

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**Original Application No. 456 of 2003**

This the 5<sup>th</sup> day of September, 2008

**Hon'ble Shri Shankar Raju, Member (J)**  
**Hon'ble Smt. Veena Chhotray, Member (A)**

Khushi Chand aged about 40 years son of Shri Mulla Das, Postal Assistant,  
Mahanagar Post Office, Lucknow.

Applicant

By Advocate; Sri R.S.Gupta

**Versus**

1. Union of India, through Secretary, Department of Post, Ministry of Communication, Dak Bhawan, New Delhi.
2. Director of Postal Services, Office of Chief Post Master General, U.P.Circle, Lucknow.
3. Senior Supdt. Of Post Offices, Lucknow Division, Lucknow.

By advocate: Sri S.P. Singh *h*

Respondents

**ORDER**

**BY HON'BLE SMT. VEENA CHHOTRAY, MEMBER (A)**

The applicant, a Postal Assistant under the Department of Post, has through this O.A. challenged order dated 30.1.2003/6.2.2003 and 23.5.2003 (A-1 and A-2 respectively). Vide A-1, a penalty of recovery of Rs. 10,000/- from the pay of the applicant and deduction of pay by seven stages from Rs. 4900/- to Rs. 4200/- in the pay scale of Rs. 4000-6000 for a period of 5 years has been imposed. The Appellate Authority has set aside the penalty of recovery and the penalty of reduction of pay is reduced to five stages from Rs. 4900 to 4400 for a period of 4 years. Seeking to quash these orders, a prayer for direction of treating the period under suspension w.e.f. 3.9.98 to 24.2.99 has also been made.

2. A charge sheet dated 30.1.03/6.3.2003 under Rule 14 of CCS (CCA) Rules, 1965 was served on the applicant. The charge was that while he was

working as a Sub Post Master, Malihabad Post Office, Lucknow on 3.3.97, 21.4.97 and 30.5.97, amounts of Rs. 12,000/- and 6000/- deposited in two Savings Bank Accounts by respective depositors were not properly accounted for in the Departmental records. There was thus a violation of relevant Codal provisions. Further that he had failed to exercise proper supervision over the working of Sri Shyam Mohan, the then S.B. Counter Assistant, who due to this laxity had succeeded to commit the fraud and thereby cause a loss to the tune of Rs.18000/- to the Department. Alleging violation of specified codal provisions and rule 3.2(1) of CCS (Conduct) Rules, 1964, the charge regarding failure to maintain absolute integrity, devotion of duty and acting in a manner which is unbecoming form a Govt. servant as required under the provisions of Rule 3.1 (i), (ii) and (iii) of CCS (Conduct) Rules, 1964 was framed.

3. The charges have been found to be proved in the enquiry report. Considering the C.O.s representation dated 15.7.2002 and enquiry report, the aforesaid penalty was awarded by the Disciplinary Authority vide impugned order dated 30.1.2003/6.2.2003 (A-1) and subsequently his appeal dated 10.2.2003 was decided by the Appellate order dated 23.5.2003 (A-2).

4. The learned counsel would contend that the applicant was not responsible for the misappropriation in this case and this fact had been acknowledged even by the Appellate Authority in his order. Having once exonerated him from the charge and waiving recovery, the other punishment of reduction could not justifiably be imposed. The averment of untenability of two punishments would also be made.

The main contention in support of O.A. would however, be regarding denial of reasonable opportunity to the C.O. to defend himself in course of the enquiry. The learned Counsel referred to para 4.4 of the O.A. and would contend that despite a request and an order to that effect by the Inquiry Officer (I.O.), the office order book of Malihabad Post Office for the relevant period was not produced nor was the Sub Post Maser, Malihabad made a

release for examination. In support, a copy of the application by the C.O. and the order of the I.O. (both dated 14.1.2002) have been annexed as A-6 and A-7.

5. Since the basic charge in this case was non observance of the Codal provisions and lack of supervision that created the enabling situation for committal of the fraud, the contention regarding the C.O. not being responsible for misappropriation is not found to be relevant. After the award of the Appellate order, the earlier two punishments have now been reduced to only one, hence that argument will also not stand.

However, we need to have a closer look at the contention regarding denial of reasonable opportunity for defending the C.O. A perusal of the relevant documents cited in support of this contention would show that on 14.1.2002, the C.O. had given an application to the I.O. to the effect that since S.W. III Shri Shyam Mohan had made contradictory statements regarding the C.O. officiating as Sub Post Master, Malihabad Post Office working as a P.A., he felt a need to examine the office order book for the periods 3.3.97, 21.4.97 and 30.5.97. This was considered necessary to ascertain whether he had actually acted as Sub Post Master on the given dates. This prayer was allowed by the I.O. It is admitted that despite the I.O's order, these documents or witness were not produced during inquiry

However, the point to see is whether this has in any way prejudiced the right of the applicant for defending himself against the charges. It is found that though not before the Disciplinary Authority, this plea was raised before the Appellate Authority. However, the Appellate Authority had applied his mind to it and arrived at the following findings:-

*(viii) The appellant has himself admitted during enquiry as well as in para 3.1 of his representation dated 15.7.2002 made against the findings of enquiry report that he was working as Sub Post Master Malihabad P.O. on 3.3.97, 21.4.97 and 30.5.97. Hence the plea put forth by the appellant at this stage does not hold*

