

(94)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1135/91

Date of decision: 17-8-1993.

Between

Abdul Gani Khan

: Applicant

and

1. Secretary, Dept. of Posts,
Dak Bhavan, Sansad Marg,
New Delhi-1.
2. The Chief Post Master General,
A.P.Circle, Hyderabad-1.
3. Director of Postal Services,
O/o P.M.G., Andhra Circle,
Hyderabad-1.
4. The Sr.Suptd. of Post Offices,
Hyderabad Divn., Hyderabad-1.
5. The Sr.Post Master,
Hyderabad G.P.O.,
Hyderabad-1.

: Respondents

Appearance:

For the applicant : Sri S.D.Kulkarni, Advocate

For the respondents : Sri N.V.Raghava Reddy, Addl.CGSC

CORAM:

The Hon'ble Sri Justice V.Neeladri Rao, Vice-Chairman

The Hon'ble Sri P.T.Thiruvengadam, Member (Admn.)

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OA 1135/91

J U D G E M E N T

(of the Bench delivered by the Hon'ble Sri Justice V.Neeladri Rao, Vice-Chairman)

When the applicant was working as L.S.G.P.A. in General Post Office, Hyderabad, charge memo. dated 26-11-84 was served on him for alleged wrong payment of Rs.18,900/- on 20-10-1984 to the depositor with SB Account No.562784. After enquiry, the disciplinary authority passed an order of removal by way of punishment. The appellate authority modified it by ordering recovery of Rs.17,760/- to be recovered from the pay of the applicant at Rs.493/- per month in 35 equal instalments and the remaining Rs.505/- in the 36th instalment and there should be reduction from L.S.G. grade to the lower grade as Postal Assistant in the revised payscale of Rs.975-25-1150-EB-30-1660 until he is found fit ~~for~~ after a period of five years to be restored to the higher post of LSG and the punishment ~~is~~ of reduction to lower grade shall operate to the postponement of future increments on restoration and the pay of the applicant was fixed at Rs.1480/- in the lower grade. Revision thereon is dismissed. The same is assailed in this O.A.

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2. The two main contentions for the applicant are: (i) that the applicant cannot be held liable for the alleged wrong payment to the depositor; and (ii) that two punishments cannot be imposed in regard to one and the same misconduct, if in fact the applicant is guilty of misconduct.

3. The material and the relevant facts which give rise to these proceedings are briefly as under:

One person opened ^{an} SB Account on 11-8-84 by depositing Rs.5/-. S.B. account No.562784 was given in regard to the same. It is alleged for the respondents that there is an entry of deposit of Rs.18,950/- with date 17-8-84 in the pass book of the said account holder and the total amount to the credit is noted as Rs.18,955/-. But it does not bear the signature of the A.P.M. It is also alleged that there are ^{are} erasers in the initials of S.B. Deposits Counter Clerk against the deposit entry of 17-8-84. In fact the said account holder had not deposited Rs.18,950/- or any amount either on 17-8-84 or on any other date. Withdrawal form for an amount of Rs.18,900/- with the Pass Book was presented at the counter at which the applicant was on duty on 20-10-84. The withdrawal form also contains column for acknowledgement on payment and the same has to be signed on payment.

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But it is alleged that the acknowledgement form had borne the purported signature of the customer even at the time of presentation with the pass book. The further case of the respondents is that there is variance between the signature on the withdrawal form and the specimen signature available on SB-3 Index Card in regard to the said account and when the pass book, the application for withdrawal and the ledger card were placed before the A.P.M., he had gone through the long book in respect of the alleged deposit entry of Rs.18,950/- dt. 17-8-84 and found it not available and then he immediately called the applicant and the latter informed him that the amount was already paid to the depositor.

It is stated for the respondents that after ~~due~~ ^{preliminary} enquiry entry the charge memo. dated 26-11-84 with the following charges was issued to the applicant:

Article-I

That the said Sri Abdul Ghani Khan while functioning as Savings Bank withdrawal counter P.A., Hyderabad GPO during August 1984 attended to preparation of Pass Book of SB new Account No.562784 on 11-8-84 in the name of the depositor as Sri M.Ramarao S/o Sri Laxmanarao, Contractor, 6-3-609/A, Anandnagar Colony, Hyderabad-500 004 and made deposit entries of Rs.5/- therein under his initials though it was not his duty without any authority/orders to that effect, contravening the provisions of Rule 420(b)(1) of P&T Manual Vol.VI part II.

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Article-II

That the said Sri AbdulGhani Khan while functioning in the aforesaid office during the period of October 1984 failed to raise any doubt and failed to bring marked difference in the signature of the depositor on the application for withdrawal dated 20-10-84 presented by the depositor of Hyderabad GPO SB A/c No.562784 for Rs.18,900/- contravening the provisions of Rule 425(3)(a) of Vol.VI Part II read with Rule 425(1)(2) ibid.

Article-III

That the said Sri Abdul Ghani Khan while functioning in the aforesaid office during the period of October 1984 accepted an application form for withdrawal in respect of Hyderabad GPO SB A/c No.562784 dated 20-10-84 for Rs.18,900/- from the depositor duly receipted both on application side and warrant of payment side on its first presentation itself instead of taking the signature of depositor for receipt at the time of actual payment of amount in contravention of Rule 425(3)(2) of P&T Mn.Vol.VI part II read with rule 425(3)(a) ibid.

Article-IV

That the said Sri Abdul Ghani Khan while functioning in the aforesaid office during the aforesaid period, paid an amount of Rs.18,900/- to alleged depositor of Hyderabad GPO SB A/c 562784 on 20-10-84 without receipt back of pass book and warrant of payment duly passed by the APM (SB) HOs as stipulated by Rule 425(a). The said official had thus failed to follow the provisions of Rule 425(3)(a) (iii) read with Rule 425(a)(ii) ibid.

Article-V

That the said Sri Abdul Ghani Khan while functioning in the aforesaid office during the aforesaid period paid an amount of Rs.18,900/- on 20-10-84 to the alleged depositor despite of telling by APM(SB)(HOs), Hyderabad GPO about the suspicion of genuineness of balance in SB a/c No.562784 and thereby caused a loss of Rs.18,900/- to the department.

Thus, the said official Sri Abdul Ghani Khan had acted as unbecoming of a Govt. servant in contravening the Rule 3(1)(iii) of CCS (Conduct) Rules, 1964 and also exhibited his integrity doubtful in contravening of Rule 3(1)(i) ibid.

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Article-VI

That the said Sri. Abdul Ghani Khan while functioning in the aforesaid office during the aforesaid period failed to satisfactorily compare the signature of the depositor on S.B.7 in respect of SB A/C No.562784 for Rs.18,900/- dated 20-10-84 with the Specimen signature on record in the manner detailed in Rule 425(2) of Vol.VI part II filled and stamped the warrant of payment on the reverse of the application and also made the entries of withdrawal in the Pass Book, long book and impressed the date stamp in the Pass Book and then transferred to the ledger clerk with the application for withdrawal for further action contravening the provisions of Rule 425(3) of Vol.VI part II.

4. Even the Enquiry Officer did not find the applicant guilty for charge No.I. In regard to the remaining charges it was found:-

That there was marked difference in the signature of the depositor on the application for withdrawal dated 20-10-84 and the specimen signature, and the applicant failed to bring it to the notice of the APM (vide Charge No.II);

That the applicant had not raised any objection when the warrant of payment side of the application for withdrawal bears signature at the time of presentation while such signature thereon had to be obtained at the time of actual payment (vide Charge No.III);

That the applicant paid the amount of Rs.18,900/- to the person who presented the withdrawal application even without receiving the pass book and passed warrant of payment endorsement from the APM (vide Charge No.IV);

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That even when the APM stated about the suspicion of the genuineness of the amount available to the credit of that account holder, the applicant paid the amount (vide Charge No.V).

5. Of course the employee who made the entry dated 17-8-84 crediting the relevant account with Rs.18,950/- is also guilty. But inspite of the said entry, if the applicant is vigilant and if he had brought it to the notice of the APM about the glaring variance of the signature on the application for withdrawal and the relevant specimen signature, and the eraser of the signature of the deposit clerk, and in any case if the applicant had not paid the amount when the pass book and the payment warrant endorsement of the APM were not sent to him, there would not have been any loss. Thus, there is no force in the contention that the disciplinary authority and the revisional authority erred in solely holding the applicant liable for this charge. The mere making of the entry of Rs.18,950/- in the pass book did not result any loss. It only enabled the cheat to present an application for withdrawal. It is not a mere case where the applicant had not brought to the notice of the APM about the variance in the signatures but it is also a case where the applicant paid the amount even when the pass book and the warrant of payment

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endorsement were not sent to him. It is not a case where that account holder is a regular customer and it is also not ^{the} a case of the applicant that he knew the customer. Then can it not be stated that there is a case of gross negligence, if he is not one of the conspirator, in making payment even before the pass book alongwith the warrant of payment endorsement is not sent to him. As it is one of cash dealing, checks and counter checks are made part of the procedure so as to ensure that no amount is paid unless the amount is available to the credit of the depositor or that he is given overdraft facility. As such the ~~XXXXXX~~ warrant of payment endorsement had to be counter signed by the concerned APM, a responsible officer. It was held by the enquiry officer on the ^{books} ~~face~~ of evidence that as the APM had a doubt about the credit entry for Rs.18,950/- when it was not found in the long book, he had not counter-signed in the warrant of payment endorsement. It was also held by the enquiry officer that the APM informed the applicant about the suspicion in regard to the credit entry. Anyhow, there is no explanation for the applicant for payment of the amount even when the pass book and the warrant of payment endorsement were not sent to him.

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Signature

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6. It was ~~x~~ next ^{was} observed for the applicant that without sending the signature on the application for withdrawal and the specimen signature to the handwriting expert one could not hold that the signature on the form is forged or not and hence there is an infirmity in the finding. But the question that had arisen for consideration in this enquiry is as to whether there is variance between the signature on the application form and the specimen signature so as to raise a doubt about the same. It is immaterial as to whether the signature on the application form and the specimen signature are in one hand. But when once the signature on the application form for withdrawal ~~xxxx~~ appears to be different from the specimen signature to the naked eye, then naturally the concerned clerk should ask the depositor, if present, to sign again so as to compare with the specimen signature and if the depositor is not present, to get it signed again for comparison and if still the variance is there, he has to bring it to the notice of the higher authority so that closer scrutiny even in regard to the credit entry can be made. In fact the evidence is to the effect that the APM verified from the long book and when the credit entry is not there he had not counter signed the warrant of payment endorsement. Thus, in view of the point which arose for consideration it is not a case where the signature on the application for withdrawal and the specimen signature should have been sent for handwriting expert for considering as to whether the applicant is guilty of the charge.

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7. It is now well established that adequacy of evidence is not a matter that can be agitated before the court/tribunal considering the proceedings under Article 226 of the Constitution. It is not urged that there is no evidence in regard to the findings on the charges II to V.

8. It was next vehemently urged by Sri Kulkarni, the learned counsel for the applicant that two punishments were imposed, one by recovery and the second by reduction to the lower scale in regard to the one and the same cause, and hence one or the other of the punishments had to be set aside. The judgment of the CAT Bangalore Bench reported in 1989 Administrative Tribunal Judgments, Page 62 (Boraiah, Major V. Director of Postal Services (SK), Bangalore) is relied upon to ^{wife} us that there cannot be two punishments in regard to one and the same cause. The ^a dual punishments is against the legal maxim "nemo debet bis vexari pro uno at eadem causa" (no one ought to be twice vexed for one and the same cause) as held in the above judgment of the Bangalore Bench, urged the learned counsel for the applicant.

9. The Supreme Court held in AIR 1953 SC 325 (Maqbool Hussain Vs. State of Bombay) that Article 20, sub-clause (2) of the Constitution of India embodies the principle of double jeopardy and it is applicable only in regard to the proceedings before the courts or tribunals in which the decisions are ^{arrived at} ~~erred~~ on the basis of evidence taken

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on oath. Article 20(2) of the Constitution does not prohibit either explicitly or implicitly double punishment in regard to one and the same cause. There are a number of offences referred to in the Indian Penal Code for which both imprisonment and fine can be imposed by way of punishment. The Full Bench of CAT, New Delhi ^{reviewed} held in 1993 (2) SLR 79 (Y.D. Farwana Vs. Union of India & anr.) by referring to Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1965 that "their attention was not drawn to any other provision from which an inference can be drawn that imposing of more than one penalty simultaneously in a disciplinary proceeding is not permissible." It was also observed therein that "judicial notice can be taken of a large number of instances where more than one penalty is imposed, which aspect had been adverted to in the letter of D.G., P&T Lr. No.105/26181.Vig. dt. 30-3-81 and it reads as follows:

"Imposition of two penalties for one lapse/offence:- A question has been raised as to whether two statutory penalties can be imposed for a single offence committed by an official. Instructions in this behalf already exist, but it is advisable to reiterate them for ready recapitulation. It has been laid down that while normally there will be no need to impose two statutory penalties at a time, the penalty of recovery from pay of the whole or part of any loss caused by an official to the Government by negligence or by breach of order can be imposed alongwith another penalty. Para 108 of the P&T Manual, Volume III also lays down that in addition to the penalty of recovery, technically there is no bar to impose any statutory penalty if the circumstances of the case justify it. The punishing

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authority should, however, bear in mind that when more than one penalty is imposed, one of which is recovery of pay of the whole or part of loss caused to the Government, the net cumulative effect on the Government servant should not be of such a severity so as to make impossible for him to bear the strain.

2. The aforesaid instructions would reveal that while normally there should be no necessity for imposing two penalties at a time, there is no bar to awarding the penalty of recovery alongwith any other penalty. But in such cases also the severity of the strain vis-a-vis the nature of offence committed by the official should be carefully assessed and borne in mind by the punishing authority. Further, the penalties indicated in Rule 11 of the CCS (CCA) Rules, are graded only. Accordingly, when the penalty of recovery is awarded, there should be no necessity to award a lower penalty. The necessity to award another penalty should arise only when it is considered absolutely necessary to award a higher penalty like reduction."

By relying upon the said letter, the appellate authority ordered reduction to the lower payscale besides ordering recovery of part of the amount of the loss sustained by the department due to the negligence of the applicant. In view of the above full Bench judgment of CAT, the conclusion of the Bangalore Bench in 1989 Administrative Tribunals Judgments, P.62 to the effect that there should not be two punishments in regard to the same cause cannot be held as good.

10. Further it is also apposite to refer to the observations of the Full Bench of CAT Calcutta in Full Bench Judgments of C.A.T., Vol.II, Page 382 (Biswanath Debnath Vs. Union of India & Ors.) that

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there would be a proliferation of temporary embezzlement and the employee would be contented that no action would ensue against him once he was found out and ^{he} refunded the amount if it is held that once the amount is refunded the matter closes and that would have a deleterious effect on the administration. It further observed that "a Government servant has no business to sit tight on the government money. He had to refund it whenever asked for, if the retention is against the rules or showed to be in breach of conduct rules he would be liable to disciplinary proceedings. Such a proceeding cannot be blocked by the argument that once a government servant ~~if~~ refunds the amount no further action can be taken against him. It is essential that before applying the principle of double jeopardy the four conditions which have been spelt out from the decision of the Supreme Court are applied."

11. Thus, the question of double jeopardy as envisaged under Article 20(2) of the Constitution of India does not arise in regard to disciplinary proceedings where the oath cannot be administered to the witness. In fact there was only one disciplinary enquiry as against the applicant for his negligence in paying the amount without raising the doubt about the variance in signatures and also in paying the amount even without receiving the pass book and the warrant of payment endorsement from the APM. There is no controversy in regard

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to the fact that the department sustained loss of Rs.18,980/- due to the negligence of the applicant. Recovery can be ordered by way of punishment under clause (iii) of Rule 11 of the C.C.S.(C.C.A) Rules, and reduction to lower grade can be ordered under clause (vi) of Rule 11. The full Bench of CAT has already referred to, held in 1993 (2) SLR 79 that more than one penalty referred to under Rule 6 of the Railway Servants (Disciplinary and Appeal) Rules which is in parameteria with Rule 11 of CCS (CCA) Rules, ^{can be imposed}. Thus, there is no infirmity in imposing the penalties of recovery and reduction to the lower scale, in the circumstances of the case.

12. Though the loss sustained is to the extent of Rs.18,900/-, only an amount of Rs.17,760/- was ordered to be recovered. It was so limited on the basis of DG P&T letter No.3/3/12/70-Disc.II/Disc.I dt.17-8-71 which states that recovery from pay was a punishment for any pecuniary loss caused by the government servant by negligence or breach of orders should not exceed 1/3rd of basic pay and it should not be spread over for a period of more than three years. It is not the case of the applicant that the instructions as per the above letter were contravened in ordering the recovery of Rs.17,760/-.

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13. The next point that has to be considered is as to whether there is such a severity so as to make impossible for the applicant to bear the strain when one of the penalties imposed is recovery from pay ~~of~~ of part of the loss caused to the government. Recovery was ordered at the rate of Rs.493/- p.m. for 35 instalments and Rs.505/- towards the 36th instalment. The basic pay of the applicant was fixed at Rs.1480/- in the scale of Rs.975-25-1150-EB-30-1660, the scale to which he was reduced by way of punishment. The applicant was drawing Rs.470/- in the pre-revised scale which comes to Rs.1480/- in the revised scale of Rs.1400-40-1800-EB-50-2300, by the date of punishment. As there is no stoppage of increments in the scale to which the applicant was reduced, during the period of punishment, the difference in ^{basic} pay in the ^{second} ~~first~~ year will be Rs.10/- per month and ⁱⁿ the later ^{two} years the said reduction will be Rs.20/- p.m., and Rs.30/- p.m., respectively. Thus, the reduction in basic pay is not considerable during the three years in which the recovery has to be effected.

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15th 10/7/

Copy to:-

1. Secretary, Department of Posts, Dak Bhavan, Sansad Marg, New Delhi-1.
2. The Chief Post Master General, A.P.Circle, Hyderabad-1.
3. Director of Postal Services, O/O P.M.G. Andhra Circle, Hyd-1.
4. The Sr. Supdt of Post Offices, Hyderabad Division, Hyderabad-1.
5. The Sr. Post Master, Hyderabad G.P.O., Hyderabad-1.
6. One copy to Sri. S.D.Kulkarni, advocate, CAT, Hyd.
7. One copy to Sri. N.V.Raghava Reddy, Addl. CGSC, CAT, Hyd.
8. One copy to Deputy Registrar(Judl.), CAT, Hyd.
9. One copy to Library, CAT, Hyd.
10. Copy to All Benches & Reporters, as per standard list of CAT, Hyo-
11. One spare copy.

Rsm/-

Noted
per 2.19.89

14. Rule 11(vi) of the C.C.A. Rules lays down that in case of reduction to the lower time-scale of pay, grade, post or service by way of punishment, the disciplinary authority may further direct regarding conditions of restoration to the grade, post or service from which the government servant was reduced and his seniority and pay on such restoration to that grade, post or service. In view of the same, the disciplinary authority has ordered restoration after expiry of five years if he is found fit. But he further ordered postponement of increments on such restoration. We feel that the said order of postponement will be a strain when recovery ^{besides} was ordered ~~and the~~ reduction to the ~~x~~ lower scale which ~~was~~ for a period of five years. Hence we feel that it is just and proper to modify the order of punishment by deleting that portion of the order about the postponement of increments on restoration.

The O.A. is ordered accordingly. No costs.

P. J. Thiruvengadam
(P.T.Thiruvengadam)
Member (Admn.)

V. Neeladri Rao
(V.Neeladri Rao)
Vice-Chairman

Dated: 17 th day of August, 1993.

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A 819/873
Dy. Registrar (Judl.)

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