from different MIS accounts, details of which have been given in the Counter Reply and total loss caused to the department was Rs. 2,34,920/- as the said MIS accounts were prematurely closed by way of forged signature. One of the signatory of these accounts Sri Rajendra Kumar Awasthi had made a complaint that the accounts had been closed without his knowledge. His signature and the signature on the withdrawal form was matched with the signature of the signatory at the time of opening of the account by handwriting expert and the same was found to be falsified thereby substantiating the loss of Rs. 2,34,920/-. The applicant was working as Clerk on the payment counter. It was his duty under the departmental rules to tally the signature of the depositors on the withdrawal form with specimen signature kept on record. As per Rule 36 (a) of Post Office Saving Bank Vol. I the payment is to be made only after the depositor has been identified and his signature has been attested by the person (other than the agent or messenger of the depositor) who is known to the Post Office. In the instant case, the witness was stated to be Sri Sanjay Kumar, who was identified as agent of the depositor thereby violating the departmental rules and hence the applicant was found guilty. On the point of jurisdiction of disciplinary authority and appellate authority, the respondents have stated that after completion of 16 years of service, the applicant has been

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promoted to the Lower Selection Grade and the disciplinary authority as per the revised schedule dated 15.9.1990 is the CPMG, who has passed the said order.

4. The applicant has also filed Rejoined Reply refuting the averments made in the Counter Reply and reiterating the stand taken in the Original Application.

5. We have heard the learned counsel for the parties and perused the pleadings on record.

6. It has been held by the Hon'ble Supreme Court in a catena of decisions viz. Uttar Pradesh Vs. Raj Kishore Yadav reported in 2006 (5) SCC 673 that the Tribunal or the Court cannot sit as an Appellate authority. The Hon'ble Apex Court has been pleased to observe as under:-

"On a consideration of the entire materials placed before the authorities, they came to the conclusion that the order of dismissal would meet the ends of justice. When a Writ Petition was filed challenging the correctness of the order of dismissal, the High Court interfered with the order of dismissal on the ground that the acts complained of were sheer mistakes or errors on the part of the respondent herein and for that no punishment could be attributed to the respondent. In our opinion, the order passed by the High Court quashing the order of dismissal is nothing but the error of judgment. In our opinion, the High Court was not justified in allowing the Writ Petition and quashing the order of dismissal and granting continuity of service with all pecuniary and consequential service benefits. It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India and, therefore, the findings recorded by the Enquiry Officer and the consequent order of punishment of dismissal from service should not be disturbed."

The case of the applicant can be examined on account of violation of principles of natural justice or on the basis of illegality being committed during the procedure. The applicant was charged under Section 16 of CCS (CCA) Rules, 1965. The procedure is to holding an inquiry is not mandatory as the same may be held only if the disciplinary authority may think it fit. In the instant case, the applicant has not alleged that any illegality has been committed by not holding the formal inquiry. It is not the case of the applicant that he was not shown the documents which has been sought. The case of the applicant is based on the degree of

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responsibility being conferred on him and the APO as rule position contained in Saving Banks Manual Volume I Rule 43 of 1987 which reads as under:-

"When a depositor wishes to close his account, he should present or send his pass book with Account closure form (SB-7A) for the withdrawal of the balance plus interest at his credit. If the depositor does not attend the post office for payment, the counter Assistant should see that the name and signature of the agent or messenger have been entered in the space provided for the purpose in the form. The counter Assistant should take action as in the case of normal withdrawal in the manner as laid down in rule 35(3) above and transfer the pass book to the ledger Assistant for calculation and addition of interest in the pass book. The ledger Assistant should bring the pass book up to date by incorporating therein transactions, if any, posted in the ledger card and not entered in the pass book, calculate the interest, post it in the ledger card and the pass book and return the pass book to the counter Assistant. The counter Assistant should complete the warrant of payment, make an entry of the withdrawal of the amount including interest in the pass book, impress the date stamp in the pass book and the warrant of payment. The remark "Account closed" should be made on the first page of the pass book, below the entry of final withdrawal and in all the unused pages of the pass book by means of rubber stamp or in red ink. He should then transfer the pass book and the warrant of payment to the ledger Assistant, who should make entries in the ledger card under his signature and give a remark "Account closed on....." below the entry of the transaction in the ledger card in red ink. He should take the Index to Ledger Cards and enter therein the remark "Closed on....." against the relevant entry. The documents viz., ledger card, index to ledger cards, warrant of payment and the pass book should then be transferred to the Postmaster who should check the calculation of interest, entries in the pass book, warrant of payment, ledger card and the index to ledger cards. He should then sign the closing entry in the pass book and warrant of payment, in the ledger card, index to ledger cards and also put signature under the remark of closure of the account in the ledger card. He should make entry of transaction in the Long Book if it is to be maintained by him and return the pass book and the warrant of payment to the counter Assistant and the ledger card with index to ledger cards to the ledger Assistant.

- (ii) The counter Assistant should obtain the acquaintance of the depositor/ messenger on the warrant of payment, compare the signature and pay the amount and return the closed pass book to the depositor/messenger.

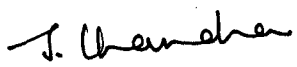
In this case, the recovery of total quantum of loss has been distributed amongst three persons, who had been held as responsible for the loss caused to the department to the tune of

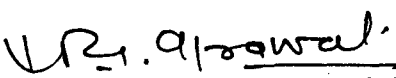
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Rs. 2,34,920/-. The case of another co-accused i.e. the ledger clerk has been mentioned, but no order has been produced. The rule position makes it clear that while three persons are responsible for ensuring that no such loss occurs and the degree of responsibility of preventing such loss based on the functions is laid down in the rules quoted above. While there has been no submission that a joint inquiry was held, but it is clear from the prorata distribution of the loss amount with equal punishment be given to all three persons. While the predominant view as laid down by the Hon'ble Supreme Court in the case of **Indian Oil Corporation Vs. Ashok Kumar Arora reported in JT 1997 (2) SC 367** is that in imposing the punishment, the authorities cannot discriminate. In the case of **UT of Dadra & Nagar Haveli Vs. Gulabhia M. Lad reported in (2010) 5 SCC 775** it has been held that in a joint inquiry the quantum of punishment, which depends upon many factors can be different against several persons. Thus, imposition of stricter punishment (removal from service) on one delinquent compared to two co-delinquents is justified keeping in view his over all responsibility as an employee. Such an action would not violate the principle of equality and discrimination.

7. To sum up, it is seen the levels of punishment awarded to various persons including exoneration to one cannot be governing principle to let off every one, nor is it correct to hold all persons equally guilty unless it is demonstrated that all had equal levels of responsibility.

8. In view of the aforesaid, the O.A. succeeds in part. Impugned orders, contained in Annexure nos. A-1 and A-2 are quashed. The matter is remanded back to the respondents to take a fresh decision from the stage of issue of chargesheet in accordance with the observations made hereinabove and also in accordance with the law. The aforesaid exercise shall be completed within a period of four months from the date of receipt of a copy of this order. No costs.


(Ms. Jayati Chandra)
Member-A
Girish/-


(Naveent Kumar)
Member-J