

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. No. 19/2006

Date of Order:

24th May, 2011

C O R A M

HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER [J]
HON'BLE MR. A.K. JAIN,....., MEMBER [A]

Nawal Kishore Prasad Verma Son of Late Ganga Prasad, Resident of village/Post Baruna Via- Fatuha District- Patna, working as Sub-Post Master, Fatuha District- Patna.

..... Applicant.

By Advocate: - Shri M.P. Dixit.

-Versus-

1. The Union of India through the Chief Post Master General, Bihar, Patna.
2. The Director of Postal Services O/o the CPMG, Bihar, Patna.
3. Sr. Superintendent of Post Offices, Patna Division, Patna- 4.
4. The Director, Account of Posts, Patna.

..... Respondents.

By Advocate: -Shri S.K. Tiwary

O R D E R

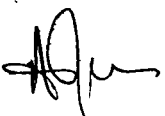
Akhil Kumar Jain, Member [Administrative] :- The instant application has been filed against the order dated 17.12.2005 passed by respondent no. 3, Superintendent of Post Offices, Patna Division as contained in Annexure A/6 whereby and where under punishment of



recovery of Rs. 20,000/- in three installments from the monthly salary of the applicant has been imposed and the order of appellate authority dated 24.07.2007 as contained in Annexure R/1 of Supplementary Written Statement of the respondents whereby the appeal dated 03.01.2006 filed by the applicant has been rejected.

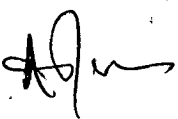
2 The case of the applicant is that while working as SPM, Fatuha S.O., the applicant was served a charge sheet dated 27.10.2005 under Rule 16 of CCS(CCA) Rules, 1965 (Annexure A/1). The charge against the applicant was that " he had not sent cash to the BOs when BOs were showing the liabilities and cash was available in Fatuha PO and in one time cash of Rs. 20,000/- (Rupees twenty thousand only) was remitted to D.G. Tola B.O. on 17.06.2005 by him beyond the line limit as the line limit for DG Tola B.O. through B.O. Bag was Rs. 5000/- (Rupees five thousand only). The intention of said Shri Verma is clear not to follow-up the line limit causing this cash of Rs. 20,000 (Rupees Twenty thousand only) looted by miscreants on 17.06.2005 near Dumri Bridge under Fatuha PS by snatching and cutting B.O. Bag and its LC Bag of D.G. Tola B.O. from Shri Surendra Prasad, GDS Mail Carrier, Fatuha B.O. Due to this negligence and carelessness, department sustained a loss of Rs. 20,000 (Twenty thousand only) and thereby he is alleged to have failed in devotion to duty and acted in a manner which is unbecoming of a Government servant as enjoined under Rule 3(i) (ii) and (iii) of CCS(Conduct) Rules, 1964. He also violated Rule 5 (2) (i) & (ii) of CCS(Conduct) Rules, 1964. Thus the said Shri Nawal Kishore Prasad Verma is charged on the following grounds:-

(i) Violation of Rule 5(i) (ii) & (iii) of CCS(Conduct) Rules, 1964.



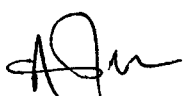
(ii). Violation of Rule 5(2) (i) and (ii) of CCS(Conduct) Rules, 1964."

3 The applicant submitted a representation on 08.11.2005 for supply of some documents for submitting reply to the charge sheet (Annexure A/2). In response to the said representation, the applicant got letter dated 17.11.2005 informing that some of the documents sought were not relevant and the remaining relevant documents could be inspected by the applicant at the office on 24.11.2005 at 11.30 hrs positively. The applicant was further advised to submit his representation within one week of the inspection of the relevant documents failing which it would be presumed that he had nothing to say in his defence and the case would be decided ex-parte (Annexure A/3). Thereafter, the applicant attended the office of the respondent no. 3 and requested him to give the details of documents required by the applicant but the same ^{was} ~~was~~ not given. He was allowed only to inspect the FIR and statement of Surendra Prasad, GDS Mail Carrier. In spite of repeated requests by the applicant, neither the documents nor the extract of rules as demanded by the applicant were supplied. Ultimately, he submitted his reply on 06.12.2005. It was stated therein that as the amount was looted from the possession of Shri Surendra Prasad, GDS Mail Carrier, then only he is responsible. It has further been submitted by the applicant that though G.D. Tola B.O. demanded for cash of Rs. 60,000/-, the applicant sent only Rs. 20,000- (Annexure A/5). However, respondent no. 3 vide order dated 17.12.2005 (Annexure A/6) imposed penalty of recovery of Rs. 20,000/- in instalments as specified in the order. It is the contention of the applicant that the order of the respondent no. 3 is not only arbitrary, motivated and unconstitutional, but it is in violation of



instruction of DG (P&T) issued vide no. 114/176/78-Disc II dated 13.02.1981 as contained in Annexure A/7. The applicant submitted appeal under section 23 [ii] of CCS (CCA) Rules 1965 to respondent no. 2 on 03.01.2006 stating facts and legal position (Annexure A/8). The Appellate Authority vide its order dated 24.07. 2007 rejected the appeal filed by the applicant. Hence, this OA.

4 The respondents in their written statement and the supplementary written statement have submitted that the punishment order passed by the disciplinary authority , respondent no. 3 is legal and constitutional. The allegation that the impugned order was passed purportedly with some motive without holding any enquiry and establishing guilt has been denied by the respondents. It has been stated that the punishment awarded is a minor penalty as mentioned under Clause [iii] of Rule 11 of CCS(CCA) Rules, 1965 and the laid down procedure under Rule 16 for imposing minor penalty has been followed by the disciplinary authority. Regarding supply of relevant documents, it has been submitted by the respondents that the applicant was allowed to inspect the relevant documents at the office on 24.11.2005 and as laid down in Rule 77 of Postal Manual Vol. III and the applicant inspected the relevant documents accordingly. The order regarding line limit is a record of applicant's office. Thereafter, vide his application dated 30.11.2005, the applicant applied for 10 days extra time for submission of his representation. Without waiting for the expiry of the said period, he submitted his final representation dated 06.12.2005 received in the office on 15.12.2005. The disciplinary authority passed order after taking into consideration the points raised by the




applicant in his representation. The appellate authority has also passed order after considering the appeal petition filed by the applicant. The applicant was punished for his lapses and violation of departmental rules after due consideration of his representations. Thus, this OA merits dismissal.

5 Heard the learned counsel for both the sides.

6 The learned counsel for the applicant submitted that the main allegations against the applicant on which basis charge against the applicant has been framed are that (i) he did not send cash to BOs when their demands were pending and (ii) that he intentionally violated the instructions laying down the line limit of Rs. 5000/- in case of DG Tola BO "causing this, cash Rs. 20,000/- was looted by the miscreants on 17.06.2005" for which reason the department has sustained a loss of Rs. 20,000/-. The learned counsel for the applicant submitted that as regards the first allegation, no details have been given as to what demands of BOs remained pending on what dates and that he did not send cash in spite of availability thereof. In spite of applicant's request to furnish details and copies of related documents as mentioned at Sl. 2 in the representation dated 08.11.2005, the same were not supplied. Instead, the respondent no. 3 in his reply dated 22.11.2005 mentioned that the same is not relevant. Even some other documents as listed in the representation were not given stating that the same are not relevant though the applicant had clearly stated the reasons why the same were relevant for his defence. This is a clear violation of principle of natural justice.

7 As regards the second allegation, it was submitted by the learned counsel for the applicant that the loot took place from the custody of



the GDSMC Surendra Prasad. There is no allegation of connivance against the applicants nor there is any connection of loot with the applicant. Hence the statement that "non follow up the line limit "causing this cash of Rs. 20,000/- looted by the miscreants on 17.06.2005" was completely baseless. Drawing attention to "Memo of Authorized Balances' in respect of Fatuha LSG (PT. GPO), issued by Senior Superintendent of Post Offices, Patna Division 24.01.2003 as contained in Annexure A/4, the learned counsel for the applicant stated that as mentioned at sub para (a) & (b) of the said memo, the respondent no. 3 had already given authority to all BOs to draw maximum amount during the month direct from the cash office from where the funds are to be drawn without reference to the head office. As such, there was nothing wrong in remitting Rs. 20,000/- by the applicant. It was further stated by the learned counsel for the applicant that the allegation that he did not remit the sums to BOs when they were showing liabilities has also not been substantiated by the respondents by giving relevant details and as such the same is baseless. He added that even in case of Fatuha PO, there is ^{for} ~~only~~ provision of remittance of Rs. 10,000/- only under system of exchange of remittance with cash office but the applicant was drawing money in lakhs showing the liabilities and his cash office Patna GPO was sending money accordingly but no charge memo has been issued on that against concerned employee in Patna office. Again on that date 17.06.2005, he sent Rs. 15,000/- to Kachi Dargah E.D.B.O. where line limit in the memo of authorized balance is Rs. 10,000/-. If the same was permissible, how could action of sending the remittance of Rs. 20,000/- to DG Tola B.O. be held wrong when BOs were authorized to draw maximum amount that may

Adju

be drawn during a month. Furthermore, negligence and carelessness alleged against the applicant in the charge sheet do not amount to misconduct as has been held by the Hon'ble Courts including the Hon'ble Supreme Court in a catena of cases. The instructions of the department relating to "Manner in which charge sheet to be framed" as contained in Annexure A/7 clearly stipulate as follows:-

" It should be clearly understood by all the disciplinary authorities that while an official can be punished for good and sufficient reasons, the penalty of recovery can be awarded only if the lapses on his part have either led to the commission of fraud or misappropriation or frustrated the enquiries as a result of which it has not been possible to locate the real culprit."

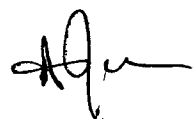
8 The learned counsel for the applicant submitted that none of these apply in instant case. It can not be said that loot was caused due to actions/omissions on the part of the applicant. Moreover, the allegation that the intention of the applicant was not to follow the line limit is also baseless as no such order prescribing line limit was shown to the applicant, nor supplied when he asked for it. On the other hand, as stated earlier, the applicant was fully authorized to remit maximum amount that may be drawn during the month. All these points were raised by the applicant in his detailed representations to the then disciplinary and the appellate authorities but they passed the impugned order without considering the points raised by the applicant. He, therefore, pleaded for quashing the impugned orders and refund of sums, if any, recovered on the basis of the impugned order.

9 The learned counsel for the respondents submitted that the ground of non supply of relevant documents taken by the applicant is

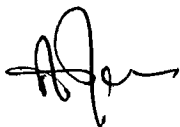


baseless. Out of the six documents requested by the applicant in his letter dated 08.11.2005 the document at Sl. 1 and 6 are related to rules, instructions and duty order which were available at Fatuha PO and were well within the knowledge of the applicant. As SPM, he was supposed to know his duty and the rules and procedure related to his function. Moreover, while dealing with work of cash and remittances to BOs, he is certainly expected to know relevant rules and orders. Ignorance of rules is not a tenable plea. As regards the documents at Sl. 2 and 5, it was stated by the learned counsel for the respondents that on the basis of the liabilities of the BOs, they send requisitions for funds which were very much available at Fatuha PO and known to the applicant. Again the report of his superior who took statement of Shri Surendra Prasad has no relevance at all as the statement of Shri Prasad was shown to the applicant. The ground indicated by the applicant that it was the duty of his superior officer also to ensure his integrity and devotion to duty is also a baseless argument. The said report has nowhere been used in substantiating the charge against the applicant. The remaining two documents were shown to the applicant as has been admitted by him. The learned counsel for the respondents therefore, submitted that the plea of non supply of documents, taken by the applicant is only to misguide the Tribunal and there has been no denial of natural justice to him on this count.

10 It was further submitted by the learned counsel for the respondents that this was not a case of simple negligence and carelessness. The instructions relating to remittance of funds through bag were being violated by the applicant intentionally in spite of full knowledge of such

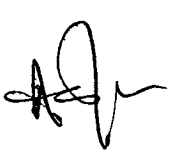


instructions. In his representation to the appellate authority, the applicant has himself admitted that on the same date, he also remitted Rs. 15,000/- to Kachi Dargah when the line limit of the said BO is Rs. 10,000/-. This clearly shows that he was conversant with the rules but not following the same. Thus it was not an inadvertent act of negligence or carelessness but with full knowledge of rules and instructions which is nothing but willful violation of instructions. He further submitted that the argument that maximum amount was authorized to be drawn by BOs as per Annexure A/4 is also baseless. Annexure A/4 relate to Fatwa LSG (PT. GPO) and not the DG Tola BO. Moreover, entries at Sl. (a) and (b) in the said order related to name of the office or offices from which funds may be obtained or surplus cash should be remitted and for sub offices that are supplied with funds by cash office. It also stipulates , " the maximum amount drawn during the month from the cash office i.e. without reference to HO is Rs ." Though no amount has been mentioned after Rs. , this does not imply that BOs have been authorized to draw maximum amount. There is a further entry below this which prescribes system under which remittance are to be exchanged against which entry 10,000/- is made. In any case this relates to Fatuha PO and not DG Tola BO. The learned counsel for the respondents further submitted that authorized cash balances, authorized stamp balance, system under which remittance are to be exchanged etc. have been laid down for all POs, BOs etc. in which entry against DG Tola BO in the relevant column of system under which remittances are to be exchanged without referring to HO, commonly called line limit, is Rs. 5,000/-. Thus, through bags, amount more than Rs. 5,000/- was not authorized to be remitted. In case of higher



amounts required to be remitted for bonafide reasons, matter should have been taken up with HO and required arrangement for remittance were to be made. A copy of the relevant extracts of documents prescribing such limits effective from 31.12.2002 was also produced by the learned counsel for the respondents.

11 Refuting the argument that any action or omission of the applicant did not cause loss to the department ^{to} ~~loot~~ and the sole responsibility lies with the EDMC who was carrying the bags, the learned counsel submitted that it was not the question whether the applicant was in any way connected with the loot. The fact is that his non compliance with the instructions relating to line limit in respect of DG Tola BO resulted in loss of Rs. 20,000/- to the Government. Rule 11(iii) of the CCS(CCA) Rules, 1965 clearly prescribes "recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders" as a penalty. This can certainly be imposed on a government servant for good and sufficient reasons. Even the instructions as contained in Annexure A/7 quoted by the applicant clarify that the penalty of recovery can be imposed if it is established that the lapse has resulted in the loss to the Government. The part of instructions quoted by the learned counsel for the applicant relates only to the fraud. In the instant case, the nexus between the loss caused due to loot and not following the instructions is clearly there. The learned counsel for the respondents, therefore, argued that the order of disciplinary and appellate authority are quite justified and there has been no irregularity or illegality in imposing the penalty on the applicant.

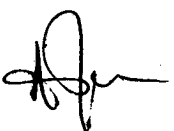


12 We have perused the records and considered the rival submissions made by the parties.

13 At the outset, we note that the instant case being a case of minor penalty under Rule 16 of CCS(CCA)/Rules, 1965, there was no recruitment of appointing an E.O. and holding a detailed enquiry. We also note that even before serving the memorandum of charges a notice was given to the applicant as admitted by him in the OA and the applicant replied thereto.

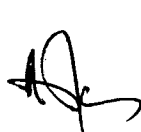
14 As regards the plea of non supply of the documents, we are inclined to agree with the learned counsel for the respondents that the applicant was expected to know the rules and instructions as well as duty roster of SPM and plea of ignorance there of is not tenable. As regards other documents also, we are inclined to agree with the submission made by the learned counsel for the respondents. We are of the opinion that there has been no denial of natural justice on this count.

15 The plea of the applicant that the BOs were authorized to draw maximum amounts based on entries in Annexure A/4 is also not considered tenable as the said entries at Sub Para (a) & (b) are for Fatuha P.O. and they do not relate to sending remittance through bag. We are also not convinced of the argument of the applicant that no instruction on the line limit were supplied or shown to him. Being responsible for handling the work of remittance, it was his duty to know relevant rules and instructions. The very fact that in his appeal petition, he made a statement that he remitted Rs. 15,000/- to Kachi Dargah B.O. beyond the line limit of Rs. 10,000/- indicates that he was aware of the system of sending remittance and related



instructions. We are, therefore, inclined to agree with the respondents that the applicant had knowledge about the line limit and even then he did not follow the same in sending remittance to DG Tola B.O. which amounts to intentional violation of instructions and thus, the said negligence or carelessness on the part of the applicant falls within the scope of misconduct. The plea that even Patna H.O. was sending amounts more than prescribed line limits or he remitted amount more than the line limit to another B.O. on the same date can not justify the violation of instruction on his part. Furthermore, though we note that the fact that the applicant did not send remittances to Bos when they were showing liabilities and had requisitioned for funds has not been clearly substantiated either in the order of disciplinary authority/appellate authority or in the W.S., this does not again justify non following of the prescribed instructions relating to sending remittances through bag.

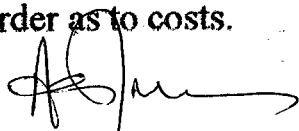
16 We are, however, of the view that the negligence/careless in not following the instructions by the applicant can not ^{be} said to be cause of loot nor there is any allegation of connivance of the applicant with the loot. But we are in agreement with the respondents that there is some nexus between the loss caused to the government due to loot and the said negligence in not following the instructions by the applicant. Had the applicant followed the line limit, the loss would have been restricted to Rs. 5,000.00 only. By this reasoning, the applicant can certainly not be held responsible for the loss of entire amount of Rs. 20,000.00. At best, it could ^{be} ~~have been~~ ^{be} a case of loss of Rs. 15,000.00 due to not following the instructions ~~by the Government~~.
Again, the loot took place from the custody of GDSCMC and his acts or

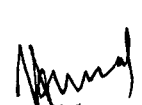


omissions are also quite relevant to decide as to how much loss is to apportioned on account of the violation of instructions by the applicant.

17 In view of the foregoing discussion and the facts and circumstances of the case, we hereby remit the matter back to the appellate authority namely ^{Director} ~~D.G.~~ Postal Services, ^{Patna} ~~Northern Region~~, Muzaffarpur for reconsidering the case on the issue of quantum of punishment with direction to pass a reasoned and speaking order in the matter keeping in view the observation made in this order, especially in para 16 above, within a period of three months from the date of receipt/production of a certified copy of this order. The applicant is directed to submit a certified copy of this order to the ^{Director} ~~D.G.~~ Postal Service, ^{Patna} within a period of fifteen days from the date of receipt of certified copy of this order. The OA is disposed of accordingly,

No order as to costs.


[Akhil Kumar Jain]
Member (A)
pkl/


[Anwar Ahmad]
Member (J)