

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 27th July, 2001

OA No. 58/99

Ghisu Lal s/o Shri Daya Ram r/o Q.No.M-1, P&T Colony, Behind GPO, Jaipur and presently working as Driver Mail Motor Service, Jaipur City Postal Division, Jaipur

..Applicant

Versus

1. The Union of India through Secretary to the Govt. of India, Department of Posts, Ministry of Communications, New Delhi.
2. The Director, Postal Services, Jaipur Region, Jaipur
3. The Senior Superintendent of Post Offices, Jaipur City Postal Division, Jaipur

.. Respondents

Mr. C.B.Sharma, counsel for the applicant

Arun Chaturvedi, counsel for the respondents

CORAM:

Hon'ble Mr. A.K.Mishra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member

ORDER

Per Hon'ble Mr. A.K.Mishra Judicial Member

Applicant has filed this OA with the prayer that chargesheet dated 20/24.12.1996 (Ann.A5), the order of the Disciplinary Authority dated 30.6.97 (Ann.A2) and the order of the Appellate Authority dated 26/27.5.1998 (Ann.A1) be quashed and the respondents be directed to refund the amount so recovered from the applicant with reasonable rate of interest.

2. Notices of the OA were given to the respondents, who

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have filed their reply, to which no rejoinder has been filed.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. Undisputed facts of the case are as follows:-

That the applicant was discharging his duty as a Driver in Mail Motor Service, Jaipur City Division, Jaipur. On 22.5.1984, when the vehicle driven by the applicant met with an accident and one Miss Nita was injured, who subsequently died in hospital. A criminal case was registered against the applicant for rash and negligent driving of the vehicle. The criminal case came to be decided on 2.8.1991 and the applicant was acquitted of the charges. Another case was filed by the relatives of the deceased girl in Motor Accident Claims Tribunal, Jaipur for granting compensation to them on account of death of Miss Nita. That case came to be decided on 3.2.1987. An award of compensation to the tune of Rs. 25,000 was passed by the Claims Tribunal against the present respondents and also the applicant. In that claim the interim award of Rs. 15,000 was passed against the Department and that amount was adjusted against the main award. The respondents had to pay Rs. 3312.90 on account of interest on the amount of compensation. Thus, due to accident alleged to have been caused by the applicant, the Department had to suffer a loss of Rs. 28,312.90. After the amount was paid, a chargesheet came to be served on the applicant in December, 1996 in which a sum of Rs. 18,720 was ordered to be recovered from the pay of the applicant in 36 instalments at the rate of Rs. 520 per month. The amount of instalments was worked out as per rules and equal to 1/3 of the basic pay of the applicant i.e. Rs. 1560 which the applicant was drawing at that time. The applicant filed an appeal against the said order. During the pendency of the appeal, the recommendations of the 5th Pay

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Commission were implemented and the pay of the applicant was fixed accordingly. The applicant was given a notice by the Appellate Authority for enhancement of punishment on account of higher pay fixation of the pay of the applicant and after hearing the applicant, the entire amount of loss suffered by the Department was ordered to be recovered from the applicant which according to the Appellate Authority was within the limit of 1/3 of basic pay multiplied by 36 months. This action of the Appellate Authority has been challenged as bad in law. The amount of instalments could not have been increased by the Appellate Authority on the ground that applicant started drawing higher pay due to fixation of pay as per 5th Pay Commission recommendations. It was argued that the original penalty of realising Rs. 18,720 was not proper as per law nor was liable to be changed by the Appellate Authority.

5. We have considered this argument. The Disciplinary Authority held the applicant liable for the entire amount as per his order dated 26/27th May, 1998, but as per rules order for recovery of more amount than amount equal to one year's basic pay in 36 instalments could not have been passed and, thus, the amount was restricted to be recovered equal to 1/3 of the basic monthly pay for 36 months. In our opinion, when the applicant has been held responsible for entire loss so caused to the Department by his action, then ordering recovery of the entire amount was well within the powers of the Appellate Authority. In any case, the amount so ordered to be recovered does not exceed the limit fixed by the law i.e. amount equal to basic pay of one year. In this case, the Appellate Authority had acted after giving notice to the applicant relating to enhancement of punishment and, therefore, the action of the Appellate Authority cannot be faulted.

6. It was next argued by the learned counsel for the applicant that the chargesheet has been served on the applicant after

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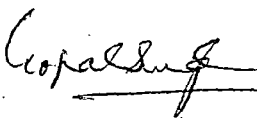
almost 12 years of the incident and 9 years after the award of the Motor Accidents Claims Tribunal and, therefore, the chargesheet can be said to be related to an incident of remote past, but we are not in agreement with the learned counsel for the applicant. The applicant in this case has been asked to reimburse the Department for the loss cause by the applicant. There is nothing to restrict such recovery on the ground of delay. This cannot be denied that applicant's action of driving the vehicle which was involved in an accident had caused the Department a loss, because the Department had to pay compensation to the parents of the deceased girl. ~~by which~~ The Claims Tribunal held all the opposite parties responsible to make payment of compensation to the applicant. The applicant was opposite party No.1 in that case and present respondents were party No. 2 and 3 in that case. All of them were held jointly and severally responsible to pay to the applicants and in view of this the applicant cannot be heard to say that only the Department was held liable and not he. At this juncture, we are not expected to go into the details, whether the accident was caused due to the rash and negligent driving of the applicant or he was not at all at fault. In this regard, the judgment of the Criminal Court in which the applicant was given benefit of doubt, cannot come to his rescue for sustaining the arguments advanced by the learned counsel for the applicant that he was not found to have been driving the vehicle by the Criminal Court. Therefore, the argument on behalf of the applicant that he was not driving the vehicle in question does not help him at this stage. It was argued by the learned counsel for the applicant that the Appellate Authority unreasonably kept the appeal pending, whereas it was expected to decide the same within 6 months. Consequently, the applicant has been held responsible to pay higher amounts due to pay fixation in the revised pay scale. Had the appeal been disposed of by the Appellate Authority quickly, he would not have suffered the enhanced penalty. We have given our consideration to this

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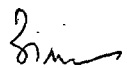
arguments, but we are not of the opinion that only because of unreasonable pendency of the appeal, the applicant deserves any relief. Therefore, the applicant cannot be given any benefit of appeal having remained pending beyond 6 months.

7. In our opinion, there is nothing on record to conclude that the Appellate Authority had exceeded its jurisdiction in revising and enhancing the amount of loss and holding the applicant responsible for the entire loss caused to the Department. Therefore, the application is devoid of any merits and deserves to be dismissed.

8. The OA is, therefore, dismissed. Parties are left to bear their own costs.


(GOPAL SINGH)

Adm. Member


27/7/2001
(A.K. MISHRA)

Judl. Member