

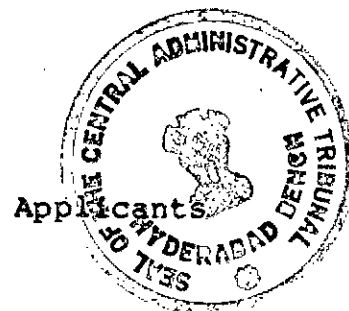
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.82/94; OA.83/94; OA.103/94; OA.112/94; and OA.113/94

Dated : 23-9-97

Between

G. Balaram (OA.82/94)
Y. Komaraiah (OA.83/94)
F. Ramachandra Rao (OA.103/94)
M. Ramalinga Reddy (OA.112/94)
Mohd. Hafeez (OA.113/94)



and

1. The Director of Postal Services
Hyderabad City Region
Hyderabad

2. Sr. Supdt. of Post Offices
Hyderabad South-East Division
Hyderabad

Respondents { common
 'the' OAS

Counsel for the applicants

: Sanka Ramakrishna Rao
Advocate (for all the
applicants)

Counsel for the respondents

: N.R. Devaraj
Sr. CGSC (for all the
cases)

CORAM

MON. MR. H. RAJENDRA PRASAD, MEMBER (ADMN.) 9/23/97

OA.82/94, OA.83/94, OA.103/94, OA.112/94, & OA.113/94

Dt. 23-9-97

Judgement

Order (per Hon. Mr. H. Rajendra Prasad, Member (Admn))

OA.82/94

The applicant, while he was posted as PA/SPM of Amberpet Sub Post Office, was charged under Rule 16 of CCS (CCA) Rules, 1965, for his failure to detect or prevent certain fictitious transactions indulged in by a P.A. of the said office in SB Accounts. The charge against him was that he had failed to maintain absolute integrity and devotion to duty, and had violated Rule 3(1)(i) and (ii) of CCS Conduct Rules, 1964. The disciplinary proceedings were finalised on 9-11-1993 with the imposition of penalty of recovery of Rs.6,396/- from his pay on the grounds of contributory negligence resulting in loss to the department. The applicant preferred an appeal on 19-11-1993 to the Director of Postal Services, Hyderabad City Region, against the penalty which was rejected by the said Director on 11-1-94. Hence this OA.

The case was admitted on 3-2-1994 and interim orders were passed staying the recovery imposed by the order of the disciplinary authority.

2. The applicant makes the following points :

(i) The factors which facilitated the committal of frauds ^{administrative} were serious lapses like permitting the main offender to overstay her tenure in the SB Branch as well as in the office, ^{and} failure to detect the fraud in course of the scheduled periodical inspections of the office which were carried out perfunctorarily.

Q.
23/9

(ii) No serious efforts were made by the respondents to recover the amounts of loss from one who actually committed those frauds, but that the authorities were only trying to recoup the loss through recovery from unconnected officials, - like for example, himself, - who were in no responsible for ^{the} fraud ;

iii) The frauds were committed independently by the said PA on her own, without aid, abetment or negligence on the part of the applicant.

3. The following decisions/rules are relied upon by the applicant :

(a) 1989(9)ATC 509, Ahmedabad Bench : In the absence of

inaction or failure to discharge statutory powers cannot invite disciplinary jurisdiction even where such failure results in losses to the department;

(b) AIR 1979 SC 1022 : A person is guilty of misconduct only if his actions arise out of ill-motives;

(c) 1989(9)ATC 364 Ahmedabad Bench :

Even in minor penalty proceedings access to records, on which a charge is based, is to be afforded to the charged official;

(d) 1990(5) SLJ CAT 91, Patna Bench :

The disciplinary proceedings cannot draw upon the material collected during preliminary enquiries.

(e) 1986(2)SLJ CAT 37, Calcutta Bench :

When a punishment is awarded taking into account matters on which an official was not called upon to explain, it violates the principles of Natural Justice;

(f) The charges framed against him are vague and imprecise and are thus in violation of Rule 106 and 107 of P&T Manual Vol.III.

4. Drawing support from the above cases/rule the applicant submits that he was not guilty of, nor charged with, attempting personal gain by malpractice; no ill-motive was ever attributed to him; he was not shown the attendance register for the relevant dates; the punishment that was imposed on him ^{apparently} was for withdrawal of Rs.1,000/- which not an issue or charge at all in the charge-sheet; and, that the charge-sheet did not contain any indication of the exact loss incurred, the modus operandi adopted or precisely how the committal of fraud came about.

5. Based on the above pleadings the applicant prays for setting aside the punishment imposed on him by the Second Respondent and confirmed by the First Respondent.

6. The respondents in their counter affidavit submit that departmental investigation into the case proved conclusively that lack of supervision was the main reason which enabled the main offender to commit the frauds, and that the applicant had dismally failed to check deposits and withdrawals before permitting any payments at the counter. They assert that the main offender was not allowed to overstay her tenure but was posted out within a month of the completion of her tenure in the office. It is also revealed that all possible and reasonable efforts were made to recover the amounts of loss by attaching the properties of main offender and her husband, through the concerned revenue authorities, by filing civil suits for the purpose. They maintain that the disciplinary authority had discussed in full all the points raised by the applicant in his defence. The respondents draw attention to Government of India decision No.23 below Rule 11 of CCS(CCA)Rules which

22/19

is as under :

"In the case of proceedings relating to recovery of pecuniary losses caused to the Government by negligence or breach of order by a Government servant, the penalty of recovery can be imposed only when it is established that the Government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach caused the loss."

7. As regards the non-supply of Attendance Register for the relevant dates it is mentioned that the same could not be produced since the Register, along with other documents, was deposited in the High Court in a case of appeal filed by the main offender. However, several other documents like the list of Transactions, Long books, Pass Books, Pay-in-slips and Withdrawal forms containing the signature of the applicant on relevant dates were shown to him and that the applicant had duly admitted his signature on them. They wonder as to how the applicant could sign as sub-postmaster on all these documents if he was not really functioning in the said capacity on the relevant dates. Finally, the Respondents submit that the main offender was certainly not acting independently on her own. All essential documents relating to each transaction were duly put up to the applicant who was acting as SPM and it was he who cleared and allowed the withdrawals without applying even basic or routine prescribed checks.

OA.83/94

The applicant, Mr. Y. Komaraiah, while working as Postal Assistant, Amberpet Sub-post Office, was charged under Rule 16 of the CCS(CCA) Rules on 15-6-1993. The imputation of misconduct against the applicant were as under:

1) He allowed one Y. Raja Rajeswari, Postal Assistant, to work unauthorisedly at the Savings Bank Counter at Amberpet

Q. 1/4
23

..5.

Post office on certain days in September/October, 1990, even though she was no longer posted in that office having earlier been transferred to station Kacheguda H.O. She is said to have been coming to Amberpet Post Office while on leave from Kacheguda H.O. and was allowed to function unauthorisedly at the Savings Bank counter at the former office. On four occas^{ions} in September, 1990, she was alleged even to have been working in Station Kacheguda HPO and also at Amberpet Sub Office for a part of the day on the same dates. During this entire period the said Raja Rajeswari committed a series of frauds in the Savings Bank, a process in which applicant Komaraiah was alleged to have abetted/ collaborated by his negligent performance of mandatory checks, thus contravening certain provisions of P&T Manual Vol.VI Part-I as also of CCS Conduct Rules, 1964.

2. The applicant denies that he had worked as Savings Bank PA at Amberpet Post Office, and that he had no authority to allow any one to work on any of the seats in the post office. The other arguments of the applicant are along similar lines of the ones raised by Mr. G. Balaram in OA. 82/94. A penalty of recovery of Rs.4,956/- was imposed on 29-10-1993, whereupon he preferred an appeal to the Director of Postal Service which was turned down by the said Director in January 1994. Hence this OA.

3. As mentioned earlier, the arguments of the applicant are similar to those adopted by Mr. G. Balaram in OA.82/94. The response of the authorities is also on the same lines as in OA.82/94.

OA.103/94

The applicant in this OA was working as PA at Amberpet Post Office between March, 1986, and February, 1991. He was also officiating as SPM on certain dates in 1989. By his

Q
23/4

acts of negligence and supervisory lapses he was alleged to have facilitated the committal of frauds by the same Raja Rajeswari who figures as prime offender in other OAs. A penalty of recovery of Rs.18,216/- was imposed by the second respondent on 26-10-1993, whereupon the applicant preferred an appeal to the Director of Postal Service on 15-11-1993. The appeal was turned down by the said Director on 12-1-1994, and the punishment was confirmed. The submissions of the applicant and the reply of the respondents are similar to those in OA.82 and 83 of 1994.

OA.112/94

The applicant, M. Ramalinga Reddy, was proceeded against under Rule 16 of the CCS(CCA) Rules, 1965, for his alleged failure to carry out certain checks, in his capacity of Assistant Postmaster, Station Kacheguda HPO, prescribed in Savings Bank Manual, and a penalty of recovery of Rs.21,096/- was imposed by the second respondent in October, 1993. On appeal, the punishment was confirmed by the Director of Postal Services on 17-1-1994. In this OA also the arguments of the applicant and the reply of the respondents follow a familiar pattern as in the earlier OAs.

Q.
2/4

OA.113/94

The applicant, Mohd. Hafeez, Savings Bank Ledger Clerk, Station Kacheguda HPO, was charged under Rule 16 of the CCS(CCA)Rules, 1965, for his failure to carry out checks prescribed in Post Office Savings Bank Manual Vol.I. A penalty of recovery of Rs.14,508/- was imposed on him in October, 1993 by respondent No.2, whereupon he submitted an appeal to the Director of Postal Service. The appeal was turned down by the Director and the penalty was confirmed. Here too, the submission of the applicant and the responses of the Departmental respondents are similar to those found in other OAs mentioned above.

2. The following are the common points raised by all the applicants :

- i) the main offender was retained beyond her tenure in the office where she committed frauds;
- ii) the basis for arriving at the quantum on recovery and the extent of their contributory negligence, if any, was not quantified on a proper basis;
- iii) none of them stood to gain by the frauds committed by the main offender and none was charged with indulging in personal corrupt practices. Mere inaction cannot be invoked and made subject or cause for initiating disciplinary proceedings and imposing the penalty of recoveries;

~~Q.13~~

..8.

- iv) they are not guilty of any misconduct because none of their actions resulted from any ill-motive;
- v) the material gathered during preliminary enquiry was used against them in the disciplinary proceedings;
- vi) there is no nexus between the precise share of their respective individual responsibilities for the loss and the amounts ordered to be recovered from their pay;
- vii) the charge sheet against them was vague; and
- viii) the disciplinary as well as the appellate authority did not meet the points that were raised in their explanation/appeal.

3. The respondents advance the following common arguments to the various points raised by the applicants:

- a) the main offender was transferred out of Amberpet Post Office soon after - within a month - of the completion of her tenure and was not allowed to overstay;
- b) sincere efforts were made to effect the recovery of loss caused to the Government by having the property of main offender and her husband attached, besides initiating civil suit for the remaining unrecouped amount to the maximum extent;
- c) failure to follow the mandatory manual rules and conduct rules does indeed amount to misconduct and ~~ipso~~ facto, the punishment awarded was in consonance with Government of India decision referred to in para (6) above;
- d) even though the attendance register was not produced in respect of some of the applicants, enough corroborative evidence by way of positive proof was shown through valid and connected documents to the applicants;
- e) the charge-sheet was precise and the annual inspections of the office were done as per rules with care and thoroughness.

Q. 12/5

4. Examined all facts and pleadings. The rules and procedures concerning the functioning of savings bank branches are foolproof and the system of accounting and compilation and maintenance of various documents and registers is quite elaborate and effective as long as various checks prescribed to be carried by different functionaries at clerical and supervisory levels are duly carried out. There is little scope, if at all, for any large scale fraud to be committed by anyone. The main lapses noticed in all these cases are :

- (i) allowing an unauthorised person to discharge functions connected with SB counter transactions in an office with which she was no longer connected;
- (ii) failure to carry out essential checks before authorising payment.

Such being the case, it is difficult to see how the applicants can possibly claim exoneration of their own failures and lapses in the discharge of their routine duties. The contention that no misconduct can be alleged in the absence of proof of a person's ill-motive cannot be invoked in cases where an official, in the normal discharge of his duties, is expected to act as a custodian of public money by carrying out certain basic prescribed checks. Similarly the plea that mere inaction on the part of an official cannot invite disciplinary action is too general a statement to be accepted in all circumstances without regard to the facts and circumstances of each case. This argument which could indeed be true in certain cases cannot be valid in situations where the fundamental task of an official to discharge his mandatory duties, or to carry out the prescribed checks, is neglected through sheer carelessness.

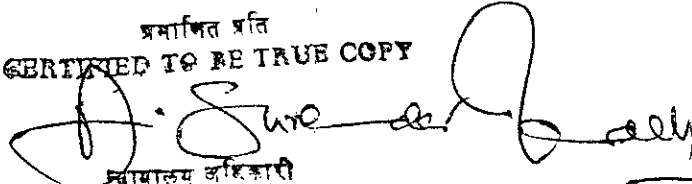
Q
24/5

5. I have seen the disciplinary proceedings as well as the appellate orders in all these cases. It is felt that, notwithstanding certain unusual observations in them, the overall tenor of these orders is not objectionable in any way. The appellate proceedings are fairly elaborate and the orders passed quite more than speaking orders.

6. The applicants have a further avenue of submitting a petition to a higher appellate/ revisional authority in all such cases. They are seen to have not exhausted this avenue which is still available to them. Giving liberty to them to submit a petition to the concerned higher authority, the cases are disposed of with a direction that such petitions, if submitted within the next 45 days, shall not be rejected merely on the ground of time-bar or limitation but shall be dealt with on merits. The penalty imposed on each of the applicants, and confirmed by the appellate authority, shall remain suspended until their petitions are finally disposed of by the concerned higher authority.

7. Thus the OAS are disposed of by common judgment.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY


न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायाधीश
HYDERABAD BENCH

24/9/02