CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 537/96, 1063/96 & 759/97

Date of Decision : 4th March 2002

A.W.Gaikwad — Applicant

Shri S.P.Kulkarni — Advocate for the Applicant.

VERSUS

Union of India & Ors. — Respondents

Shri S.S.Karkera for Shri P.M.Pradhan — Advocate for the Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri Govindan S. Tampi, Member (A)

(i) To be referred to the reporter or not ? yes

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? no

(iii) Library yes

(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.537/96, 1063/96 & 759/97

Dated this the 4th day of March 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri Govindan S. Tampi, Member (A)

1. Anantrao Waman Gaikwad (Applicant in OA.537/96)
2. Ratnakar Bapu Deobhankar (- do - 1063/96)
3. N.M.Shaikh (- do - 759/97)

Assistant Postmaster/
Postal Assistant,
Dhule Head Post Office,
Dhule-424 001. ...Applicants

By Advocate Shri S.P.Kulkarni

vs.

Union of India through

1. Senior Superintendent of Post Offices, Dhule Postal Division, Dhule - 424 001.

2. Director of Postal Services, Aurangabad Region, Aurangabad - 431 002.

3. Member (Post), Office of the Director General (Posts), Department of Posts, Dak Bhawan, Ministry of Communication, Sansad Marg, New Delhi. ...Respondents

By Advocate Shri S.S.Karkera
for Shri P.M.Pradhan

..2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

OA.NO.537/96

The applicant was working as Deputy Postmaster, Dhule H.P.O. during 30.3.1993 to 17.4.1994. On 6.10.1993 he was not on duty being on casual leave. On 6.10.1993 the treasurer of Dhule H.P.O. Shri H.M.Shaikh at about 10.00 a.m. at the opening of the counters (Applicant in OA.No.759/97) advanced cash of Rs.50,500/as per demand from Shri D.V.Marathe R.D. Counter Postal Assistant without taking aquittance in token of having handed over cash of Rs.50,500/- to R.D.Counter P.A. and amount being written in words and figures as required by Rules. The initials of Assistant Post Master were also not obtained in token of authorisation of advancement of specific cash. Shri D.V.Marathe after obtaining cash advance of Rs.50,500/- immediately found that the entire cash was missing from his custody - a case of 'theft'. He informed the Deputy Postmaster who in turn reported the matter to higher authorities. The police was also informed and a case of theft was registered. D.V.Marathe R.D.counter P.A. from whose custody the cash was stolen along with one another were arrested. After investigation the chargesheet has been filed in the Court.

2. The Respondent No.1 Senior Superintendent of Post Offices, Dhule issued charge memo under Rule 16 of CCS (CCA) Rules,1965 on 1.6.1994 to the applicant for the below mentioned charges :-

..3/-

"(i) (a) Failed to maintain devotion to duty in as much as showed negligence in enforcing the limit of Rs.10,000/- as per O.B.R.-para-3 recorded by Post Master General on 26.3.1993 and I.R.Para-6 recorded by Senior Supdt. of Post Offices, in June,93 read with office Note dated 30.3.1993 by Senior Postmaster, Dhule. This resulted in advancing cash of huge quantity daily.

(b) On 6.10.1993 a huge amount of Rs.50,500/was given to the Treasurer to Shri Marathe R.D.Counter P.A. from whose custody it was then lost.

(ii) Failed to sign the Treasury Cash Book below closing balance from 13.9.1993 to 5.10.1993 in violation of Rule-36 F.H.B. Volume-II.

(iii) Failed to place his initials in T.C.B. from 21.7.1993 to 5.10.1993 (authorisation of payment) against any of the entries of sums paid by the Treasurer, before giving cash to officials and thus violated Rule 66(33) read with instructions contained in Rule 31 to 38 of F.H.B. Volume-II."

3. It appears that the practice of advancing cash at the counter opening hours was irregular. The Inspecting authorities however did not object to it but were critical about non removal of surplus collections periodically while the former is not regulated by any set of instruction.

4. The applicant's grievance is that one Shri Japsare, A.P.M. was proceeded against and recovery of Rs.10,000/- was imposed which is reduced to Rs.1,000/- in appeal while applicant's appeal for imposition of penalty of Rs.10,000/- is rejected.

..4/-

The advancing of cash without any limit at the opening of counter for payment in respect of N.S.C., Savings Account etc. are not covered by any Rules. Advancing of cash at the opening of the counter is usual practice.

Shri Deobhankar, Assistant Postmaster was on duty on 6.10.1993.

The appellate order is arbitrary, violative of principles of natural justice as personal hearing asked for is not provided taking the stand that it is allowed in Major Penalty cases - Shri Rathi is not punished who was working on the fateful day as Deputy Postmaster.

OA.NO.1063/96

5. The applicant was working as Assistant Postmaster, R.D. Dhule Head Post Office from 29.6.1993 to 6.10.1993 and was assigned supervision over R.D. section of the said Dhule Head Post Office. The Senior Superintendent of Post Offices, Dhule issued charge memo on 9.6.1994 to the applicant under Rule 16 of CCS (CCA) Rules,1965 alleging misconduct as under :-

> "(i) Allowed free admittance of strangers/ unauthorised person inside the Post Office especially Head Post Office, R.D. Section.
>
> (ii) On 6.10.1993 also he admitted one such outside and unauthorised person namely, Shri Sahebrao Patil inside R.D. Counter.

..5/-

(iii) On any day, did not check the amount of advance taken by Head Office, R.D.Counter P.A. to satisfy himself that the amount so advance is actually needed for payment at the very start of the counter. On 6.10.1993 also he failed to carry out check on the above lines. He thus allowed to pass huge amount without justification from treasury and thereby created risk to Government money. The amount of Rs.50,500/-(Rs. Fifty Thousand Five Hundred only) advanced to R.D.Counter on 6.10.1993 was lost and as such applicant exhibited lack of supervision and negligence to duties resulting in loss of Rs.50,500/-.

(iv) Applicant failed to object passing of R.D.withdrawal of Rs.6002.25 from R.D.Account No.609573 by Shri J.N.Bhandari, Postal Assistant on 1.9.1993 instead of Shri A.S.Shimpi, Head Post Office R.D.Postal Assistant (who was supposed to do it as per duty assigned to him) but on the contrary issued Pay Order.

(v) Due to (i) to (iv) above applicant is charged of violation of Rule-653(i) of Postal Manual Volume-II as also (failure to maintain devotion to duty) Rule 3(1)(ii) of C.C.S.(Conduct Rules,1964."

6. The applicant denied the allegations vide his defence letter dated 27.6.1994. The Senior Superintendent of Post Offices, Dhule inflicted punishment of recovery of Rs.10,000/- from pay of the applicant vide order dated 4.8.1994. The applicant preferred the appeal dated 17.9.1994 which is rejected vide order dated 23.2.1996.

7. The grievance of the applicant is that there was a theft of cash amounting to Rs.50,500/- after it's receipt by the Postal Assistant (Recurring Deposit Counter) - Shri D.V.Marathe on 6.10.1993 at Dhule Head Post Office at 10.10 hours which is admitted by Shri D.V.Marathe as either being lost or stolen from his custody. Shri R.B.Deobhankar, who was working as Assistant

..6/-

Post Master (Counters) violated order - passed in order Book March 1993 by advancing more cash than Rs.10,000/-, failure to check and prohibit entry of strangers inside the Post Office working hall also contributed to theft/loss of Rs.50,500/- for which Shri Deobhankar was responsible, entry of Shri Sahebrao Patil, Peon, Nagarpalika, Dhule was unauthorised, the rules in F.H.B. enjoin upon Post Master, Assistant Post master to authorise drawal of cash from Treasury were not followed. The detailed enquiry was asked, which was denied. The appellate authority did not provide personal hearing even when the request was made in this respect in appeal memo, there is no close proximity or direct nexus between the theft/loss of cash from counter and failure to limit the cash advance. The order Book entry of March,1993 was not shown to the applicant and got noted from him. He was not aware of it. Shri Japsare another Assistant Post Master who noted the same, continued to violate it was punished with recovery of Rs.10,000/- which is modified in appeal to Rs.1,000/- only. The punishment awarded is contrary to Rule 107 & 108 of Postal Office Manual Volume III. As such subject case is of non-application of mind and discrimination in awarding punishment. The penalty is disproportionate to the alleged misconduct. Hence, this OA to quash and set aside punishment order Exhibit A-2, Appeallate order Exhibit A -1 and Charge memo Exhibit A -3 with the direction to the respondents to give personal hearing to the applicant.

..7/-

OA.NO.759/97

8. The applicant was served with the charge memo dated 4.8.1994 under Rule 16 of the CCS (CCA) Rules, 1965 - the imputation were as under :-

> "(i) He did not enter amount handed over to Shri D.V.Marathe in words.
>
> (ii) He did not initial the entry.
>
> (iii) He did not take the receipt also in words from Shri Marathe.
>
> (iv) He did not obtain initials of the Deputy Postmaster in token of authorisation.
>
> (v) Allowed huge amount to pass out of Treasury, creating risk to Government money.
>
> (vi) The above negligence resulted in the loss of huge amount of Rs.50,500/- violation of Rule 32,33 and 38 of Volume_II read with Rule 3(1)(ii) of C.C.S.(Conduct) Rules,1964."

9. The applicant submitted the reply to the same admitting the charges mentioned in para (i) to (iii) but denying the allegations levelled in para (iv) to (vi) . The Respondent No.1 inflicted punishment of recovery of Rs.10,000/- vide memo dated 4.8.1994. An appeal was preferred against the said order to the D.P.S. Aurangabad on several grounds along with personal hearing which was rejected without providing personal hearing vide order dated 12.1.1996. The applicant preferred Revision to the Member (P) on 24.4.1996 raising the grounds which were raised in appeal which is also rejected vide order dated 7.1.1997.

..8/-

10. The grievance of the applicant is that there is no nexus between or direct proximity of lapses with loss of cash. The applicant is not directly or remotely connected with it. It is a simple case of theft. As such a case of no evidence and punishment other than recovery of loss is warranted. Shri Rathi - the Deputy Postmaster, who can be said to have failed to check entry of stranger inside post office is allowed to remain unanswerable. The personal hearing was not given. The order passed by the Appellate Authority as well as Revisional Authority are arbitrary, not reasoned one and without application of mind. Hence this OA to quash and set aside order of punishment, appellate order revisional order dated 4.8.1994, 12.1.1996 and 7.1.1997 respectively, charge memo dated 1.6.1999 with the direction to refund Rs. 10,000/- with interest @ 12% p.a. alongwith costs.

11. One of the grievance of all the applicants in OA 537/96, 1063/96 and 759/97 is that though they claimed personal hearing before Appellate Authority, but the Appellate Authority failed to provide personal hearing. The applicants have requested for personal hearing in their appeal memos.

12. In AIR 1986 SC 1173 Ram Chander V/s Union of India and others the Apex Court has stated as under:

> "It is of utmost importance after the Forty Second Amendment as interpreted by the majority in Tulsiram Patel's case { (1985)3 SCC 398} that the Appellate Authority must not only give a hearing to the Government sersvsant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. Reasoned decisions by Tribunals, such as the Railway Board in the presents case, will promote public

..9/-

confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fairplay and justice also require that such a personal hearing should be given."

13. Perusal of the same makes it clear that the applicants are entitled to personal hearing in appeal if they have asked for. In all the three cases the applicants had asked for personal hearing and the Appellate Authority has failed to provide personal hearing. In such circumstances, the plea of the respondents that the personal hearing is confined only to major penalty chargesheet cannot be a valid ground for the reason that the provisions relating to decision/consideration of the appeal does not speak so.

14. In the result all the three OAs. are partly allowed. Impugned Appellate orders and Revisional order are quashed and set aside. The matter shall go to the Appellate Authority which shall provide personal hearing to the applicants and then shall decide the appeals by reasoned order dealing with the contentions raised by the applicants within a period of three months from the date of receipt of copy of the order. If any grievance still survives, the applicants are at liberty to agitate the same in accordance with law and rules. No order as to costs.

(Govindan S. Tampi)
Member (A)

(S.L.Jain)
Member (J)

mrj.