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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO. 603/91

DATE OF JUDGEMENT: 28-2-1994

Between

M.Narasimham .. Applicant

and

Union of India Represented by:

1. The Secretary to Government,
Department of Posts,
New Delhi
2. The Director of Postal Services,
O/o The Postmaster General
Hyderabad Region
Hyderabad
3. The Superintendent of Postoffices,
Mahaboobnagar .. Respondents

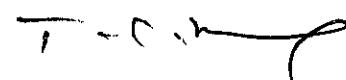
Counsel for the Applicant :: Mr KSR Anjaneyulu

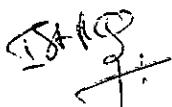
Counsel for the Respondents :: Mr NV Ramana, Addl.CGSC

CORAM:

HON'BLE SHRI A.B. GORTHI, MEMBER(ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)


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JUDGEMENT

(As per Hon'ble Shri T. Chandrasekhara Reddy, Member(J))

This is an application filed by the applicant herein under Section 19 of the Administrative Tribunals Act, to declare the order of the Superintendent of Post Offices, Mahaboobnagar (3rd respondent herein) dated 31.5.90 and that of the Director of Postal Services, Hyderabad (2nd respondent herein) letter dated 13.5.91 ordering recovery of Rs.17,800/- in 29 equal instalments at the rate of Rs.530/- per month as per Superintendent of Post Offices, Mahaboobnagar letter dated 20.5.91 ^{as} illegal and quash the same and also, further direct the respondents to refund the amount recovered from the applicant in pursuance of the above letters and to pass such other order or orders as may deem fit and proper in the circumstances of the case.

2. The facts so far necessary to adjudicate this OA in brief, may be stated as follows:

3. The applicant herein, while he was officiating as Postmaster, Mahaboobnagar Head office, one Sri K.Ramulu, who was working as Treasurer II under the control of the applicant, and who was assigned the duties of Recurring Deposit Counter Clerk, Mahaboobnagar Head Post Office committed Recurring Deposits/Time Deposits/National Savings Certificate frauds to the tune of Rs.1,50,023.25p. It is the case of the respondents that, ~~due to~~ the negligence of the applicant herein facilitated the said Ramulu, Treasurer II, to commit the said fraud upto Rs.,31,252/- out of the total amount of Rs.1,50,023.25p and that, the applicant was liable to make up the loss of the said amount of Rs.31,252/-. A minor penalty charge ^{dt 16-10-89} sheet under Rule 16 of CCS(CCA) Rules, 1965 was served on the applicant wherein the charges as against the applicant

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are as follows:

- i) that the applicant did not verify physically the stamps and stationery with Treasurer II Shri K. Ramulu ~~which~~ as envisaged in the provisions of Rule 30 and 66 of P&T Financial Hand Book Vol.II. This resulted in a shortage in the stamp balances of Mahaboob Nagar Head Post Office to the tune of Rs.9,555.75ps enabling the Treasurer II to show fictitious balances from 1.1.89 onwards during the period in which the applicant was officiating as Postmaster.
- ii) that the applicant failed to maintain long book personally, but allowed ~~the~~ Sri K.Ramulu Treasurer II RDCC to maintain the same in violation of Rule 482 of P&T Manual Vol.VI Part II as amended vide Director General's letter No.43-8/86/SB dtd.10.9.86. This resulted in commission of RD/TD/CTD frauds amounting to Rs.31,252/-.
- iii) that the applicant, as Head of the office, failed to ensure the prompt submission of National Savings Certificates returns for October.1988 to the Director of Accounts, (Postal) Hyderabad which resulted in commission of National Savings Certificate frauds by the RDCC Sri K.Ramulu to the tune of Rs.69,250/-.

4. The applicant submitted his written statement dated 16.2.90 in his defence to the Superintendent of Post Offices, Mahaboobnagar who is the Disciplinary Authority. The Disciplinary Authority, after going through the representation of the applicant dated 16.2.90, as per his orders dated 31.5.90, ordered a recovery of Rs.22,800/- from the applicant at the rate of Rs.633 p.m. in 35 instalments and Rs.645/- as the last instalment with immediate effect. The applicant preferred an appeal to the Appellate Authority i.e. Director of Postal Services, Hyderabad. The appellate authority, as per his orders dated 13.5.91, upheld ~~the~~ the application.

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applicant was negligent in discharging his duties and that the same facilitated the said Sri K.Ramulu to commit the said fraud. However, the appellate authority reduced the penalty of recovery from Rs.22,800/- to 17,800/- and ordered to recover the same (Rs 17,800) in 29 equal instalments after taking into consideration the long service which the applicant had put in the department and on humanitarian grounds. The present OA is filed questioning the said order of recovery of Rs.17,800/- in 29 instalments at the rate of Rs.530/- per month, out of the salary of the applicant.

5. Counter ~~x~~ is filed by the respondents opposing this OA.

6. We have heard Mr KSR Anjaneyulu, counsel for the applicant and Mr NV Ramana, Standing Counsel for the respondents.

7. For the fraud committed by the said Sri K Ramulu, a criminal case has been lodged in the competent criminal court. It is the contention of the applicant that absolutely there is no evidence to show that the applicant is responsible for the said loss ^{due to} ~~due to~~ his negligence and in view of this position, that the OA is liable to be allowed. We have perused the material before us, including the charge memos along with the imputations issued as against the applicant and his reply in defence to the said charge memo. The loss of Rs 9550.75 was ~~never~~ detected on 6.2.89 with regard to shortage of stamps. If the applicant had been vigilant and had been checking the stamp registers, it would not have been possible for the said Ramulu to cause

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the said loss of Rs.9550.75ps by mis-appropriating postage stamps and service stamps. But, no recovery as seen, had been ordered from the applicant as the said ^{Postage and Service Stamps} Ramulu had made good the entire loss of Rs.9550.75ps ~~andwards~~. But the fact remains that the applicant had been negligent in discharging his duties and in not ~~exist~~ exercising proper supervision with regard to the maintenance of Stamps Register. During the period, the applicant ^{Asst. (S.B.)} officiated as Postmaster, Mahaboobnagar Post Office, the applicant had also not supervised the long book with regard to the various deposits that are made ~~in~~ the post offices. It was the duty of the applicant to maintain the long book personally. Not only he has failed to maintain the long book personally but also by allowing the said Ramulu to maintain the long book, he had failed to exercise proper supervision with regard to its maintenance. So, in allowing the said Ramulu to maintain the long book, which is purely a negligent act of the applicant, or in not exercising proper supervision with regard to ^{like a postmaster} its maintenance, ^{the} ~~the~~ acts of the applicant had resulted in the said Ramulu committing ^{1/2} the fraud upto Rs.31,252/- with regard to the RD/TD/CTD deposits.

8. It was also the duty of the applicant to ensure proper submission of NSC returns. But the NSC returns for the month of October, 1988 had been submitted only in the month of Feb. 1989 which had facilitated the said Ramulu to commit fraud to the tune of Rs.69,250/-. Even though the loss has been due to the fraud played by the said Ramulu and the amount being heavy, the appellate authority has restricted the liability of the applicant only to Rs.17,800/- and had ordered the recovery of the amount

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as a penalty. From the perusal of the entire record, there cannot be any doubt about the fact that the charges as against the applicant had been amply proved. Even though it was open for the applicant to ask for issue of a charge sheet for major penalty under Rule 14 of the CCS(CCA) Rules to have a reasonable opportunity to participate in the inquiry, the applicant never asked the competent authority to issue a charge sheet under Rule 14 of CCS(CCA) Rules. CCS(CCA) Rules provide for the imposition of the following minor penalties.

- i) Censure
- ii) Withholding of promotion
- iii) Recovery from pay of the whole or part of any pecuniary loss caused to the Govt. by negligence or breach of orders
- iv) Withholding of increments on pay

It is needless to point out, Art. 311 of the Constitution does not apply to the imposition of minor penalties and only for imposition of major penalties and as such, it is also not open for the applicant to contend that he had been denied reasonable opportunity.

9- Recovery from the pay of the applicant as a whole or part to make up the pecuniary loss incurred by the Govt. is a sort of penalty. As already pointed out, recovery is treated as minor penalty. Conditions for imposing the penalty of recovery are-

- i) ~~that~~ the government should have suffered pecuniary loss and the said loss must have been due to the negligence or breach of orders by a Govt. servant
- ii) that the prescribed procedures had ~~not~~ been followed.

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As a general rule, every Govt. servant is bound to take due and proper care with regard to the official duties which he performs and ~~that he~~ guilty of negligence which has resulted in loss to Government is liable to ~~be~~ auction action and the loss so incurred by the Government is liable to be made good by the Govt. servant and the loss is liable to be recovered as a penalty. From the facts and circumstances of this case, there cannot be any doubt about the fact that the respondents have been put to loss due to the negligence of the applicant in the discharge of his duties. As already point out the applicant had failed in the discharge of his duties to verify stamps account with reference to stamps register which ~~an~~ act has got to be construed as negligence on the part of the applicant. The applicant, as already pointed out, had also failed to maintain long book or exercise supervision of the long book that was being maintained by the said Ramulu which action of the applicant had also facilitated the said Ramulu to commit fraud of RD/TD/CTD deposits. As already pointed out, the applicant had failed to submit NSC returns in time and that had also resulted in committing fraud by the said Ramulu. ~~So from the above, Negligence on the part of the applicant, is quite evident from the facts and circumstances of the case itself. It is not the case of the applicant that the said Ramulu had not committed fraud. But the case of the applicant is that he was never responsible for the fraud committed by the said Ramulu.~~ ~~No doubt,~~ the applicant might not be directly responsible for the fraud committed by the said Ramulu. But the acts of negligence of the applicant, as already pointed out, had very much

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fecilitated the said Ramulu to commit fraud. So, for the negligence of the applicant, the applicant has to suffer and we see no infirmity in theorder of the appellate authority for recovery of the said amount of Rs.17,800/- from the salary of the applicant at the rate of Rs.530/- in 29 equal instalments.

10. It is faintly contended on behalf of the applicant, that the applicant was on leave from 4.2.89 to 20.2.89. and as such, he cannot be made responsible for any loss. The applicant had worked In-charge of Mahaboobnagar Post office from May 1988 to 3.2.1989. It is only during this period that the alleged frauds have taken place. So, it is not open for the applicant in view of the facts and circumstances of the case that as he was on leave from 4.2.1989 to 20.2.1989 that he is liable to be absolved of charges that are framed against him. ~~The~~

11. The respondents had taken the stand that the applicant had been proceeded for his contributory negligence. In view of the stand of the respondents, it is contended by the applicant that there cannot be any act of contributory negligence on the part of the applicant and the same is against the cardinal principle of the theory of punishment. and hence, he cannot be made liable for the loss incurred by the department and that the entire loss is to be made good only by the said Ramulu. The word that the applicant is guilty of "contributory" negligence is used loosely. There is no "Contributory" negligence. But, the applicant had been guilty of negligence and we have also made the same clear in our order. Because of the loose "terminology" used with regard to the negligence of the applicant, it is not open for the applicant to take advantage of the same and try to make a point in his favour.

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11. It is vaguely contended that there was no justification in issuing of the charge memo dated 16.10.89, as there was no material to proceed as against the applicant under Rule 16 of CCS(CCA) Rules. There is ample material on record to show that there was every justification on the part of the respondents in issuing of charge memo under Rule 16 of ECS(CCA) Rules for the negligent action of the applicant and the loss which the department sustained.

12. The learned counsel for the applicant relied on a decision reported in ATLT 1988(2) CAT 495 Srinivas Rao Vs Director of Postal Services, Bangalore. The facts therein would go to show that the applicant therein (B.S.Srinivasa Rao) was held responsible for deriliction of duties on a date when he was not incharge of the postal stamps. Whereas, in this case as already pointed out in para 10, the alleged frauds have taken place only when the applicant had worked Incharge of Mahaboobnagar Postoffice i.e. from May 1988 to 03.02.1989. Hence, the above said decision is not applicable to the facts of this case. In this case, we are fully satisfied that the applicant had been guilty of negligence. The entire loss which the Department had sustained had not been compensated by the said Ramulu. The Department seems to have put the liability on the applicant only at an amount of Rs.17,800/- for the negligent act of the applicant to compensate the loss. The action of the ~~respondents~~ respondents, in the facts and circumstances of this case in imposing the penalty, is legal. This is a case

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where there is plenty of material to support the action of the respondents. So, we see no merits in this OA and hence, this OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.

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(T.CHANDRASEKHARA REDDY)
Member(Judl.)

A.B. GORTMI
Member(Admn)

Dated: 1 - 2 - 1994

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Deputy Registrar(J)CC.

To

1. The Secretary to Government, Dept.of Posts, u.c.I, New Delhi.
2. The Director of Postal Services, o/o the Postmaster General, Hyderabad Region, Hyderabad.
3. The Superintendent of Post Offices, Mahaboobnagar.
4. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT.Hyd.
5. One copy to Mr. N.v.Ramana, Addl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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*10th Sept
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