

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI**

ORIGINAL APPLICATION NO.756/97

WEDNESDAY, THE 19TH DAY OF SEPTEMBER, 2001

**CORAM: SHRI JUSTICE V.RAJAGOPALA REDDY.VICE CHAIRMAN
SMT. SHANTA SHASTRY. MEMBER (A)**

Govind Bheroomal Raghani,
Son of Bheroomal Raghani,
Age: Adult,
Working as Head Clerk, Foreign
Mails, Office of Controller,
Foreign Mails, Fort,
Mumbai-400 001.

... Applicant

By Advocate Shri S.P. Kulkarni.

Versus

1. Union of India, through
Member (Posts),
Office of Director General (Posts),
Department of Posts,
Ministry of Communications,
Government of India,
Sansad Marg, Dak Bhavan,
New Delhi-110 001.
2. Controller of Foreign Mails,
Department of Posts, Irwin House,
Ballard Estate, Fort,
Mumbai-400 038.
3. Assistant Controller, (O.M.)
Foreign Mails, Office of the
Controller of Foreign Mails,
Fort, Mumbai-400 038.

... Respondents

By Advocate Shri P.M. Pradhan.

O R D E R (ORAL)

Shri Justice V. Rajagopala Reddy, Vice Chairman (J)

The applicant, Shri G.B. Raghani, is a Head Clerk, on FMS section Foreign Posts Office, Bombay. A charge memo has been served upon him on 25.8.93 proposing to hold an enquiry under Rule 16 of the CCS (CCA) Rules on the following charge:

CA

"During the month of August, 91 Shri Govind Bheroomal Raghani was working as Head Clerk in F.M.O. Section of Foreign Post Office, Bombay-400 038. On 17.8.91 three international money orders detailed below were issued for payment. They were received from the Switzerland postal Administration. they were also allotted with Bombay Foreign Money order numbers as detailed below:

International No.	Bombay Fgn.No	Date of issue	Amount in US \$	Amount in Rupees	Payable to
27	1020	17.8.91	58.15	1472/-	Mr. Chelliah Ebenezer Prayer Hall, Cheenthalur 685502 Kerala
28	1021	17.8.91	150.00	3797/-	Mr. Saroj Kumar Ray, 203 Durganagar 700065 Calcutta
29.	1022	17.8.91	482.80	12220/-	Kupani Deepak, C/o Mr. Kamal Wadhwa, AE/18, Tagore Garden New Delhi-110 027.

while copying out the names and addresses of the payees from the money order cards on the money order forms, the money order cards were interchanged wrongly by the dealing assistant (copying clerk). This has resulted in advising money orders with incorrect M.O. numbers and amounts in favour of wrong payees as shown below:

International No	Bombay Fgn No	Date of issue	Amount	Name of payees to whom money orders u/r were wrongly issued & paid
27	1022	17.8.91	12220/-	Mr. S.Challiah, Cheenthalur-685502
28	1020	17.8.91	1472/-	Mr. Saroj Kumar Ray, Calcutta-700065
29.	1021	17.8.91	3797/-	Kupani Deepak, New Delhi-110 027.

3. From the details of the money orders received from the Switzerland Postal Administration as shown in para 1 and the details of the money orders actually issued for payment as shown in para 2 above, it is seen that excess and short payments have taken place as shown below:-

CM

Int.No.	B'bay Fgn.No	Date	Name & address	Amt. due to be paid in US\$	Amt. in Rs. 11y pd.	Amt. Rs.actua excess paid	Amt. short paid
27.	1022	17.8.91	Mr. Challiah Cheenthalur 645502	58.15	1472	12220	10748 --
28.	1020	17.8.91	Mr. Saroj Kumar Ray Calcutta 700065	150.00	3797	1472	-- 2325.00
29.	1021	17.8.91	Kupani Deepak, New Delhi, 110027.	482.80	12220	3797	-- 8423.00


From the above particulars it is seen that the payees at Sl.2 & 3 Shri Saroj Kumar Ray & Shri Kupani Deepak were paid short amount of Rs.2325/- and Rs.8423/- respectively. The pay at Sl.1, Shri S.Chelliah was paid excess amount of Rs.10748/-. The claims of the payees at Sl.2 & 3 had to be settled by issuing sanction orders for short paid amount, subsequently. Thus, Government had suffered loss of amount of Rs.10748/- (rupees Ten thousand seven hundred forty eight only)

Shri G.B. Raghani was working as Head Clerk, FMO Section on 17.8.91 on which date the above mentioned money orders were issued. The above mentioned money orders prepared by the dealing assistant (copying clerk) were further to be physically checked by the responsible officer and signed as an issuing Postmaster. The said Shri G.B. Raghani, while working as Head Clerk, FMO Section, Foreign Post Office, Bombay 400 038 had failed to physically check the above money orders as per the provision of Rule No.352 (1) (d) of Foreign Post Manual and thereby failed to maintain devotion to duty and violated the provision of Rule No.3(1)(i) of the CCS (Conduct) Rules 1964."



The applicant submitted his explanation on 15.12.93. The Disciplinary Authority, considering the said explanation and holding that the charge was proved, imposed the penalty of recovery of 50% of the loss amounting to Rs.5374/- (rupees five thousand three hundred seventy four only) from the monthly pay of the applicant in 10 monthly equal instalment of Rs.500/each and one instalment of Rs.374/- and recovery to commence from the month of January, 94, by its order dated 25.1.94. The applicant claimed the matter in appeal but was not successful. He preferred further revision which was also rejected, confirming the order of the Disciplinary Authority. Aggrieved by the above, the present OA is brought before this Tribunal.

2. The contention of othe learned counsel for the applicant is that the applicant was neither negligent nor guilty of an irregularity in the discharge of his duties. He was consistently discharging his responsibilities. The lapse alleged at best could be only due to heavy pressure of work on the particular day coupled with other attendant circumstances. it is therefore argued that as he was not the beneficiary of the money involved and as it was clearly found by the Disciplinary Authority that the lapse was done unintentionally, nevertheless penalising the applicant for no fault of his, would be contrary/ dechors the findings of the Disciplinary Authority and therefore arbitrary.



3. Heard the counsel for the applicant and respondents.

4. A perusal of the above charge memo shows that the payees under three money orders namely Mr. Chelliah, Shri Saroj Kumar Ray and Shri Kupani Deepak were paid Rs.12,220/-, 1472/- and 3797/respectively. In such payment, Shri Chelliah was paid excess of Rs. 10,748/- and Saroj Kumar and Deepak were short paid. Hence the payees had to be settled by sanction order for short amount and thus Government suffered loss. It is the case of the prosecution that the above money orders were prepared by the dealing assistant (copying clerk) who was posted in that section in the absence of regular clerk, he has committed mistake in the preparation of money orders and thereby the names and addresses of the payees on the money order cards were interchanged wrongly and that had resulted in in advising the money order with incorrect MO number in favour of wrong payees. The charge against the applicant was that being the supervisor, he failed to supervise the preparation of the money order by the copying clerk. Thus, it is not the case of the prosecution that the applicant had himself committed any mistake in the preparation of the money order. The charge relates to laxity in supervision.




5. In the explanation given by the applicant, he has clearly stated that as per the practice in vogue, he checked the money order and there was no irregularity noticed by him in any manner. He further stated that he was the lonely checking supervisor as the other supervisor was on leave and that due to heavy pressure of work, there might be a lapse in his supervision. He also stated that the extenuating circumstances such as shortage of staff and consequent pressure of work etc., should be taken into account as per Rule 101 of P & T Manual Volume III. It is also stated by him that it was not a proper practice to entrust the monetary transaction to a college student, who was the real culprit in this case and it was not possible not to have committed a single lapse in his supervision of the several M.Os prepared by the copying clerk.

6. The Disciplinary Authority in the impugned order, having noted the plea of the applicant that the lapse committed by the applicant was unintentional and might be due to heavy pressure of work, and noting in his conclusions that mistake occurred 'unintentionally unwrittingly and without self interest' of the charged official, nevertheless held that due to the lapses on the part of the applicant, the department had to suffer huge monetary loss and hence the applicant should not be let off without being penalised. It was also found that



as the applicant had failed to check the money order physically it had resulted in incorrect issue of the money order under his signature.

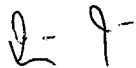
7. Two grounds were urged in this (1) the Disciplinary Authority ought to have held an enquiry and (2) it failed to consider whether due to heavy pressure of work and the other attending extenuating circumstances the lapse had occurred and hence no misconduct was established. We find force in this contention. Though the Disciplinary Authority has passed an elaborate order extracting the pleadings of the applicant, and discussing the material on record but in our opinion it had failed to consider the thrust of the applicant's case that he was not at all responsible for the lapse as the same was due to heavy pressure of work on two grounds, (1) another supervisor was absent (2) the monetary transaction in preparing the money order has been entrusted to a college student, in the absence of regular copying clerk. This aspect of the matter was not kept in mind by the Disciplinary Authority. it is also seen from the explanation of the applicant that on that day he had to see several money orders and had to check them in view of the absence of the regular copying clerk. Out of several money orders it appears that only three money orders there was excess/ short payment. Further, when the Disciplinary Authority itself had come to the conclusion that the mistake occurred was done unintentionally, and without



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any self interest, the Disciplinary Authority has mis directed itself in holding that the applicant was guilty, As contended by the learned counsel for the respondents, we are aware of our limited jurisdiction and it is not permissible for us to reappreciate the evidence on record and come to a different findings from that of Disciplinary Authority, as we do not possess appellate jurisdiction. But as discussed supra, we are of the view that due to the fact that it escaped the attention of othe Disciplinary Authority to focus its attention as to the core of the applicant's case and as we find that on the basis of the findings of the Disciplinary Authority itself no misconduct could be established against the applicant the impugned orders are liable to be quashed. We find that the impugned order came to be passed without considering the explanation given by the applicant, which had led in awarding the penalty to the applicant.

8. The Appellate Authority as well as the Revisional Authority have also not kept in mind the above aspect as regards the explanation of the applicant. With the result, the OA is allowed and the impugned orders are quashed. In the circumstances we do not order any costs.


(SMT. SHANTA SHASTRTY)
MEMBER (A)


(V. RAJAGOPALA REDDY)
VICE CHAIRMAN (J)