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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION No.784/91

DATE OF JUDGEMENT: 30. 1 1995

Between

R.L. Narasimham

.. Applicant

and

1. The Secretary,
Department of Posts,
Dak Bhavan, New Delhi.
 2. The Director Postal Services
O/o The Postmaster General
Hyderabad Region, Hyderabad.
 3. The Superintendent of Postoffices
Mahabubnagar Division
Mahabubnagar 509 001.
- .. Respondents

Counsel for the Applicant :: Mr S.D.Kulkarni

Counsel for the Respondents :: Mr NR Devraj, Sr.CGSC

Coram:

Hon'ble Shri A.V. Haridasan, Member(Judicial)

Hon'ble Shri A.B.Gorthi, Member(Admin)

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O.A.No.784/91

Dt.of Judgement: _____ 90

JUDGEMENT

[As per Hon'ble Shri AV Haridasan, Member(J)]

Shri RL Narasimham, working as Sub-Postmaster, T.D.G., Sub-Postoffice, Mehabubnagar, has in this application filed under Section 19 of the Administrative Tribunals Act, challenged the legality, propriety and correctness of the order dated 31.5.90, of the third respondent imposing on him the penalty of recovery of a sum of Rs.20,640² from his pay and allowances in a proceeding under Rule 16 of the CCS(CCA)Rules and the order dated 16.5.1990 of the second respondent in dismissing his appeal.

2. Facts in brief, are as follows:

The applicant, while working as Asst.Postmaster(SB), Mehabubnagar Head office, was served with a memorandum of charges under Rule 16 of the CCS(CCA)Rules, alleging that the department sustained an aggregate loss of Rs.1,16,877/- due to his non-observation of the departmental rules by the applicant while working as Asst.Postmaster (SB), Mehabubnagar Head office and that, he had failed to maintain devotion to duty and as required under Rule 3(i)(ii), had also failed to ensure integrity and devotion to duty. The statement of imputations of mis-conduct appended to the memorandum of charges contained the following:

- "1) authorised discharge of four NSCs of Rs.10,000/- denomination each bearing Nos.G1 015135 & G1 01536 to 138 on 23.12.88 and 31.12.88 respectively which were already discharged and paid the discharged value to the purchaser on 31.10.88 itself without properly checking the NSC discharge journal with the application and entries on the certificates of earlier discharge etc. as required under Rule 23 of PO SB Man.Vol.II which resulted in an aggregate loss of Rs.55,400/-.

- ii) failed to exercise the required checks while signing the NSC discharge journals prepared by Sri K.Ramulu, RDCC, Mahabubnagar HO for an ~~xxxxxx~~ aggregate amount of Rs.30,225.00 on 7.10.88 and to detect fictitious numbers of NSCs noted in the discharge journal as required under Rule 23(2) of PO SB Man.Vol.II.
- iii) failed to secure the discharged NSCs bearing Nos.G/1 015121 to G/1 015150 of Rs.10,000.00 denomination each which were encashed by the purchaser on 31.10.1988 and also NSC & journals concerned in his personal custody till the returns are sent to audit office as required under Rule 33(4) of PO SB Man,Vol.II.
- iv) failed to arrange submission of NSC returns for October, 1988 till 6.2.89 though the NSC returns for the subsequent months were duly despatched to the audit office as required under Rule 51 of PO SB Man.Vol.II.
- v) attested the RD PRSS list prepared by Sri K.Ramulu RDCC noting it as a copy of the special list dt.31.8.88 of Smt Pula Anusuya,MPRS Yogna Agent in respect of 10 year CTD accounts of date 31.12.88 without ascertaining the disposal of the original special list dtd.31.8.88 as required under Rule 7(ii)(a) of PO Small Savings Scheme Part-II(Vth Edition-1988 by KN Dureja) as amended vide DG Posts New Delhi lr.No.42-2/83-SB dt.9.11.83 and 12.2.85.

The department sustained an aggregate loss of Rs.1,16,877.00 due to non-observance of the departmental rules enumerated above. Thus, Sri RL Narasimham, while working as APM(SB) Mahabubnagar HO failed to maintain devotion to duty as required under Rule 3(1)(ii) and also failed to ensure the integrity and devotion to duty of government servants under his control as required by rule 3(2)(i) of CCS(Conduct)Rules, 1964."

statement of

In the earlier part of the imputations, it has been indicated that Shri K.Ramulu, Treasurer II and former RDCC, Mahabubnagar meddled with the discharge of NSCs kept in the custody of the applicant and had de-frauded the Government to the tune of Rs.1,50,023.25 and that the non-observance of the rules by the applicant and his negligence in keeping safe custody of the discharged NSCs, checking the relevant journals while authorising the payment, had ~~xxx~~ facilitated fraud being committed by Sri Ramulu. ~~xxx~~ The applicant in his explanation to the memorandum of charge, had inter-alia stated that the lapse on his part was owing to pressure

of work, that there was no facility for safe custody of the NSCs owing to ~~the~~ defect in the almirah and that as he was not directly responsible for the fraud committed by Sri K.Ramulu, he is not liable to be penalised. The third respondent on a consideration of the reply statement of the applicant to the memorandum of charges, ~~and~~ as also, the relevant material, held, that the applicant ^{was} guilty of the misconduct and imposed on him the penalty of recovery of Rs.20,640/- from his pay and allowances towards the loss sustained by the department in 35 instalments of Rs.585.00. Aggrieved by this order, the applicant preferred an appeal to the second respondent. The second respondent by his order dated 16.5.1990 considered the appeal and held that as the applicant was directly responsible for the loss, there was no justification for interference with the order of the third respondent and therefore, rejected the appeal. Aggrieved by these orders, the applicant has filed this application. The applicant has stated in the application that since Sri Ramulu has clearly admitted that the fraud was committed by him, and as the applicant could not have prevented the commission of the fraud by Sri Ramulu, in view of the provisions contained in Rule 106, 107 & 108 of the P&T Manual Vol.III, and in view of the ruling of the Madras Bench of this Tribunal in CN Harihara Nandan Vs Presidency Postmaster reported in (1988)8 ATC 673 the decision of the 2 and 3 respondent to ~~XXXX~~ recover from the pay and allowance of the applicant a huge sum of money of Rs.20,640/- is totally unjustified; therefore, the applicant prays that the impugned orders may be set aside.

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3. The respondents in their reply have contended that the loss to the Government could have been averted if the applicant had properly checked the records and verified the purchase applications when the payment on second time on the NSC which had already been discharged earlier was made, and that, therefore, since the loss was to the State which was caused due to the negligence of the applicant, there is no merit in the contention of the applicant that the respondents have gone wrong in imposing on him the penalty.

4. We have heard Sri Kulkarni, learned counsel for the applicant and Mr NR Devraj, for the respondents.

5. It is borne out from the pleadings and material on record that the applicant, had to discharge 4 NSCs value of Rs.10,000/- bearing nos.G/1 015135 & G/1 015136 to 138 on 23.12.88 and 31.12.88 respectively which had already been discharged and paid the discharge value to the purchaser on 31.10.88 itself without properly checking the NSC discharge journal with the application and entries on the certificates of earlier discharge etc., as required under Rule 23 of PO SB Man.Vol.II which resulted in an aggregate loss of Rs.55,400/-, and that, he had also failed to exercise the required checks while signing the NSC discharge journals prepared by Sri K.Ramlu, RDDC, Mahabubnagar HO, the person, who had mis-appropriated the money for an aggregate amount of Rs.30,225.00 on 7.10.88, and to detect fictitious numbers of NSCs noted in the discharge journal as required under Rule 23(2) of PO SB Man.Vol.II. It has also come out that the applicant has failed to keep the NSCs in his personal custody till the

returns were sent to Audit Office for the month of October, 1988 as required under Rule 33(4) of PO SB Man. Vol. II, while he had ~~sent~~ sent the returns for the subsequent months. The failure on the part of the applicant to verify the relevant journals and ~~x~~ certificates has facilitated the commission of fraud and mis-appropriation by Sri Ramulu. Therefore, the argument of the counsel for the applicant that the applicant is not directly responsible for the loss and that, therefore the penalty of recovery of pecuniary loss could not have been imposed on him has no force. The learned counsel for the applicant invited our attention to a decision of Madras Bench of this Tribunal in CN Harihara Nandan Vs Presidency Postmaster reported in (1988) 8 ATC 673 and also to another decision of the Ahmadabad Bench in PL Khandelwal Vs Union of India reported in (1989) 9 ATC 509. We have gone through the above judgements. The facts and circumstances of the case under citation and the facts and circumstances in this case are entirely different. In those cases it was held that only if pecuniary loss was caused to the State for reasons directly attributable to a Govt. servant, a recovery from his pay and allowances may be justified. In this case, had the applicant exercised due diligence expected of him in discharging of his duties as APM, Sri Ramulu, the RDDC could not have committed the fraud. Therefore, there is no force in the contention of the learned counsel for the applicant that the loss to the State was not directly a result of the negligence on the part of the applicant.


6. The learned counsel for the applicant again invited our attention to the Govt. of India Decision No.23 under CCS(CCA) Rules No.11 and letter of DGP&T No.114/176/78-Disc.II dated 13.2.1981 wherein it has been stated ".....it should be clearly understood by all the disciplinary authorities that while an official can be punished for good and sufficient reasons, the penalty of recovery can be awarded only if the lapses on his part have either led to the commission of the fraud or misappropriation or frustrated the enquiries as a result of which it has not been possible to locate the real culprit. It is therefore obligatory that the charge sheet should be quite elaborate and should not only indicate clearly the nature of lapses on the part of the particular official, but also indicate the modus operandi of the frauds and their particulars and how it can be alleged that but for the lapses on the part of the official, the fraud or misappropriation could be avoided or that, successful enquiries ~~made~~ could be made to locate the stage at which the particular fraud had been committed by a particular person. This will enable the accused not only to submit a defence against the allegation brought against him, but also to explain how the lapses had not contributed to the loss in any manner." Therefore, Mr Kulkarni, counsel for the applicant argues that the ~~modalities~~ modalities of the commission of frauds by Mr Ramulu has not been clearly spelt out in the statement of imputations and that it has not been stated as to how the applicant could have averted the loss to the State and for that reason, the penalty cannot be sustained.

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7. As observed by us earlier, if the applicant had taken due care in discharging his functions before authorising the discharge and payment of the NSCs, he could have understood that the 4 NSCs in question had been discharged and payment made earlier and avoided a subsequent discharge and payment. Therefore, the negligence on the part of the applicant has enabled Sri Ramulu to commit the fraud and that has been clearly stated in the imputations of mis-conduct. We are also convinced that the provisions of Rule 106 to 108 of P&T Manual Vol III have also been taken into consideration by the disciplinary authority, as also the appellate authority while deciding to impose the penalty in question on the applicant.


8. On an anxious consideration of the facts and circumstances of the case, we are of the considered view that the impugned orders are perfectly legal and they do not call for any judicial interference. In the result, the application fails and the same is dismissed leaving the parties to bear their own costs.


(A.B. GORTHI)
Member(Admn)


(A.V. HARIDASAN)
Member(Judl.)


Dated: 30. 1 1995

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DEPUTY REGISTRAR(J)

To

1. The Secretary, Dept. of Posts, Dak Bhavan, New Delhi.
2. The Director, Postal Services, O/o The Post Master General, Hyderabad Region, Hyderabad.
3. The Superintendent of Post Offices, Mahaboobnagar Division, Mahaboobnagar - 509 001.
4. One copy to Mr. S.D. Kulkarni, Advocate, CAT, Hyderabad.
5. One copy to Mr. M.R. Devraj, Sr. CGSC, CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.


7. One spare copy.

YLKR