

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

O.A. No. 92 of 1990.

Babu Ram Dhooria Applicant.

Versus

Union of India & 2 others Respondents.

Hon'ble Mr. Justice U.C. Srivastava, VC

The applicant entered the Postal Department in the year 1966 and after gradual promotions, ^{was} promoted as Postal Assistant and at the relevant point of time was working in Mehewaganj Post Office, Distt. Kheri. A charge-sheet was served on the applicant under Rule 16 of the C.C.S (CCA) Rules, 1965 by the Superintendent of Post Offices, Kheri on 24.11.88 alleging that while he was working as Postal Assistant at Kheri Head Post Office in the capacity of Ledger Assistant II on 12.8.85, he failed to comply with the provisions of Rules 440 and 442 of P & T Manual Vol. VI Part II by not raising objection in transferring Kheri H.O. five years T.D. Account No. 50986 to Mohandi Sub-Office and thus the department sustained a loss of Rs. 32,705/- and secondly he failed to comply with the provisions of Rule 440 and 442 on 10/11.6.85 in that capacity by not raising objection on transferring Kheri H.O. five years T.D. Account No. 50975 to Pallia Sub-Office under its Account No. 125768 and thereby the Department sustained a loss of Rs. 30,775/- and by doing so he failed to maintain absolute integrity and devotion to duty as required under Rule 3(i) (ii) of the CCS (Conduct) Rules.

The applicant moved application that particular documents may be given to him ^{to enable him to file his reply} and this is how the matter was delayed and ultimately he submitted his reply making certain complaints. The Disciplinary

Authority found that all this was a matter which could have been decided on the basis of documents and consequently on the basis of documents, a detailed order was passed by him narrating the facts and circumstances and the loss to which the department was put to and the applicant's role in the same in-as-much-as there was act of omission or commission on his part also. The applicant filed a departmental appeal which too was dismissed. Thereafter, he approached this Tribunal.

2. The parties have exchanged their affidavits and on behalf of the applicant, the enquiry proceedings have been seriously challenged and it has been said that the applicant has been deprived of reasonable opportunity to defend himself. He was not given the copies of the documents nor was allowed the inspection of each and every document and further reliance was placed on the statements of certain witnesses whom the applicant was not allowed to cross-examine and no full-fledge enquiry took place. It is to be noted that the charge against the applicant was in respect ^{of} a minor penalty only. It was for the Disciplinary Authority to decide whether a full-fledged enquiry should be held or not. The Disciplinary Authority could have acted on the basis of versions of both the sides and it was on its discretion to hold an enquiry. In the instant case, the Disciplinary Authority has decided the matter taking into consideration the version of the applicant as well as the documents and in the opinion of the Disciplinary Authority and the Appellate Authority, it was a case which could have been decided on the basis of

documents and no oral evidence was needed.

3. The respondents in the reply have pointed out that the photostat copies of the documents sought for by the applicant were given to him though at a later stage. The applicant also wanted other documents but he could not point out as to how they were relevant in the case. In the entire pleadings of the case, the relevancy of such documents have not been pointed out. In the circumstances, it cannot be said that it was a case where a full-fledged enquiry should have been held and the ~~enquiry~~ ^{punishment} is vitiated on this score. After the enquiry, the Disciplinary Authority passed an order requiring the applicant to pay a sum of Rs. 9,000/- which was adjusted to his liability but no reason, whatsoever, has been assigned as to how the applicant was liable to pay that amount. From the pleadings of the parties, ~~case~~ it is clear that more than one persons were involved in the same and if there were lapses, omissions and negligence, it was not only on/of one and for that it was obligatory on the department to hold the extent of liability of each and every person and without determining the liability of ~~each~~ every person, arbitrarily no amount could have been fixed and no person could have been asked to pay a particular amount. In this connection, reference of Rules 106, 107 and 108 of the P & T. Manual may be made which reads as under:-

"106: In the case of proceedings relating to recovery of pecuniary loss caused to Government by negligence, breach of order by the Government Servant, the

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penalty of recovery can be imposed only when it is established that a Government servant was responsible for a particular act, for acts of negligence and for breach of order and rule and that such negligence and breach caused loss.

107: In case of loss caused to the Government, the Competent and Disciplinary Authority should correctly assess in a realistic manner a contributory negligence on the part of officer while determining any omission or lapse on the part of an Officer bearing of such lapses or loss and extranuating circumstances in which duties were performed by the officer, shall be given due weight.

108: Maximum amount which may be recovered from the delinquent Officer on account of loss caused to the department who is negligent should be one thousand rupees of his pay spread over a period of three years. For this purpose only basic pay should be taken into account. In addition the penalty of recovery technically there is no bar to impose a statutory penalty if the circumstances of the case justify. The Punishing Authority should, however, bear in mind that more than one penalty was imposed one of which recovery of pay the whole of the part of loss caused to the Government."

4. In the instant case, the respondents directed that the recovery should be made that is within the period prescribed under the rule within three years and obviously it was found that the applicant was also responsible for negligence and breach of the rule. Even if that was so in view

(8)

of Rule 107, it was obligatory on the part of the respondents to find out as to what extent the applicant's negligence was responsible for causing a particular loss but that was not done although the rule enjoins a duty on the respondents to do so. Accordingly, this application deserves to be allowed in part and so far as recovery of the part of order is concerned, fixing a sum of Rs.9,000/- as liability of the applicant is quashed. However, it will be open for the respondent to decide the role of the applicant and the contributory negligence and the extent of loss to which he is responsible and which he is required to pay. In case, ultimately after the enquiry which it is expected may be concluded within three months as the matter is old, it is found that the applicant is liable to pay a lesser amount, the extra amount which has been realised from the applicant, would be refunded back to him. With these observations, the application is disposed of without any order as to costs.


VICE CHAIRMAN.

DATED: MARCH 18, 1992

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