

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI
ORIGINAL APPLICATION NO.768/2001

Date of Decision: 31.05.2002

Shri S.R. Oval.

Applicant(s)

Shri S.P. Kulkarni.

Advocate for applicants

Versus

Union of India & others

Respondents

Shri Ms. H.P. Shah.

Advocate for Respondents

CORAM: HON'BLE SHRI BIRENDRA DIKSHIT. VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. .. 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 ✓

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 768/2001

THIS THE 31st ~~THE~~ DAY OF MAY, 2002

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

Shri Subhash Ramchandra Oval,
Son of Shri Ramachandra Oval,
Age 56 years, working as
Sorting Postman, Pune City HO,
Pune.

.. Applicant

By Advocate Shri S.P. Kulkarni.

Versus

1. Union of India through
Senior Postmaster (Ga3) H.O.,
At P.O. Pune-411 002.
2. Director of Postal Services,
Pune Region,
Office of Postmaster General,
Pune Region,
At. P.O. Pune-411 001.

... Respondents

By Advocate Smt. H.P. Shah.

O R D E R

[Smt. Shanta Shastri, Member (A)]:

By this O.A. the applicant is seeking to quash and set aside the appellate order dated 20.10.2000, the order of the Disciplinary Authority dated 29.3.2000 as also the Charge Memo, the applicant is also seeking a declaration that the imputation of charges relating to loss of cash bags is misdirected and has no nexus even indirectly or otherwise. He is also seeking a refund of the recoveries made so far and a cost of Rs.8,000/- to be awarded to him.

2. The applicant is working in the Postal Department as a Sorting Postman. Though he was officiating as a Sorting Postman in the Pune City Post Office he was drafted for the duty of Cash

...2.

Overseer. Some of the sealed cash bags were stolen from the Cash Van in the compound of the Pune City Head Post Office. According to the respondents, the applicant was responsible for the loss of these Cash Bags on account of his negligence. The respondents therefore proceeded against him under Rule 16 (1) (b) of CCS (CCA) Rules 1965. The Charge Memo was issued to him on 24.2.1998. There were two Articles of Charge. The gist of the charge is that on 29.7.1997 the applicant who was working as Cash Overseer at Pune City Head Office was entrusted the Cash Conveyance of eight Town Sub Offices through MMS Schedule No.11 having total cash conveyance of Rs.7,86,000/-. The applicant with mutual consent of Shri G.D. Pawar, another Cash Overseer of Cash Schedule No.12 and Drivers of Cash Van of both the Schedules unauthorisedly took the cash bags of 3 Sub Post Offices viz. (1) Model Colony (2) Nav Sahyadri & (3) Ex-Servicemen Colony and gave the cash bags of two Sub Offices viz. SP College P.O. and Swargate Chowk P.O. to the Cash Overseer of Schedule No.12. Due to this unauthorised exchange, the applicant was to convey cash bags of Sub Post Offices having total cash conveyance of Rs.5,51,000/- and Shri G.D. Pawar, Cash Overseer of Schedule No.12 was to convey cash bags of 5 Sub Post Offices having total cash conveyance of Rs.7,20,000/-. Shri G.D.Pawar kept the cash bags in his possession in the Driver's cabin of cash van of Schedule No.12 parked in the Pune City H.O. compound and went to the rear side of cash van leaving the cash bags unguarded. The cash bags were found to have been stolen thereby causing loss of Rs.7,20,000/- to the Department. Besides the applicant did not mention the names of the Sub Offices of which he received the cash bags and also did not note the weight of each cash bag in

...3.

h

the Treasurer's Cash Book, as required by Rules. The applicant was thus charged for alleged unauthorised exchange of conveyance of cash bags and contravening the provisions of Rule No.106 (1) of Postal Manual Vol. II (Part-III). It was also alleged that by showing gross negligence towards his duties he acted in a manner unbecoming of a Govt. Servant and thus contravened the provisions of Rule 3 (1) (ii) (iii) of CCS (Conduct) Rules 1964. The enquiry was held, the report was submitted by the Enquiry Officer holding both the charges as having been proved. The disciplinary authority after considering the enquiry report and the representation submitted by the applicant on the enquiry report held charges against applicant having been proved beyond doubt. He agreed with the findings of the enquiry authority and ordered that an amount of Rs.49,500/- be recovered from the pay of the applicant in 36 equal monthly instalments of Rs.3,075/each, starting from 1.4.2000.

3. The appellate authority also considered all the facts and found the action of the Disciplinary authority as being in order vide his order dated 20.10.2000.

4. The applicant finds the findings of the Enquiry Officer and the disciplinary authority as perverse. According to the applicant both the disciplinary authority as well as the appellate authority have simply agreed with the findings of the Enquiry Officer, have punished/rejected the appeal of the applicant without going into the main points raised by the applicant in the appeal. According to the applicant the case of loss of cash bags was a case of theft from the Cash Mail Van parked in the compound of Pune City Head Post Office and the procedural lapses in handing over the cash bags as per Schedules

...4.

M

(which were never operative) cannot be the cause of the loss. The learned counsel for the applicant submits that even Enquiry Officer while recording his findings has stated thus: "I also agree with the defence side that this charge has no link with the loss of cash bags from the custody of Shri G.D.Pawar. This was established practice of not giving the receipt in TCB by Cash Overseers. But the fact is that this is required to be entered as per Rule 23 (2) of P.O. Manual Vol. IV Part-III. The receipts granted by Shri Ovhal in Pune City H.O. T.C.B. dated 29.7.1997 for eight cash bags first and one cash bag in second instance does not indicate such entry in words and figures by Shri Ovhal in his own handwriting." No nexus is established even by remotest probability that the alleged non observance of schedule of Mail Motor Schedule resulted in loss of cash bags. The cash bags which were stolen had been duly received by Shri G.D.Pawar. The applicant cannot be held responsible for the loss. The findings of the Enquiry Officer are incongruous. While in one breath he admits that the records do not prove any predetermined act by exchange of cash bags of the Sub Post Offices by the applicant and Shri G.D. Pawar, in another breath he finds both the charges as proved only on the basis of deductive theories. The Cash Car Schedules were not available and even the Treasurer and the Assistant Post Master were themselves not aware of the existence of such Schedules. The enquiry officer in fact has recorded that the applicant is held guilty for loss of Govt. money contained in the cash bags stolen from the custody of Shri G.D. Pawar only on the premise that it is for the Disciplinary Authority to decide in respect of the charge though this lapse may not affect or contribute to the loss

...5.

A

to the Department. The applicant further submits that there is no evidence to hold Charge No.1 as proved inasmuch as S.P. College Post Office did not find its mention in any of the car Schedules i.e. 11 and/or 12. There is no clear picture which emerged regarding the goings on in respect of the observance of Schedules. The Enquiry Officer however, found fault with the applicant merely on the lapses not connected with the loss/theft. That the Schedules were not available has been admitted by the Treasury Officer Shri Hande as well as Assistant Post Master Shri D.W.Bhide. The Cash bags were simply made over as per the showing of the cash Overseers viz. the applicant and Shri G.D.Pawar as per their convenience.

5. The applicant while admitting that he did not note the weight of cash bags in the main T.C. B. submits that the lapse is of a purely technical nature. It has no nexus with the theft and loss of cash bags, and the failure attributed to the applicant in the article of charge and charge No.2, at the most can be held to be negligence in the maintenance of records and in following the proper procedure in receiving the cash bags from the Treasurer. According to the applicant the whole exercise is out of proportion and not a single act of lapse on the part of the applicant can come in the ambit of misconduct whereby loss was facilitated. It was a simple case of theft from the custody of Shri Pawar.

6. The Respondents submit that the charge that the applicant did exchange the cash bags and he did not enter the weight of the cash bags as required in the Treasury Register have been proved in the enquiry and the applicant is guilty of this. It is because of the exchange of bags done by mutual consent between

...6.



the applicant and Shri G.D. Pawar that the applicant is to be held responsible for the theft of the bags which but for the exchange would have been with the applicant as per the Schedule No.11. Therefore, the applicant has been rightly punished and recovery has been ordered justifiably. The order of the Disciplinary Authority has brought out in the order that the grave omission on the part of the applicant shows that he is most irresponsible and therefore, such grave lapses can be linked with the loss of Cash bags as the same cash bags have been lost. The Disciplinary Authority also held that though the applicant has mentioned so many lapses on the part of other officials, but by showing lapses on other's part the official cannot be absolved from the charges proved against him. According to the Disciplinary Authority the applicant did receive some cash bags from Schedule No.12.

7. The respondents also submit that the appellate authority has also passed detailed reasoned speaking order considering all the points raised in the appeal of the applicant. According to the appellate authority even the punishment imposed is rather lenient considering the gravity of lapses and huge monetary loss sustained by the Department due to dereliction of duty on the part of the applicant. The applicant has been imposed upon a penal recovery of only a small fraction of the total loss for which applicant was directly responsible.

8. The respondents, therefore, submit that the applicant has no case and no fault can be found with the orders of the Disciplinary authority as well as the appellate authority. They are well reasoned speaking orders.

9. We have heard the learned counsel for the applicant as well as the respondents. It is seen that the applicant and one

...7.

Shri G.D. Pawar exchanged the cash bags by mutual consent and conveyed/intimated the authorities concerned and took their permission. Though there was no malafides but as a matter of convenience the bags were exchanged this was also a practice followed generally, this lapse of exchange of bags has been linked to the theft of the cash bags which were actually in the possession of Shri G.D.Pawar and not of the applicant. It is also correct that the applicant did not enter the weight and names of the sub post offices for which the cash bags were taken by him. He merely recorded that he had taken possession of 8 bags. He claims that the bags which were lost of Sub Post Offices of S.P.College and Swargate Chowk were not part of the Schedule No.11, which was to be followed by the applicant. Since the Schedules were not ready merely by inference it cannot be said that the applicant is responsible for the loss of those bags. Shri G.D. Pawar also admitted in his statement that he had received those bags from the applicant. He has not denied that. Had things run smoothly in normal course such exchange of bags might have gone unnoticed altogether. It is only because of the theft that the situation got aggravated. It is true that the applicant cannot be absolved of the lapses on his part by pointing out the lapses in the official machinery. At the same time, since the Schedules were not ready and it has not been clearly established that the Cash Bags of Sub Post Office of S.P.College and Swargate Chowk, were included in Schedule No.11 and were taken by the applicant and handed over to Shri Pawar, it cannot be said that the applicant only is responsible for the loss of the cash bags. The loss of the cash bags cannot be linked with the exchange of bags. Even without the exchange of

...8.

the bags there could be a possibility of those bags being stolen. As rightly pointed out by the applicant there is no nexus. In our considered view at the most the applicant can be held guilty of unauthorised exchange of bags with Shri G.D.Pawar and of not entering the weight and names of Sub Stations in the Treasury Register as required by Rules. With these lapses, ordering of recovery of a huge amount from the applicant pertaining to the stolen cash bags does not appear to be reasonable. The applicant certainly needs to be punished for the lapses. But not for the loss on account of theft which occurred. It is not for us to assess the evidence, but it has come out in the Enquiry Report itself that there was no clear picture regarding the Schedules No.11 and 12, it is not established as to which were the bags which were taken by the applicant and exchanged with Shri Pawar, whether the Sub Post Offices of S.P.College and Swargate Chowk were part of the Schedule No.11 at all. Even the Enquiry Officer has clearly stated that there is no nexus between the exchange of bags between the applicant and Shri Pawar and the actual theft which took place. It is also not clear whether the applicant had taken the cash bag of S.P.College and Swargate Chowk from the Treasurer. The Treasurer himself seems to have handed over those bags under receipt to Shri Pawar and not to the applicant. We, therefore, hold that while the applicant is definitely liable for punishment for the unauthorised exchange of the bags, and for not recording the weight and names of the post office, the applicant cannot be held responsible for the loss that has occurred and therefore, the recovery ordered in that respect needs to be quashed and set aside. We accordingly, quash and set aside the impugned order dated 20.3.2000 of the Disciplinary Authority and

....9.

21.10.2000 of the Appellate Authority. The respondents shall not therefore, recover any amount from the applicant. In case recovery has already been made, the amount so recovered shall be refunded to the applicant within a period of one month from the date of receipt of a copy of this order.

10. It will however be open to respondents, to impose any other penalty as per Rules except for ordering of recovery towards the loss of Cash Bags on account of theft.

11. In the result, the O.A. is allowed. No costs.

Shanta f.

(Smt. Shanta Shastri)
Member (A)

B. Dikshit

(Birendra Dikshit)
Vice-Chairman

sj* /Gajan

31/5/2
Order/Judgement despatched
to Applicant, respondent (s)
on *24/6/02*
W