

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 27.05.2014.

Pronounced on 14th July 2014

Original Application No.360/2010

Hon'ble Ms. Jayati Chandra, Member (A)

Hon'ble Dr. Murtaza Ali, Member (J)

Jagan Ram Yadav, aged about 58 years Son of Sri Hari Das Yadav, A.P.M. (S.B.I.), Faizabad H.O. R/o Jagdish Nagar Khojanpur Rakabganj, Faizabad.

-Applicant.

By Advocate: Sri R.S. Gupta.

Versus.

1. Union of India, through the Secretary, Ministry of Communication and IT Department of Post, Dak Bhawan, New Delhi.
2. S.S.P.Os., Faizabad.
3. Senior Post Master, Faizabad.
4. Shri P.D. Shukla, S.S.P.Os., Faizabad.

-Respondents

By Advocate: Sri Asheesh Agnihotri.

O R D E R

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

- (a). *That this Hon'ble Tribunal may kindly be pleased to quash the order dated 30.07.2010 as contained in Annexure No.A2 passed by SSAPOs, Faizabad and refund the recovery already made from pay of applicant.*
- (b). *Any other relief as may be found just may also be allowed in favour of applicant with cost of OA."*

2. The facts of the case are that the applicant had joined as PA in 1972 was promoted to BCR (HSG-II) cadre before the year 2000. He was working as Assistant Post

Master (Try), Faizabad H.O. when the dacoity took place in Faizabad H.O. during night of 09.02.2010 and 10.02.2010 in which an amount of Rs.10,01,297/- was carried away by the dacoits and an FIR was lodged by the department. Despite the same he was charge-sheeted u/r 16 of CCS (CCA) Rules, 1965 by the Senior Post Master, Faizabad on 08.02.2010 (Annexure-3). The applicant submitted his representation dated 13.02.2010 stating inter-alia that the said dacoity was beyond the control of anybody as is also evident from the FIR lodged by the department. The case was finally closed by the Senior Post Master, Faizabad awarding him a "Censure" entry by his order dated 17.02.2010 (Annexure-2).

3. However, the Senior Superintendent, Faizabad Division, who is neither the appointing authority nor the appellate authority nor the reversionary authority as the applicant is in the BCR Grade, issued a show cause notice vide Memo dated 28.05.2010 proposing to enhance the "Censure" entry imposed upon him and sought his representation. The representation was duly given by him but the Senior Superintendent of Post Offices, Faizabad going beyond his competency issued the impugned order dated 30.07.2010 by which he has awarded the penalty of recovery of Rs.1,00,000/- from the pay of the applicant @ Rs.5000/- per month in 20 installments. The applicant has primarily challenged the legality of this order on the ground of competency of the Senior Superintendent of Post Offices, Faizabad, who issued the impugned order. As per Schedule of Powers of officers of the department of post in respect of post office staff printed at page-217, 244 and 245 of postal manual volume III (Annexure-6) the Senior Superintendent of Post Offices, Faizabad does

not have the Appellate Jurisdiction over the applicant. Hence, this OA.

4. The respondents have contested the claim of the applicant through their Counter Reply denying the claim of the applicant. Their case is that the applicant by not remitting the various amount indented by other post offices, allowed the retention of huge amount of Rs.10,01,297/- in Post Office, Faizabad. Although, the dooity may be an incident over which the applicant does not have any control but if he had remitted the cash to the other post offices the dooity would have resulted in less loss to the department. Therefore, the imposition of recovery of Rs.1,00,000/- by the Appellate Authority on grounds of dereliction of duty is justified. Moreover, it is further submitted that the applicant who was then working as APM Treasury was indented as subsidiary offender of the case and was awarded penalty of 'censure' vide Senior Post Master of Post Offices, Faizabad by Memo dated 17.2.2010. It is also submitted that on receipt of direction from Circle Office, Lucknow letter dated 27.4.2010 the case of the applicant was reviewed by the Senior Superintendent of Post Offices, Faizabad Division, who found that sufficient cash was actually not remitted to the concerned Sub Offices according to their liabilities. Hence, the applicant was served with show cause notice for enhancement of punishment by Senior Superintendent of Post Offices, Faizabad dated 28.05.2010 and finally he was awarded the penalty of recovery of Rs.1,00,000/- (One lakh only) by Memo dated 30.07.2010 in cancellation of earlier Memo dated 17.02.2010 passed by Sr. Post Master. As per Schedule of Powers of officers of the department of post as

communicated by vigilance communication dated 27.08.1990 and 16.10.1990 the Senior Superintendent of Post Offices, Faizabad had full Appellate jurisdiction over the applicant. The applicant was never awarded the HSG grade, but he was working in the Time Scale. Hence, the Senior Superintendent in his capacity as Head of Division was the Appellate Authority. The respondents have also stated that the applicant has sought intervention of the Tribunal without availing the departmental remedies, which were available to him.

5. The applicant has filed his Rejoinder Affidavit, stating more or less same things as earlier stated by him in his OA. Further, he had also justified the retention of Rs.10,01,297/- on the ground of non-availability of vehicle to shift the cash. He also placed reliance on the judgment of Hon'ble Allahabad High Court in the case of Shiv Kumar vs. State of U.O & Others reported in [1999 (17) LCD-1153] wherein the Hon'ble High Court has held as under:-

"In the result, the writ petition succeeds and is allowed. The impugned order of dismissal dated 17.8.1993 passed by respondent no.2 is quashed. The respondent no.2 is directed to reinstate the petitioner in service with all consequential benefits of service within a period of two months from the date of production of a certified copy of this order before him."

6. He has relied upon the Schedule of Powers of officers of the department of post in respect of post office staff printed at page-217, 244 and 245 of postal manual Volume-III (Annexure-6), the Senior Superintendent of Post Offices, Faizabad does not have the Appellate Jurisdiction over the applicant.

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7. We have heard the learned counsel for both the parties and perused the entire material available on record.

8. The ***Hon'ble High Court of Judicature at Bombay v. Shashikant S. Patil, (2000) 1 SCC 416*** stated that in a disciplinary case the judicial review arises only in the following cases:-

- (a). where there has been a violation of the principles of natural justice; or
- (b). the proceedings have been held in violation of statutory regulations pre-scribing the mode of such enquiry; or
- (c). the decision is vitiated by consideration extraneous to the evidence and merits of the case; or
- (d). if the conclusion made by the authority is ex facie arbitrary or capricious that no reasonable person could have arrived at such conclusion ; or

9. Hence, we confine over selves to the examination of procedural irregularity, if any. In this case the applicant filed the OA mainly on the ground of the fact that the Appellate Authority does not enjoin the power as exercised by him in revising the penalty given by Disciplinary Authority. The applicant has stated that the Senior Superintendent of Post Offices has no right, authority and jurisdiction being the Appellate Authority since he has been promoted to BCR (HSG-II) cadre before the year 2000.

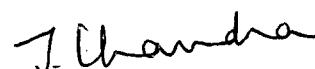
10. We are not inclined to enter into the dispute of the pay-scales at this stage as that is not the issue here. The relevant fact is that the applicant had not challenged the order dated 17.02.2010 (Annexure-2) passed by the Sr. Post Master, Faizabad in his capacity as the Disciplinary

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Authority over the applicant whatever pay scale that he was drawing. The schedule of powers produced by the applicant as Annexure-6 does not include the designation of Senior Post Master as the disciplinary authority (under column-3) for any category of posts. Similarly, the schedule of powers submitted with his rejoinder as R-3 shows that the disciplinary authority for Post Master in higher or lower selection grade is a gazetted Post Master and the appellate authority is Director Postal Services. But, this schedule of powers is undated. On the other hand the copy of schedule of powers provided by the respondents is dated 30.10.1990 as is said to be the revised power. In this copy, the Disciplinary Authority for Post Master in LSG/HSG grade is the Senior Post Master (Column-3) and the Appellate Authority is Head of Division. The Senior Superintendent of Post Offices is stated to be the Head of the Division for Kheri Division.

11. In view of the above, the OA fails and is liable to be dismissed and the same is accordingly dismissed. Parties to bear their own costs.


(Dr. Murtaza Ali)
Member (J)


(Ms. Jayati Chandra)
Member (A)

Amit/-