

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 537 OF 2007

Order Reserved on 19.2.2014

Order Pronounced on 13/3/2014

HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Ashok Kumar Chaudhary, aged about 46 years, son of Late Shr T. N. Chaudhary, resident of Type 11/68, P&T Colony, Sector K, Alinganj, Lucknow (Presently working as Postal Assistant, 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 Postmaster, General Post Office, Lucknow.

Respondents

By Advocate Sri Deepak Shukla.

ORDER

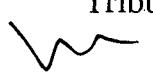
By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- (a) issuing/passing of an order or direction setting aside the impugned punishment order dated 31.10.2005, passed by the Respondent No. 3 (as contained in Annexure No. A-1) to this Original Application and the impugned appellate order dated 27.11.2007, passed by the Respondent No. 2 (as contained in Annexure No. A-2 to the 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 cost."

2. The brief facts of the case are that the applicant was initially appointed in 1983, was inflicted the penalty of recovery of a sum of Rs. 67,167/- from his salary in 39 installments of Rs. 1700/- each per month and the last installment was to be treated as 867/- which is

passed by the respondents illegally and arbitrary manner. It is also pointed out by the learned counsel for the applicant that his appeal was rejected in a very mechanical manner as such, he has challenged the aforesaid order of recovery dated 31.10.2005 and the order of the appellate authority dated 27.11.2007 by means of the present O.A. It is also pointed out by the learned counsel for the applicant that while the applicant was working as Ledger Assistant in National Savings Certificate Branch GPO, the applicant compared the signatures of the certificates holder of the face value of Rs. 10,000/- each and subsequently the payment was allowed by the Assistant Postmaster, GPO Lucknow. Subsequently, on basis of a complaint received by the holder of the NSC that the payment has been made to the wrong persons. The show cause / charge memo dated 12.7.2001 was issued under Rule 16 of the CCS(CC&A) Rules, 1965. The applicant submitted the representation denying the allegations and also requested that enquiry be held and the respondent No. 3 rejected the request of the applicant and asked him to submit his reply within 7 days. The applicant submitted the reply and after considering the reply, the punishment was imposed and thereafter the appeal preferred by the applicant was also rejected by the appellate authority. The applicant has also categorically pointed out that the applicant has compared the signatures of the account holder, but the same was approved by the Assistant Post Master as such, payment was disbursed. It is also indicated by the applicant that in the finding recorded by the inquiry officer, the charge leveled against the applicant is also not stands proved but, this was disagreed by the disciplinary authority and the disagreement memo was given by the CPMG and the applicant has also submitted the reply to the disagreement memo. The learned counsel for the applicant has also pointed out that while passing the order of recovery, the disciplinary authority has not considered all the material available on record. As such, it requires interference by the Tribunal.



3. The learned counsel for the respondents filed their reply as well as the supplementary counter reply, and through counter reply, it is indicated by the respondents that the orders dated 31.10.2005 as well as the order dated 27.11.2007 passed by the respondent Nos. 2 and 3 are well reasoned and speaking orders and does not required any interference by this Tribunal. Apart from this, it is also indicated by the respondents that the recovery is made from the applicant since 2005. Not only this, the learned counsel for the respondents has also pointed out that the applicant while he was working as NSC Ledger Clerk, the duty of the applicant was to verify the signatures of the investors available on NSC presented at counter for payment and in the instance case, there is a fraud committed towards encashment of NSCs No. 379458 to 467 of Rs. 10,000/- each in the name of Shri Shanti Kumar Jain and Kamelsh Kumar Jain. Apart from this, it is also indicated that Shri Shanti Kumar Jain has submitted the complaint dated 31.5.2000 to the Chief Postmaster that the aforesaid NSCs were tendered at the counter of Lucknow GPO on 11.4.2000 for encashment and the payment of maturity value of Rs. 201500/- was made but he could not get cheque up to the date of complaint. Upon enquiry, it is reveled that the NSCs were encashed on 11.4.2000. Not only this, it is also mentioned in their reply that the identification of Shri V. K. Singhal, resident of 56, Anand Nagar, Lucknow as a agent and the remarks are also mentioned as discharged on 11.4.2000. Apart from this, it is also mentioned in their reply that the identification was accepted by the Assistant Post Master. As such, it was pointed out by the respondents that the Sri V. K. Singhal has managed the forged signature of Shri Shanti Kumar Jain on each NSC in collusion with the staff concerned. There is a preliminary enquiry and in that enquiry Shri Shanti Kumar Jain, the NSC holder as well as Shri V. K. Singhal agent/ investors given the statement. Shri Jain submitted in his statement that he did not get himself identified by any one and also disowned his signature certifying the word 'cash' substituted for 'cheque' whereas Shri V. K. Singhal has given his

statement on 16.6.2000 and submitted that Shri Shanti Kumar Jain contacted him with 10 NSCs of Rs. 10,000 each for encashment, and the word cheque was encircled and word cash was certified by Shri Shanti Kumar Jain. The applicant has given his statement in which he accepted that he has received NSCs but the same were put up to Assistant Post Master for allowing payment. It is also mentioned in the counter reply that the forged signature of the investors has been confirmed from handwriting expert. As such, a case was registered as crime No. 409/420/467/468/471/120 B of I.P.C against staff concerned and V. K. Singhal and the case is still pending before the Chief Judicial Magistrate, Lucknow. The duty of the applicant was also explained that he was required to tally the signatures of the investors which he fail to compare as such, it caused loss to the Government exchequer. Therefore the recovery was ordered upon the applicant.

4. The learned counsel for the applicant has filed their rejoinder and through rejoinder, mostly the averments made in the O.A. are reiterated. It is also indicated by the learned counsel for the applicant that the respondent No. 3 disagreed with the finding of the inquiry officer but failed to look into the scope of alleged evidence collected during the preliminary inquiry viz-a-viz evidence surfaced during the departmental inquiry and the punishment order dated 31.10.2005 has been passed in a mechanical way without properly considering the role and responsibility of the applicant and without looking into the evidence which has come before the inquiry officer. Not only this, it is also pointed out by the learned counsel for the applicant that the applicant has no role in authorizing the payment taking signature of witness or making payment. The Ledger Clerk is not responsible for making payment of maturity value of a National Saving Certificates and the applicant has also having no role in authorizing payment or taking signature of witnesses or making payment of matured value. The applicant has also pointed out that the inquiry officer submitted his report and recorded the finding that the charges against the applicant were not proved. However, this

was not agreed by the respondent No. 3 and the reasons of disagreement were bald and non speaking. The representation of the applicant was also not considered and the applicant was inflict with a order dated 31.10.2005.

5. The supplementary counter reply and the supplementary rejoinder affidavit is also perused and mostly the averments made are the reiterations of the earlier pleadings.

6. Heard the learned counsel for the parties and perused the record.

7. Undisputedly, the applicant was working with the respondents organization and due to wrong payment of NSCs, the charge sheet was given in which it is mentioned that the applicant while working as Ledger Clerk in the NSC Branch of GPO has made a payment of Rs. 2,01500/- to wrong persons as such, a loss has been occurred to the Government and along with the charge sheet, the list of documents as well as the list of witnesses are mentioned, it is to be pointed out that in the list of witnesses one Shri Shanti Kumar Jain is mentioned as one of the witnesses and on the complaint of Shanti Kumar Jain, the inquiry was conducted. The inquiry officer has recorded the oral evidence of Ganesh Kumar, Dev Narain Verma and R. D. Mishra. Apart from this, it is also mentioned by the inquiry officer that the applicant has submitted the papers to the Assistant Post Master which was subsequently received by him and thereafter, the payment was released. Coming to the finding, it is pointed out by the inquiry officer that the charges leveled against the applicant were not proved as such, he has submitted the report. When the report of the inquiry officer was disagreed by the Chief Post Master and he has given his disagreement memo, the applicant has submitted his representation against the disagreement memo and through his representation, he has denied the charges leveled against him. But the disciplinary authority disagreed when the reply given by the applicant has imposed a punishment of recovery of Rs. 67167/- in 39 installments of Rs. 1700/-per month and the last installment of Rs.867/-.

The applicant preferred appeal and the appeal of the applicant was also

rejected by the appellate authority and pointed out that due to loss incurred to the government, the applicant is liable to re-pay the loss.

8. Undisputedly, the scope of judicial review in the disciplinary proceedings is very limited. But it is also required to find out that where arbitrariness or unfairness has been done, the punishment imposed on the delinquent can be treated as an arbitrary and unfair as compared to his conduct. The bare perusal of the inquiry officer report clearly shows that the complaint i.e. Shanti Kumar Jain was asked to appear before the inquiry officer and he was served with the notice again and again, but he has not came for the evidence. As such, his statement are not recorded. Apart from this, in the preliminary inquiry the complainant himself said that he did not get himself identified by any one. An FIR was lodged against Shri V. K. Singhal, agent, who has committed the fraud and has recorded the statement given by the applicant and he has also submitted the voucher to the Assistant Post Master for allowing payment. The bare perusal of the punishment imposed by the inquiry officer dated 31.10.2005 does not show this fact that the complainants himself absented for appearing before the inquiry officer and punishment imposed by the Assistant Post Master was dropped and he was exonerated from the charges leveled against him.

9. It is also correct that the respondents cannot be permitted to resort to selective treatment in respect of the applicant or in respect to the other employee when both of them are involved in the similar departmental proceedings and any act of repository of power whether legislative or administrative or quasi judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could even have ever made it.

10. Considering the averments made by the learned counsel for the parties, we deem it appropriate to interfere in the present O.A., as such the impugned order dated 31.10.2005 as well as 27.11.2007 i.e. order

passed by the Disciplinary Authority and Appellate Authority are quashed and the O.A. is allowed. The amount already recovered shall be refunded to the applicant forthwith. It is made clear that the applicant is not entitled for the interest if any. No order as to costs.

J. Chandra

(Ms. Jayati Chandra)
Member (A)

Navneet Kumar

(Navneet Kumar)
Member (J)

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