

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.503 OF 1996

Dated, the 16th December, '98.

BETWEEN :

NVR KUMAR Applicant

AND

1. Supdt. of Post Offices,
Peddapalli Division,
Peddapalli.
2. Director of Postal Services,
Hyderabad Region,
Hyderabad.

... Respondents

COUNSELLS :

For the Applicant : Mr. S. Ramakrishna Rao

For the Respondents : Mr. N.R. Devaraj

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)

THE HON'BLE MR. B. S. JAI PARAMESHWAR, MEMBER (JUDL)

2/2

Centd...2

--2--

2. This is an application filed under Section 19 of the Central Administrative Tribunals Act. The application was filed on 16.4.96.

3. While the applicant was working as SB Ledger P.A. at Hayatnagar Head Office, he was served with a minor penalty charge memo by proceedings No.F4-2/98/CW dt. 26.9.94.

4. The applicant submitted his explanation to the charge memo dt. 2.3.95. A copy of his explanation is at Annexure-IV to the O.A.

5. The Disciplinary Authority i.e. R-1 after considering the explanation and the official records, by his proceedings No.F4-2/93 dt. 31.7.95 imposed a penalty of recovery of Rs.8,000/- from the applicant. A copy of the order passed by the R-1 is at Annexure-I to the O.A.

6. Against the said order of penalty, the applicant preferred an appeal dt. 8.8.95 to the R-2.

7. The applicant, even without waiting for the disposal of the appeal by the R-2 approached this Tribunal in O.A. 905/95. On 28.8.95, the said O.A. was disposed off with the direction to the appellate authority to consider and decide the appeal of the applicant preferably before 28.11.95.

8. Accordingly, the R-2 considered the appeal of the applicant and by his proceedings No.ST/21-3/45/95 dt. 28.11.95 rejected the appeal and confirmed the recovery as ordered by the R-1. A copy of the order passed by R-2 is at Annexure-VI to the O.A.

9. The applicant has filed this O.A. challenging the order dt. 30.7.95 passed by the disciplinary authority and

P. T. B.

-: 3 :-

the order dt. 28.11.95 passed by the appellate authority ~~are~~ as arbitrary, frivolous, unwarranted not in line with the instructions contained in P&T Vol.III.

10. The applicant has challenged the impugned orders on the following grounds :

- (a) The impugned orders are inoperative and ineffective.
- (b) The authorities while passing the impugned orders contravened Rule 130 of the P&T Manual Vol.III.
- (c) The appellate authority failed to act under rule 74 and 77 of the P&T Manual Vol.III.
- (d) The disciplinary authority before passing the impugned orders failed to furnish certain documents sought for by him and thus the principles of natural justice were violated.

11. It is submitted that K. Abady, P.O. was manned by a single official and the said official had committed certain irregularities resulting in pecuniary loss to the department; that had the Inspecting Officials of the department had taken care and carried out their periodical inspections regularly the ^{Sub-} fraudulent acts of the said Post Master K. Abady P.O. would ^{Subj-} have been avoided or averted; that the said Post Master, K. Abady P.O. was convicted in the criminal case; that he was not in any way responsible for the said ^{fraudulent} acts of the SPM K. Abady P.O.; that the disciplinary authority failed to follow the Rules 106 and 107 of the P&T Manual III and DGP&T letter No.114/176/78-Disc.II dt. 13.2.1981; that he was entitled to ^{to} know the fraud and also/what extent he was responsible for the fraud, and how he could have been responsible for the fraud committed by the Post Master K. Abadi. The applicant submits that he has been made a scape goat for the negligence of the inspecting officials of the department; that the respondent No.2 has not taken these and other valid grounds raised by him in

The Appeal

-:4:-

the appeal; that the respondent No.2 mechanically followed the order passed by the Respondent No.1 without applying his mind. The Respondent No.2 made certain observations which were not warranted; that the Respondent No.2 misinterpreted the charge for not carrying out the checks whereas the charge levelled against him was of contributory negligence; that on the part of the inspecting officials of the department in not carrying out periodical checks, it facilitated the Post Master K.^aAbady to make certain financial irregularities; that no act on his part resulted in the commission of fraud; that his failure to point out the unjustified issue of FPB, he submits that he could come to know of the issue of FPB only had the SPM intimated and that therefore, the frauds committed by the Sub-Post Master, K. Abady was not on account of any negligence on his part; that the Respondent No.2 has made certain remarks about the performance of his duties which are not called for; that the disciplinary authority had failed to give a finding whether a detailed enquiry in the case was necessary or not; that it was for the disciplinary authority to record so, when he had taken a decision to impose the penalty of recovery of Rs.8,000/- from him; that the disciplinary authority failed to indicate the manner of recovery of Rs.8000/- from him in the impugned order.

12. The respondents have filed a counter explaining the circumstances under which the minor penalty charge memo was issued to the applicant; that the applicant failed to exercise the checks prescribed in respect of 21 SB Warrants of payment of 8 SB Accounts of K. Abadi S.O. charged at Huzurabad H.O. between 1.2.92 to 18.2.93; that the said warrants of payment amounted to Rs.43,170/-p that the applicant had failed to notice the irregular issue of a fresh pass book in respect of SB Account No.150739 received at Huzurabad H.O. on 8.4.92, and that all the 21 withdrawals were allowed fraudulently by the Sub-Post Master K. Abadi S.O. Hence the charge memo

B

-:5:-

was issued to the applicant; that it is unnecessary for the respondent No.1 to indicate the manner of recovery of that Rs.8,000/- from the applicant/as per rules; that only 1/3rd of the monthly salary of the applicant could be recovered; that accordingly only to that extent recovery has been made from the salary of the applicant that under rule 16 it is not mandatory for the disciplinary authority to permit the delinquent employee to verify the documents; that no enquiry was conducted in this case; that the disciplinary authority permitted the applicant to peruse the documents which were in the custody of the disciplinary authority and the remaining 4 documents were not found relevant for the perusal of the applicant. The disciplinary authority has considered as regards allowing the applicant to verify the documents and in the order; that the disciplinary has passed the order in a judicious manner. The order of the disciplinary authority was implemented from 1.9.95 by recovery of a sum of Rs.400/- p.m. from the pay of the applicant; that the appeal was decided by the Respondent No.2 on 28.11.95; that recovery has been made from the salary of the applicant within the permissible limits; that the applicant has not availed the remedy available to him in submitting a petition to the competent authority against the order of the Respondent No.2; that the applicant was charged for failure on his part to carry out the prescribed checks; that the applicant at the time of submitting his explanation to the charge memo/in the appeal submitted by him, never contended that he had actually carried out the prescribed checks as per the P&T Manual; that had the applicant been diligent in carrying out the checks, the fraudulent acts of the said Sub-Postmaster could have been detected and averted; that the withdrawal of a sum of Rs.2,000/- from the S.B. Account bearing No.150758 on 21.4.92 and the other fraudulent withdrawals indicated in the charge memo could have been detected; that the disciplinary authority having regard to the past service rendered by the applicant took a lenient view in imposing the penalty of recovery.

B

-: 6 :-

of Rs.8000/-; and that the orders impugned in the O.A. are perfect, legal and valid. Thus they submit that the O.A. is liable to be dismissed.

13. During the course of hearing the learned Counsel for the respondents relied upon the Rules 36 and 38 of the Post Office Savings Bank Manual Volume-I.

14. The applicant was working as SB Ledger P.A at Huzurabad P.O. At that time one Syed Jamaluddin was the Sub-Postmaster K.Abadi S.O. which S.O. comes under the administrative control of Huzurabad H.O. It appears that the said Syed Jamaluddin had committed certain frauds and forged the S.B.7 withdrawal forms and withdrew the amounts from the S.B. accounts as detailed in the charge memo. At that time, had the applicant exercised his due diligence in the performance of his duties as S.B. Ledger P.A. in the H.O. the fraud committed by the said Syed Jamaluddin could have been avoided or averted. This dereliction of duty on the part of the applicant lead to the issue of a minor penalty charge memo. dated 26.9.94. The details of the S.B. Account from which the said Syed Jamaluddin had fraudulently withdrawn the amounts are indicated in the charge memo. It is the case of the disciplinary authority that S.B. 7 withdrawal forms were in fact prepared by the said Syed Jamaluddin.

R

-: 7 :-

15. Immediately on receipt of the charge memo, the applicant requested the respondent authorities to furnish certain documents to enable him to prepare his defence. The details of the documents are to be found in the Annexure-3 page 16 to the O.A. as per his request. The other documents made in the request were not available with the respondent authorities. Hence, the applicant was not permitted to peruse these documents.

16. The applicant has submitted his explanation dated 2.3.95. The charge memo was issued for imposing minor penalty. The applicant has not sought in his explanation dt. 2.3.95 for conducting a detailed enquiry into the charge. Hence the Disciplinary Authority need not record a finding that the detailed enquiry was not essential. The Disciplinary Authority having felt that no detailed enquiry was essential, he had issued a ^{memo} minor penalty charge. Had the applicant in his explanation insisted upon for a detailed enquiry then it was incumbent upon the Disciplinary Authority to record a finding whether a detailed enquiry as sought for by the applicant was in fact necessary or not. Hence, we feel, in the absence of such a plea in the explanation, the Disciplinary Authority was justified in passing the impugned order.

R

-: 8 :-

17. The writings on the SB 7 withdrawal forms are not material. But the signature of the depositor on the forms are material and important. The applicant as S.B.Ledger P.A. was to verify whether the signatures appearing on S.B.7 withdrawal forms were that of the depositor or not.

18. As already observed the learned counsel for respondents relied upon Rule 38 1(a) of the P.O. Savings Bank Manual Vol.I 1998 Edition. The said Rule reads as follows :

"Procedure in Head Offices in respect of withdrawal at Sub-Offices: When the amount of a withdrawal if paid by a Sub office the amount paid will be shown in the list of transactions and the charge will be supported by the warrant of payment duly signed by the person to whom payment was made. The balance entered by the depositor on the application shall be checked by the Ledger Assistant with the balance in the ledger card. The signature of the depositor on the application should also be compared by him with the specimen in the application card/SS card and the signature of the person who received payment on the warrant should be compared with that on the application, in the case of withdrawal made at single handed sub offices In the case of withdrawal made at other sub offices (not in LST or above) the check of the signature should be carried out in respect of withdrawal of Rs.1000/- or above. This check need not be exercised in respect of withdrawal at sub-offices in LSG or above."

19. This clearly lays down the duties of the S.B Ledger P.A. At least he should have verified the signatures appearing on the S.B.7 withdrawal form and ascertained the genuineness or otherwise.

20. Evidently, the applicant has not performed his duties diligently.

21. The said Syed Jamaluddin Sub-Postmaster K. Abadi committed frauds and caused loss to the department to the extent of Rs.81,493.20 Ps. It is stated for the applicant that the said Syed Jamaluddin was the Sub-Postmaster K. Abadi and that therefore, he could not be made responsible for any fraud committed by the said Sub-Postmaster.

22. The applicant is under a wrong impression that he is made responsible for the fraud committed by the said Sub-postmaster. The charge levelled against the applicant is that he failed to perform his part of the duty diligently in verifying the S.B.7

-: 9 :-

withdrawal form. Had the applicant raised any objection, then he should have brought to the notice of his superior officers then and there itself. Even during the ^{explanation} ~~enquiry~~, the applicant has nowhere stated that he had exercised his due diligence in verifying the SB 7 withdrawal forms received from K. Abadi S.O.

Therefore

23. He made entries in the Ledger cards on the basis of the SB 7 withdrawal forms received from sub-pest office.
24. The applicant has challenged the impugned order as in-operative. His contention is that the disciplinary authority imposed penalty of recovery of Rs.8000/- from the salary of the applicant and that the disciplinary authority did not specifically indicate the ~~xxx~~ manner of recovery. It is his contention that non-indication of the manner of recovery of Rs.8000/- from the salary of the applicant is an illegality. For this he relies upon Rule 130 of the P&T Manual Vol.III.
25. The Rule states that it is not open to the punishing authority to cancel or revise its own orders, and that it cannot itself set aside its own order even when it discovers any procedural irregularities. In this case, the disciplinary authority has not attempted to revise his order dt. 31.7.95. In fact, the applicant took a similar stand in the appeal. The Appellate Authority considered the said ground in his order dt. 28.11.95 and rejected the same.
26. Hence, we do not feel that the respondent authorities violated the Rule 130 of the P&T Manual Vol.III.
27. The other ground raised by the applicant is that he was not furnished the documents detailed in Annexure-3 to the O.A. As already observed, the documents which were available in the custody of the respondent authorities were actually furnished to the applicant. He has not stated in what manner he was prejudiced because, ~~if~~ the respondents could not furnish him the other

R

documents. The gravamen of the charge is that he failed to carry out the prescribed checks as detailed in the charge memo. The applicant, as observed by the appellate authority has nowhere stated he had in fact performed his duties diligently.

28. The applicant challenged the order passed by the Appellate Authority. The order passed by the appellate authority is at Annexure-6 pages 26 to 29 of the O.A. We find no irregularity in the manner of the disposal of the appeal submitted by the applicant. In fact the appellate authority has ~~not~~ taken into consideration all the grounds raised by the applicant in his appeal.

29. The last ground urged by the applicant is that without assessing the culpability, the disciplinary authority has ordered to recover a sum of Rs.8000/- from his salary. The Court of Tribunal cannot assess the culpability of the applicant in terms of money. The respondent authorities are the proper authorities to ascertain the culpability of the applicant and actually they have taken the facts of the case into consideration and thought it proper to recover a sum of Rs.8000/- from the salary of the applicant. This Tribunal cannot interfere with the finding of the appellate authority. However, if the applicant feels that the imposition of penalty of recovery of Rs.8000/- from the salary of the applicant is excessive, he may, if so advised, submit a detailed representation to the Director of Postal Services for consideration.

30. In view of the above discussion the applicant is not entitled to the reliefs claimed in the O.A. and the O.A. is liable to be dismissed.



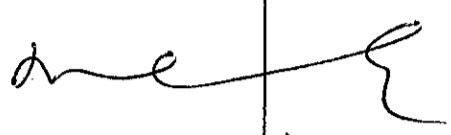
Centd...

-: 11 :-

31. Accordingly, the O.A. is dismissed. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (J)

16/12/98


(R. RANGARAJAN)
MEMBER (A)

Dated, the 16th December, '98.

CS

93/12/98

II COURT

copy to

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

1) D.R. (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

2) Spare

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESWAR :
M(J)

DATED: 16/12/98

ORDER/JUDGMENT

MA/R.A./C.P.No:

in

OA. NO. 503/98

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

