

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

...

Original Application No. 838/2001

Bilaspur, this the 6th day of ~~June~~^{July}, 2004

Hon'ble Shri M. P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Member (J)

Avinash Mishra
s/o Late Sh. Jagmohan Mishra,
Aged about 46 years,
Postal Assistant,
Rewa Head Post Office,
Rewa.

..Applicant

(By Advocate: Shri V. Tripathi)

-versus-

1. Union of India through
Secretary,
Ministry of Communication,
Dept. of Posts,
New Delhi.
2. The Post Master General of
Chhattisgarh Circle,
Raipur.
3. Director,
Postal Services
Raipur
4. The Superintendent,
Post Offices,
Rewa Division,
Rewa.

...Respondents

(By Advocate: Shri P. Shankaran)

O R D E R

By Madan Mohan, Judicial Member -

By filing the present original application, the applicant has sought the following main reliefs:

- i) to set aside the recovery order dated 9.6.99 (A/2) and punishment order dated 6.1.2000 (A/4) and appellate order dated 2.8.2000 (A/6) to the extent it declines refund of recovered amount to the applicant.
- ii) consequently command the respondents to refund the amount of Rs. 61,056/- to the applicant alongwith interest on delayed payment till the date of realisation.

2. The brief facts of the case are that the applicant

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was initially appointed in the month of February, 1977 as Postal Assistant. A chargesheet under Rule 16 of CCS (CCA) Rules was served on the applicant, vide order dated 22.12.1999 (A/1) on the allegation that there is a procedural irregularity on the part of the applicant thereby he has violated the procedure laid down in Rule 35(5) of Savings Bank Manual Part-I. In pursuance to the same facts and allegations and order dated 9.6.1999 (A/2) was passed thereby it was directed that the applicant should deposit the amount otherwise departmental and police action will be taken against him. The applicant, left no option, deposited an amount of Rs. 61,056/- vide receipt (A/3). Before issuing the order dated 9.6.1999, no show cause notice was issued to the applicant nor any opportunity of any nature was given to him. The applicant deposited the aforesaid amount in good faith having left no option. While replying to the chargesheet, the applicant had failry admitted that the procedure defect is on his part and stated the reasons for occurrance of such defects. On account of this fact, a punishment order dated 6.1.2000 (A/4) was passed whereby applicant's one increment was withheld for one year without cumulative effect. However, the applicant made a request that the amount so recovered from him may be refunded to him which request was not acceded to by the disciplinary authority and the amount of Rs.61056/- was not refunded back to the applicant. Aggrieved by the said action of the respondats, the applicant preferred an appeal (A/5). The said appeal is also rejected by the appellate authority vide its order dated 2.8.2000 (A/6). It is submitted that the recovery is a statutory punishment prescribed under Rule 11 of the said Rules and can be inflicted only under Rule 11 only in a condition when the department has suffered a pecuniary loss. In the present case department has not suffered any pecuniary loss thus

the recovery is bad in law and deserves to be refunded to the applicant. Hence, this O.A. has been filed for seeking the aforesaid reliefs.

3. Heard the learned counsel for both the parties.

4. It is argued on behalf of the applicant that he is not pressing the relief about penalty of minor punishment but is ~~restricting~~ his arguments to the refund of amount recovered from the applicant i.e. 61,056/- . It is further argued that though the applicant has committed a procedure mistake but it has not caused any pecuniary loss to the department. Hence, the order passed by the respondents for recovery is illegal and against the law. The applicant had deposited the amount in goodfaith with the hope of refund of the said amount by the respondents.

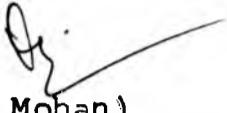
5. In reply, learned counsel for the respondents argued that the applicant while posted at Chorahta as Sub Post-Master opened a joint 'B' savings Bank Account in the name of Smt. Anjlika Prakash and Shri John Henery Pal, ~~SAS~~ Agent, on 28.1.1996 with initial deposit of Rs. 48,000/- under S^o A/c No. 180876. Infact the real depositor Smt. Anjlika Prakash wanted to open a MIS A/c with Rs. 48,000/- in her own name and to this effect she gave the money and account opening application formduly signed to Mr. John Henery Pal, SAS agent for getting the MIS account opened. Shri John Hnerey Pal, SAS Agent, filled the form and added his name as joint account holder and in connivance with the applicant get the said account opened and the applicant deliberately failed to record the type of Account in the Pass Book and also to complete the nomination process as per recorded nomination on the form of oepning of account or otherwise to cancel the same with varied reasons. Apart from this, the applicant committed great irregularity in allowing and admitting withdrawal of Rs. 7500/- on 22.1.1996 and Rs. 40,000/- on 23.1.1996 by Sh. John Henery Pal, joint holder of the Account without production of pass book.

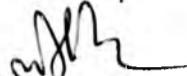
This act of the applicant is in total contravention of Rule 33(5¹) of the Saving Bank Manual Volume No.I and this resulted into a complaint from the real depositor Smt. Anjlika Prakash. Since the applicant was directly involved in allowing the aforesaid withdrawals without pass book, the loss suffered to the Department by way of allowing irregular withdrawals which is directly attributable to the applicant. It is further argued that because of the irregularities committed by the applicant, the applicant had deposited /credit the withdrawn amount with interest thereon willingly on 16.6.1999 without any protest. Hence, the O.A. is liable to be dismissed.

6. After hearing the learned counsel for both the parties and careful perusal of the record, we find that the applicant is restricting his relief only to the recovery of amount recovered from him. It is observed that the applicant helped the SAS Agent Shri John Hnerey Pal in adding his name as joint holder while opening the account of the real depositor Smt. Anjlika Prakash, who wanted to open the said account in his own name. Moreover, he committed a grave misconduct in allowing and admitting withdrawals of certain amount on 22nd and 23rd day of January, 1996 that too even without production of the pass book from the joint account holder i.e. Shri John Hnerey Pal, and failed to discharge his duties with devotion violating the prescribed procedure. Therefore, the applicant was directed to credit the amount with interest, which was deposited by the applicant willingly on 16.6.1999 without any protest. The argument advanced by the applicant's counsel that the department has not suffered any pecuniary loss cannot be accepted because the department has to pay the said amount to the real depositor, hence the amount deposited by the applicant cannot be refunded to him.

7. In the facts and circumstances of the case, the O.A.

dismissed with no order as to costs.


(Madan Mohan)
Judicial Member

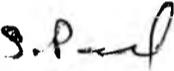

(M.P. Singh)
Vice Chairman

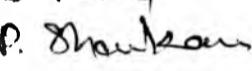
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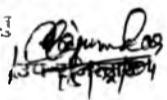
पृष्ठांकन से ओ/न्या.....जलपुर, दि.....

प्रकाशिति अवृत्ति :-

- (1) रामिर, राम उदाहरण प्राप्ति ने जलपुर
- (2) अपेक्षित ली/सिवाय/को.....दो कार्यालय
- (3) अपार्टमेंट ली/सिवाय/को.....दो कार्यालय
- (4) संसदीय विधायिका विधायिका विधायिका


S. Patel


P. Bhakar


P. Bhakar

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