

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application Nos. 212/2007 and 213/2007

This the ²⁵ day of January, 2012

Hon'ble Shri Justice Alok Kumar Singh, Member (J)

Hon'ble Sri S.P.Singh, Member (A)

(O.A. No.212/2007)

Kamlesh Kumar son of Jagdish Prasad Shukla aged about 46 years Sorting Assistant, HRO 'O' Division, Lucknow.

Applicant

By Advocate: Sri P.R.Gupta

Versus

Union of India through its Secretary, Department of Posts, Ministry of Communication, S&T P. Dak Bhawan, Sansad Marg, New Delhi-1.

Chief Post Master General, U.P. Circle, Hazratganj, Lucknow-226001.

3. Director Postal Services (HQ) O/o Chief Post Master General, U.P. Circle, Hazratganj, Lucknow-1.

4. Senior Superintendent RMS 'O' Division, Charbagh, Lucknow-226004.

Respondents

By Advocate: Sri Vishal Chowdhary

(O.A. No.213/2007)

Mahendra Pratap Maurya aged about 40 years son of Sri Jiyawan Maurya, Sorting Assistant, HRO 'O' Division, Lucknow.

Applicant

By Advocate: Sri P.R. Gupta

Versus

1. Union of India through its Secretary, Department of Posts, Ministry of Communication, S&T P. Dak Bhawan, Sansad Marg, New Delhi-1.

2. Chief Post Master General, U.P. Circle, Hazratganj, Lucknow-226001.

3. Director Postal Services (HQ) O/o Chief Post Master General, U.P. Circle, Hazratganj, Lucknow-1.

4. Senior Superintendent RMS 'O' Division, Charbagh, Lucknow-226004.

Respondents

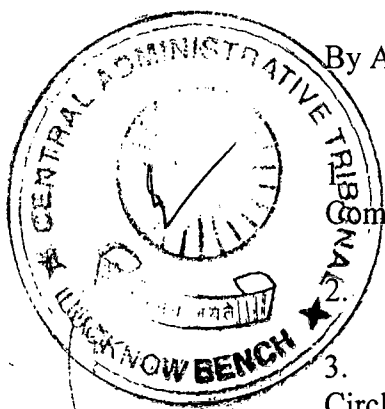
By Advocate: Sri Vishal Chowdhary

(Reserved on 23.1.2012)

ORDER

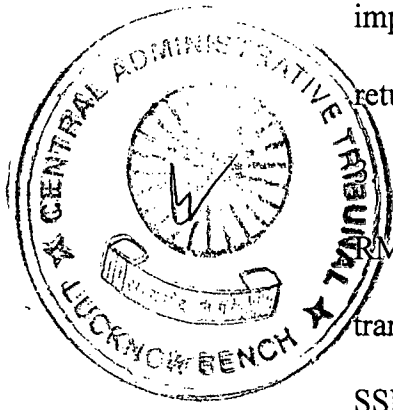
By Hon'ble Shri Justice Alok Kumar Singh, Member (J)

While preparing the judgment by the then Hon'ble Members,, it was noticed that the applicant of O.A.No.213/2007 and 4 others were found



responsible for the loss of R. 27,900/- and accordingly their liability was proportionally determined. Therefore, the respondents were directed to disclose as to whether any other O.A. of similar nature is pending. On 17.3.2010, it was brought to the notice that a similar O.A. No. 212/2007 is also pending. Therefore, both the OAs were directed to be taken up together as per order dated 10.8.2011 passed in O.A. No. 213/2007. Consequently, both these OAs are being decided by means of a common judgment.

2. In O.A. No. 212/2007, a relief has been sought for setting aside the impugned order of recovery of R. 5000/- from the pay of the applicant and for returning the amount to the applicant.



The applicant's case is that he did not receive the registered bag of Basti RMS I dispatch. It was received by one Sri K.B. Singh, at 2.00 p.m. who transferred it along with mail list in violation of the relevant provisions. But the SSRM 'O' Division, Lucknow totally failed to identify and assess correctly the guilty person. It was a case of contributory negligence. Further, no higher investigation was got done for reaching to a definite conclusion in respect of loss of Rs. 27,900/-. The award of punishment of recovery of Rs. 5000/- from the pay of the applicant was passed by Superintendent RMS 'O' Division, Lucknow (Annexure No. 2) on 31.5.2006. Thereafter, appeal was filed on 6.7.2006 which was decided against the applicant by Director, Postal Services (Hqrs.) Lucknow on 26.2.2007 (Annexure-1). In the relief clause, the date of order of recovery of Rs. 5000/- has not been specifically mentioned. Nevertheless, the recovery order has been challenged on the ground of its being arbitrary and un-constitutional.

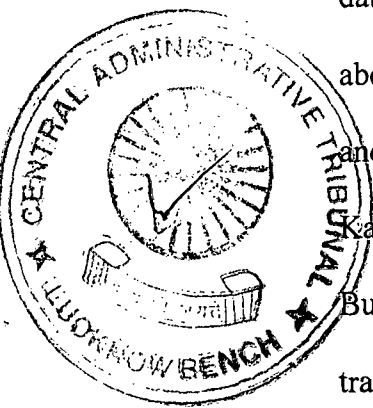
4. The claim of the applicant has been contested by filing a detailed Counter Reply saying that the case relates to loss of R-Bag closed by CRC, Lucknow G.P.O dated 7.2.2005 for Basti RMS Ist dispatch with total 137 +1+12+0 = 150. Besides, the loss of 137 RLs and 1RB total value of 12 Insured letters was ascertained for Rs. 27,900/- This came to light on 16.5.2005 on receiving of search bills in respect of Insured/registered letters which were dispatched in the said R-Bag. After enquiry, it was found that this

R-Bag was received from Mail Motor by Sri K.B.Singh M.G., MA, Lucknow RMS/2 dated 7.2.2005 along with other bags entered in Mail list.. But further disposal of the said R-Bag was not traced from the relevant records of M.A. Lucknow RMS. In this regard, Memo were issued to Sri K.C. Goswami, J.B.Singh and Rakesh Awasthi, SAs who were ordered to work in MA Lucknow RMS/2 dated 7.2.2005. But all of them unauthorizedly remained absent. On account of sudden absence of these three officials, Sri Kamlesh Kumar, applicant and two others were diverted from H.S. Lucknow RMS/2 dated 7.2.2005 to work in MA branch of Lucknow RMS/2 dated 7.2.2005 at about 18.30 hrs. Others two were Devi Prasad who worked as Incharge MA and Sri Mahendra Pratap Maurya who worked as Addl. M.A. The applicant Kamlesh Kumar worked as Assistant H.A. in Lucknow RMS/2 dated 7.2.2005. But they failed to dispatch the said R-Bag even by G-1. They also failed to transfer the said R.Bag to MA/3 Lucknow RMS by making entry in the respective M.L.. Consequently the respective bag was lost due to gross negligence of above three officials. Further Sri K.B.Singh, M.G. who received the R-Bag from the mail Motor and Sri Sheo Pal, M.M. who kept the said R-Bag in M.A. branch were also found responsible for not intimating the Mail Agents regarding receiving and keeping the R.Bag under reference. The disciplinary action under Rule 16 of CCS (CCA) Rules, 1965 was taken against the above five officials which was finalized on 31.5.2006 with penalty of recovery as detailed below:-

- | | | |
|------|--------------------------------|------------|
| i. | Sri Devi Prasas I/c MA | Rs. 7900/- |
| ii. | Sri M.P. Maurya, Addl. M.A. | Rs. 5000/- |
| iii. | Sri Kamlesh Kumar ,Asstt. M.A. | Rs. 5000/- |
| iv. | Sri K.B.Singh, M.G. | Rs. 5000/- |
| v. | Sri Sheo Pal, M.M. No.4 | Rs. 5000/- |

The appeal preferred by the applicant has been rejected on 26.2.2007

5. The applicant also filed Rejoinder Reply reiterating almost all the pleadings contained in the O.A.



6. In O.A. No. 213/2007, the following reliefs have been sought by the applicant.

- a) set aside the impugned order of recovery of Rs. 5000/- from the pay of the applicant passed by DPS (HQ) Lko dated 27.2.2007 and SSRM 'O' Division Lko dated 31.5.2006..
- b) direct the respondents to eliminate hostile attitude with the applicant and return the amount of Rs. 5000/- recovered from the pay of the applicant and drop the charge sheet leveled against the applicant.
- c) pass any other appropriate orders as deemed fit judicious and proper in the circumstances of the case, in favour of the applicant.

In this O.A. there are similar facts and pleadings as in the above O.A. No. 212/2007 and similar relief has also been sought. However the appeal of this applicant against the punishment order has been rejected on 27.2.2007.

8. In the Counter Reply also, claim has been contested on similar grounds.

9. In this case also, a Rejoinder Reply has been filed reiterating the pleadings contained in the O.A.

10. We have heard the learned counsel for the parties at length and perused the material on record.

11. At the outset it may be mentioned that both these OAs pertain to minor punishment in accordance with the proceedings under Rule 16 of CCS (CCA) Rules. According to the respondents, as mentioned the above five persons were found to be responsible for the lapse entailing a loss of Rs. 27,900/- and therefore, after proceeding under the aforesaid Rules, a penalty of recovery of Rs. 5000/- was imposed against four employees each and Rs. 7900/- against one Devi Prasad, the then Incharge M.a. The amount has already been recovered. Both the applicants filed appeal against the order of recovery passed by the Disciplinary Authority. Their appeals were rejected vide order dated 26.2.2007 and 27.2.2007 respectively. An alternative remedy of filing revision was available to them but neither of them have availed this remedy to redress their grievances. No satisfactory and plausible explanation has

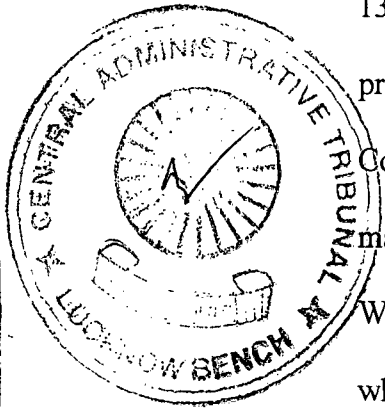


been given as to why the alternative remedy was not availed. On this ground itself, both the OAs are liable to be dismissed.

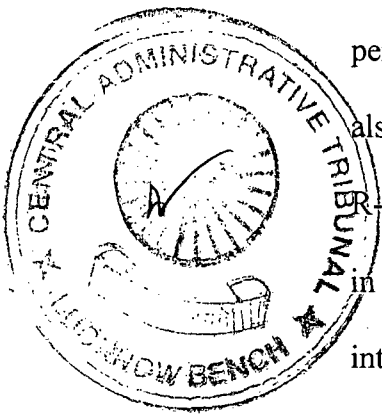
12. Secondly, it is significant to note that in O.A. No. 212/2007, even the date of order which has been challenged, has not been mentioned in the relief clause. The only order which has been challenged in this O.A. is order of recovery of Rs. 5000/- which apparently has been passed by the Disciplinary Authority on 31.5.2006. But unless the appellate order dated 26.2.2007 is also challenged, the above relief is meaningless.

13. The law is settled on the point that in the matters of disciplinary proceedings (pertaining to minor or major penalties, as the case may be), the Courts/ Tribunals have a very limited role to play to look into the decision making process. This is the only scope of judicial review in disciplinary cases.

We do not have to go into the merit of the decision. We have only to see as to whether the decision making process was or was not in accordance with the relevant rules. No such flaw could be indicated on behalf of the applicants in both these cases. The learned counsel for applicants has also not been able to show much less establish any violation of applicants' right to (a) know the case against them, (b) adequate opportunity to meet the case against them. We also do not find anything arbitrary or perverse in the order passed by the appellate authority. In fact, the entire pleadings are hazy and do not make out any clear case in favour of the applicants. During the course of arguments also, it could not be shown as to whether the points which have been now taken in the pleadings were specifically raised while filing the reply against the statement of imputation which was served upon them. Even copy of such reply has not been filed in O.A. No. 212/2007. Similarly, all the 12 points raised by applicant Kamlesh Kumar and all the 8 points raised by applicant Mahendra Pratap Maurya have been elaborately dealt with in a satisfactory manner by the appellate authority in their orders dated 26.2.2007 and 27.2.2007 respectively. The statement of imputation was to the effect that they failed to dispatch the said R-Bag closed by CRC, Lucknow GPO Stg/1 dated 7.2.2005 for Basti RMS 1st for dispatch. They also failed to transfer the said R.Bag to MA/3 Lucknow

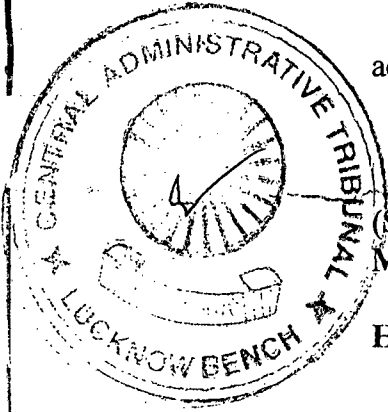


RMS/2 dated 7.2.2005. Further it is mentioned in the statement of imputation that the said R-Bag contained 137 RLs and one RB and 12 Insured letters which were lost. The value of 13 Insured letters was Rs. 27,900/-. The particulars of these Insured letters or its value have not been challenged. It is also not disputed that due to sudden absence of three officials, the applicant and two others were diverted from HS Lucknow RMS/2 dated 7.2.2005 to work in MA Branch of Lucknow RMS/II at about 18.30 hrs. The only worth mentioning thing which appears to have been said in a fragile manner in OA. is that probably the applicants had only a limited time of about three hours to perform the work. But that by itself cannot be an excuse. Much emphasis has also been laid in the O.A. that it was one Sri K.B.Singh, M.G. who received the R-Bag from the mail Motor and Shri Sheo Pal, M.M. who kept the said R-Bag in M.A.Branch but they were also examined and found responsible for not intimating the Mail agents regarding receiving and keeping the R.Bag under reference. An equal amount of Rs. 5000/- have been directed to be recovered from them also. It was found to be a case of contributory negligence.



14. Refuting the pleadings of the OAs, it has been categorically averred in the counter reply that according to para 2 (ii) of MDW of M.A. Lucknow RMS/2 (Annexure 4 of O.A.), the applicant was assigned to take a deal the mails received from Lucknow GPO Stg/1 but he neglected those duties and dispatched the mails for only G-9 out section. It has been further pleaded that the applicants neither took the mails in their accounts nor dispatched them by entry in any mail list. Regarding K.B. Singh, M.G., it has been clarified that he was responsible for only safe and physical receipt of the bag. But it has been fairly conceded that the working of the applicants was from 14 hrs. to 21.45 hrs (while they were assigned this work at 18.30 hrs.). But at the same time it has been also pleaded that after dispatching the mail for G-9 out section, the applicants left the office without any permission and without performing the duties assigned to them. The applicants have failed to prove any thing contrary to it.

15. In view of the above discussion, we reach to a final conclusion that both the applicants could not make out any case in their favour for grant of any of the reliefs claimed by them. Both the OAs, therefore, deserve to be and are accordingly dismissed. No order as to costs.



Sek
(S.P.Singh)
Member (A)

HLS/-

Certified Copy

Rajesh 31/01/2012
Section Officer (Judicial)
Central Administrative Tribunal
Lucknow Bench, Lucknow

Sek
(Justice Alok Kumar Singh)
Member (J)

25.1.12

31-1-2012