

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH**

**Original Application No.381/2006  
This the 31<sup>st</sup> day of July 2008**

**HON'BLE MR. M. KANTHAIAH, MEMBER (J).  
HON'BLE MR. SHAILENDRA PANDEY, MEMBER (A)**

Shitla Prasad, Mailman HRO Railway Mail Service 'O' Division,  
Lucknow.

...Applicant.

**By Advocate: Shri R.S. Gupta.**

Versus.

1. Union of India through the Secretary, Department of Post Dak Bhawan, New Delhi.
2. Chief Postmaster General, U.P., Lucknow.
3. Director Postal Services (HO) O/o C.P.M.G. U.P., Lucknow.
4. S.S.R.M. 'O' Division, Lucknow.

... Respondents.

**By Advocate: Shri K.K. Shukla.**

**ORDER**

**BY MR. M. KANTHAIAH, MEMBER JUDICIAL.**

The applicant has filed this OA under Section 19 of the Administrative Tribunal Act, 1985 with a prayer to quash the order Dt. 14.08.2006 Anneuxre-A-1 under which the Respondent No.3 enhanced the punishment of censure to recovery of Rs.34,538/- and with all other consequential benefits.

2. The respondents have filed Counter Affidavit, denying the claim of the applicant stating that the orders passed by the Respondent No.3 is in accordance with rules and there are no justified grounds for interference of this Tribunal.

3. The applicant has filed Rejoinder Affidavit, denying the stand taken by the respondents and also reiterated his pleas in the OA.

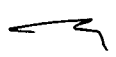
4. Heard both the sides.

5. The point for consideration is whether the applicant is entitled for the relief prayed for.

6. The admitted facts of the case are that during the year 2000, the applicant worked as Mailman, H.R.O., RMS 'O' Division at Lucknow under Shri

V.M. Srivastava, Sorting Assistant. During that period the applicant prepared mail list as per the instructions of sorting agent Sri V.M. Srivastava. It is the case of the respondent department that RTB prepared by AMAAP-1 Dt. 05.12.2000 received by Mail Agent Lucknow RMS-1 was allegedly missing from the custody of the mail man since 18.02.2000 with loss worth Rs.1,38,150/-. Against the same, the respondent department conducted disciplinary proceedings against Shri V.M. Srivastava, the then Sorting Assistant HRO, RMS 'O' Division under Rule 14 of the CCS (CCA) Rules 1965, in which he was found guilty and thereupon, he was dismissed from service on 02.05.2003. Against the orders of dismissal, he preferred an appeal on 13.6.2003 but during the pendency of the appeal, he died on 29.06.2003 and thereafter, his appeal was decided on 27.09.2004 by the then DPS, Lucknow modifying the punishment order of dismissal to compulsory retirement.

7. At the same time, the department also initiated proceedings against the applicant under Rule 16 of CCS (CCA) Rules 1965 and issued charge Memo stating that he prepared the list at the instance of his in-charge V.M. Srivastava, which he is not suppose to do and the same is against the provision of Postal Rules, Book No.7 (8<sup>th</sup> Edition) Rules -147. After submitting his explanation, the Respondent No.4, awarded punishment of 'Censure' vide Memo Dt. 30.03.2005. Annexure-2 is the copy of charge sheet Dt.02.12.2004 whereas, Annexure-3 Dt.30.03.2005 is the copy of punishment order issued by Respondent No.4. Before submitting his explanation the applicant sought copies of documents including the statement of V.M. Srivastava Dt. 06.06.2001. Annexure-5 is the copy of statement of V.M. Srivastava. After the orders of




punishment of censure by Respondent No.4 the appellate authority (Respondent No.3) issued show cause notice to the applicant covered under Annexure-A-6 Dt.13.07.2005 stating that in exercise of powers conferred under rule 29 (1) (v) of CCS (CCA) Rules 1965, he intends to revise the punishment order of censure to the penalty of recovery of amount of loss of R. 1,38,150/- caused to the department and sought his explanation and the applicant submitted his reply. Annexure-6 Dt.13.07.2005 is the copy of show cause notice and Annexure-7 Dt.01.08.2005 is the copy of reply. The applicant has submitted his reply, (Annexure-7) stating that he is innocent and not liable for any penalty and also stated that the case in respect of loss of such property was proved against V.M. Srivastava for which he was dismissed from service and subsequently the same was converted to compulsory retirement. After considering the reply of the applicants, Respondent No.3 issued orders covered under Annexure-A-1 Dt. 14.08.2006 under Clause (V) of Sub rule (1) of Rule 29 of CCS (CCA) Rules, 1965 imposing penalty of recovery of Rs. 34,538/- being 25% of total loss of Rs. 1,38,150/- to be recovered from the pay of the applicant at Rs.1000/- in 34 installments and Rs.538/- in the last installment. Against the said orders, the applicant filed this OA.

8. The main case of the applicant is that he was not responsible for the loss of 25 bags worth Rs. 1,38,150/- as alleged by the department and further the said loss was proved against the then Sorting Assistant V.M. Srivastava and he was dismissed from service but in the appeal his punishment was modified to compulsory retirement and as such the penalty imposed by Respondent No.3 against him is not at all justified.

←

9. Admittedly, the Respondent No.4, who conducted enquiry against the applicant under Rule 16 of CCS (CCA) Rules 1965, clearly stated in his report Annexure-3 stating that it will not be proper to make the applicant responsible for the loss of respective RTB which was not even content of the mail list prepared by the applicant and thus let him off with punishment of "Censure". Thereafter, the Respondent No.3 the appellate authority, after issuing show cause notice to the applicant enhanced the punishment from censure to imposing penalty of Rs. 34,538/- under Annexure-1. Under Rule 29 (i) (v) of CCS (CCA) Rules, 1865, the appellate authority is empowered to enhance the punishment imposed by disciplinary authority. But in the instant case, it is not the finding of the disciplinary authority that the applicant was found guilty and he categorically stated that the applicant was not responsible for the loss of respective RTBs. Further, the department also found guilty Sri V.M. Srivastava, the then Sorting Assistant, for loss of such bags and imposed punishment of dismissal from service, which was modified into compulsory retirement by the Appellate authority.


10. In such circumstances, without proving any of the charges against the applicant, for the loss of bags worth of Rs. 1,38,150/-, and when the department itself punished with major penalty of dismissal the then Sorting Assistant for such charges, taking the matter of the applicant by Respondent No. 3 and imposing of enhanced punishment of Rs. 34, 538/- is not at all sustainable. The Respondent No.3 is justified to take such decision, if there was any responsibility fixed on the applicant for loss of such bags or if



there was any finding against the applicant in the enquiry by Respondent No.4.

11. In view of the above circumstances, the orders of the Respondent No.3, covered under Annexure-1, enhancing the punishment of the applicant from censure as ordered by Respondent No.4 to recovery of amount of Rs. 34,538/-, fixing his responsibility for the loss of 25 bags worth of Rs. 1,38,150/- is not at all maintainable and as such the applicant is justified in challenging the same.

In the result, OA is allowed <sup>and we</sup> ~~quashing~~ the enhanced punishment as ordered by Respondent No.3 covered under Annexure-1 Dt. 14.08.2006 and also ordered ~~for~~ refund of the recovered amounts from the applicant. No costs.

  
(SHAIENDRA PANDEY)  
MEMBER (A)

  
(M. KANTHAIYAH)  
MEMBER (J)

31-07-2008

/amit/