

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NOs. 992/1999

This 17th the th day of April, 2003.

T.A.Hadke Applicant
(Applicant by Shri S.P.Kulkarni, Advocate)

Versus

Union of India & Ors. .. Respondents
(Respondents by Shri V.S. Masurkar, Advocate)

CORAM:

HON'BLE Shri A.S.Sanghvi, Member (J)
HON'BLE Shri Shankar Prasad, Member (A)

(1) To be referred to the Reporter or not?
(2) Whether it needs to be circulated to other Benches of the Tribunal?
(3) Library.✓

Shankar Prasad
(Shankar Prasad)
Member (A)

sj*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the 17th day of April, 2003

Coram: Hon'ble Mr.A.S.Sanghvi - Member (A)
Hon'ble Mr.Shankar Prasad - Member (J)

O.A. 992 OF 1999

Triambak Amruta Hadke,
S/o Amruta Tukaram Hadke,
aged 43 years,
Postal Assistant (T.B.O.P.)
Gole Colony, P.O.Nasik.
R/o N-32/N-1/12/1,
Ganesh Chowk, CIDCO Colony,
Nasik.
(By Advocate Shri S.P.Kulkarni) - Applicant

Versus

1. Union of India
through Senior Superintendent of
Post Offices, Nasik Postal Division,
P.O.Nasik.
2. The Director of Postal Services
O/o Postmaster General,
Aurangabad Region,
Aurangabad.
3. Postmaster General,
Aurangabad Region,
P.O.Aurangabad.
(By Advocate Shri V.S.Masurkar) - Respondents

O R D E R

By Hon'ble Mr.Shankar Prasad - Member (A) -

The Applicant had been issued a minor penalty charge sheet. After consideration of his reply that the payment was made in terms of letter dated 7.1.1994 endorsed by Senior Superintendent of Post Offices letter No.L-1/33/Postal Agency/93-94 dated 22.2.1994 the disciplinary authority passed an order for the recovery of the amount. The appellate authority also rejected the said appeal. Hence the present OA for the declaration that this is a case of no evidence and for quashing of both these orders.

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2. The case of the applicant in brief is that he was working as Stamp Treasurer at Nashik Head Post Office during 1994 to 1996 and his duty included issue of stamps/stationery to Stamp Vendors and Licenced Postal Agents. One Shri Manohar T.Gadkari who is physically handicapped obtained a licence to work as Licenced Postal Agent. The Licence mentioned the rate of commission at 5% notwithstanding its downward revision by letter dated 20.2.1986. The Department of Posts issued a circular letter enhancing the commission of Stamp Vendors to 5% but this was endorsed through Licenced Postal Agent file and a copy marked to said licensee. This mistake was dictated in January, 1996. The responsibility for excess payment has been fixed on Stamp Treasurer and Supervisor only leaving the real offenders such as Postmaster (Head) Office, Assistant Divisional Office out.

The further case of the Applicant is that he had taken a specific stand in the appeal memo that the payment had been made after confirmation from the Office of Senior Superintendent of Post Offices. The excess payment could have been recovered from the licensee. Even there has been a discrimination in Postal Staff in matters of penalty. This is a case of no evidence.

3. The case of respondents in brief is that the licence was granted on 30.8.1986 and he was being paid commission in accordance with March, 1986 order. The Applicant misinterpreted the February, 1994 circular which has resulted in excess payment. This circular is in respect of Stamp Vendors and not Licenced Postal Agents. When the error was detected the Applicant was

asked to credit the proportionate share of excess amount paid. When this was not done the charge sheet was issued. The case of retired official Smt.K.S.Khandekar is distinguishable. Efforts to recover from the licensee have not been successful. The decision to recover from subsidiary offenders was not successful. The licence of said Shri Gadkari has also been terminated w.e.f. 7.3.1996.

4. We have heard the learned Lawyer on behalf of both the parties.

5. The Applicant has enclosed with the OA a copy of the report of the Assistant Superintendent of Post Offices, Nasik West Subdivision dated January, 1997. The said report makes very important observations that commission was paid by the employees at the spot without prior sanction of Postmaster and in total disregard of the procedure prescribed in para 12 of the Scheme. This further indicates that Commission at the rate of 3 % upto Rs.1,000 and 1.5% above, that amount was paid upto February, 1994. This further indicates that the brother of licensee, who works as HSA SA Nashik CSO also came to take stamps on some occasions.

The Senior Superintendent of Post Offices letter dated 30.9.1986 regarding the appointment of Shri MT.Gadkari indicates that commission will be payable as per para 11 to 14 of the instructions.

The February, 1986 Letter of DDG (PP) which was circulated in March, 1986 provided that existing Licencee Postal Agents should be asked to give their willingness to continue under revised rates and in case the same is not received the licence be terminated. It is expected from the above that licences issued after this date ought to have incorporated this condition. It is also evident from the preceding paragraph that commission was being paid at the rate of 3% upto Rs.1000 paid and 1.5% above Rs.1000.

7. A plain reading of the January, 1994 circular indicates that this is in respect of Licensed Stamp Vendors and not Licensed Postal Agents. Even the commission has been enhanced from 1 1/2% to 5%. It may be noted that earlier commission was 3% and 1 1/2% in case of Licensed Postal Agents. This itself should have raised a doubt. The Applicant had joined service in 1980 and has also been given a promotion under the Time Bound Promotion Scheme.

It has also to be noted in this connection that the CCS (Conduct) Rules were specifically amended in 1978 to provide that the Government servant shall be acting in his best judgment except when he is acting under the direction of his immediate superior. In the later case the instructions shall be in writing and in case of oral instructions the Government servant shall be entitled to have written confirmation.

There is nothing on record to indicate that such a doubt was raised or that in case of oral discussions a confirmation was sought for.

Department of Personnel & Administrative Reforms instructions quoted at page 370-371 of Swamy's Manual on Disciplinary Proceedings (Fifth Edition) provide -

The act or conduct of a servant may amount to misconduct -

- (a) if the neglect of the servant though isolated, tends to cause serious consequences;
- (b) Negligence or neglect of work or duty amounting to misconduct - Habitual negligence or neglect of work.

8. We have also taken note of Section 11 of C.C.S.(C.C.A.) Rules, 1965 which defines penalties. The relevant part of the said section is as follows:-

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-

- (iii) 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;

9. The first and foremost question for consideration is as to whether every act of negligence amounts to misconduct and as to whether every act of negligence can be penalised under Discipline & Appeal Rules.

10. The Apex Court in the case of State of Punjab Vs. Ram Singh Ex Constable, AIR 1992 SC 2188 has defined misconduct as follows:-

"Thus it could be seen that the word 'misconduct' though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and nature of duty. It may involve moral turpitude, it must be improper or wrongful behaviour, unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherin the term occurs regard being had to the scope of the statute and the public purpose it seeks to serve."

While considering the scope of All India Service Rules, the Apex Court in Union of India Vs. J.Ahmed, AIR 1979 SC 1022, held as follows:-

".....It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high....."

11. It would appear from the above that all acts of negligence may not amount to misconduct and, therefore, may not be punishable under the Discipline & Appeal Rules but certain acts of negligence amounts to misconduct and can be so punished.

12. The expression for good and sufficient reasons appearing in Tamil Nadu Police Subordinate Services (Discipline & Appeal)

Rules, 1955 came up for discussion before the Apex Court in the case of Secretary to Government Vs. A.C.J.Britto, AIR 1997 SC 1393 and their Lordships held as follows:-

".....The Rules applicable in this case do not specify acts of misconduct for which a delinquent officer can be punished. Rule 2 empowers the competent authorities to impose upon members of service penalties specified thereein for good and sufficient reasons. Therefore, the decision of this Court in A.I.Kalra's case (AIR 1984 SC 1361) (supra) is clearly distinguishable holding that there was no justification to indicate disciplinary proceedings against the respondents, the Tribunal ought to have considered whether there was good and sufficient reason for inviting such proceedings against him. It was not justified in taking that view on the ground that such an act of delinquency has not been specified in the rules as misconduct."

13. The Apex Court in the case of State Bank of India and another Vs. T.J.Paul, AIR 1999 SC 1994 was considering the scope of gross misconduct under Conduct Rules applicable to the State Bank employees and in that context observed as follows:-

".....In other words likelihood of serious loss coupled with negligence is sufficient to bring the case within gross misconduct. The Inquiry Officer's finding of 'gross misconduct' on the ground of not obtaining adequate security is, therefore, correct and cannot be said to be based on no evidence as held by the High Court. This can be contrasted with para 22 (vi) (o) under minor misconduct which deals with 'neglect of work and negligence in performing of duties.' In our view, the contention of the learned senior counsel for the appellants Sri T.R.Andhyarujina is, therefore, entitled to be accepted.

16. The contention of the learned senior counsel for the respondent ignores the fact that 'gross negligence or negligence likely to involve the Bank in serious loss' would come under major misconduct within para 22 (iv) (1). As stated above, even assuming that there is no gross negligence, simple negligence will come under major misconduct if accompanied by 'likelihood' of serious loss and this is clear from para 22 (iv) (1). Hence the finding of the Inquiry Officer regarding gross misconduct is correct and could not have been set aside by the High Court....."

14. The first ground which has been taken up in this OA is that as per the agreement signed by the concerned Licencee Postal Agent, a commission at the rate of 5% was paid. We have noted in para 5 above that as per rules and instructions on the subject, the said clause ought to have been modified and further that notwithstanding the existence of such clause the concerned LPA was being paid at the rate of 3% and 1 1/2% till February, 1994. It is only thereafter that commission has been paid at the rate of 5% in pursuance of the said instructions of February, 1994. In view of this the argument that such payment was warranted because of the agreement, cannot be accepted.

15. As has been indicated in Para 7 above, the Department of Posts had two schemes namely for Stamp Vendors, and for Licence Postal Agent. The said instructions clearly provided for enhancement of the commission of Stamp Vendors and therefore had no connection with Licencee Postal Agent. It also appears from record that the said instructions of January, 1994 has been forwarded to subordinate formations by two letters of even memo no.viz. letter of February, 1995 to Senior Post Master and Post Master HSG-I and Sub Postmasters and vide letter dated February, 1994 to Senior Postmaster, Postmaster HSG-I together with Sub Postmaster Golay Colony and the licensee Gadkari. The question therefore arises as to whether this letter should have been treated as sufficient authority for making payment to the said Licencee as the letter has been issued from the Postal Agency Section and not from Stamp Vendor Section. As indicated in Para 7 above, the plain reading of the said circular shows that the said is applicable to Stamp Vendors only, reference is to the

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earlier letter of 1983 on the subject, and the commission has also been increased from 1 1/2% to 5%. Therefore this was fit case where an experienced hand like the applicant should have had some doubt. The Applicant has tried to get over this by stating that he was acting under the instructions of his superior. As has been indicated in Para 7 above, the CCS (Conduct) Rules as has specifically been amended in 1978 to provide for written confirmation of oral orders of superiors. No document has been produced to support this contention that Written Confirmation had been sought for.

16. Another feature of the instant case is that the report of Assistant Superintendent of Post Offices shows that there was on the spot payment of commission contrary to the instructions on the subject. It is true that the said violation of procedure has not been specifically referred to in a minor penalty chargesheet but it is equally true that while furnishing his reply to the minor penalty chargesheet, the Applicant had taken the ground of instructions of February, 1994. It has been stated in the appeal Memorandum that notwithstanding the instruction it was being paid on the spot without prior approval of Senior Post Master. The Senior Post Master was signing the main cash book in token or having checked. Why not SSPOs Nashik who inspected the Offices or Asstt. Supdts who were receiving the schedule. It is only in reply that it has been argued that the A.P.M. Treasury, Smt. Khandekar had got the matter clarified from headquarters.

17. Yet another point which has been taken by the Applicant is that disproportionate penalty has been imposed on him. It has

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been contended that the real culprit i.e. Postmaster, Head Office, Assistant Divisional Officer who were responsible so called excess payment have not been made responsible. As has been indicated above, the Assistant Superintendent of Post Offices in his report, which was produced by the Applicant himself has found that the payment of commission has been made on the spot in total disregard of the standing instructions. The applicant too, has stated that on the spot payment was continuing since long. The applicant has been changing his stand frequently. His first stand should be accepted. New grounds cannot be raised in O.A.

18. The Applicant has also tried to draw a parallel with the case of Smt.K.K.Kandekar in whose case an injunction has been granted by the Civil Court. It appears from a plain reading of the said order that no disciplinary proceedings had been initiated against the said person who had sought voluntary retirement and further that the Applicant had furnished a Bank guarantee for release of the said amount. Thus the said case is clearly distinguishable.

19. The report of Asst.Supt. of Post Offices referred in para 5 above, also indicates that the agreement was showing commission at the rate of 5%. It states that Senior Post Master, Nashik Head Office had also misinterpreted the circular. It further quotes the statement of applicant that no objection on monthly payment of Commission was received from SSPO, Nashik nor from Directorate of Postal Accounts, Nagpur. Senior Supdt. of

Post Offices who is the disciplinary authority, has however, not taken into account if other persons were also responsible or there has been supervisory failure. Another feature is that the brother of licensee was an employee of the postal department and was sometimes coming to receive stamps also.

20. While we agree that the negligence of the applicant has contributed to the department suffering a loss, we are of the view that recovery should also have been effected from other responsible persons or from those who are charged with supervisory failure. We, therefore, set aside the order of Disciplinary and Appellate Authority on quantum of recovery and remand the matter to Disciplinary Authority for passing an order on quantum of money to be recovered in light of our discussions. The O.A. accordingly partly succeeds. No costs.

Shankar Prasad
(Shankar Prasad)
Member (A)

A. S. Sanghvi
(A.S. Sanghvi)
Member (J)

mf/sj