

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION Nos.555/2017

Date of Decision: 15.09.2017.

CORAM: HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

S.S. Parab
 Working as Assistant Postmaster
 Shiroda So
 Sindhudurg Nagari – 416 812.
 R/at G-7, Aishwarya Complex,
 Sabnis Wada, Sawantwadi,
 Dist. Sindhudurg 416 518.
(Advocate Ms. Priyanka Mehndiratta)

... ***Applicant***

Versus

1. The Union of India,
 Through the Chief Postmaster General,
 Maharashtra Circle, GPO,
 Mumbai 400 001.
2. The Director Postal Services,
 Goa Region, Panaji 403 001.
3. The Superintendent of Post Offices,
 Sindhudurg Division,
 Sindhudurnagri 416 812.

... ***Respondents***

ORDER (Oral)

Per : Shri A.J. Rohee, Member (J)

Today when the matter is called out for admission, heard Ms. Priyanka Mehndiratta, learned Advocate for the Applicant. We have carefully perused the case record.

2. The Applicant who is presently working as Postal Assistant has sought the following reliefs in this OA:

8.a) The Hon'ble Tribunal may graciously be pleased to call for the records of the case from the

Respondents and after examining the same quash and set aside the impugned orders dated 11.11.2016 and 09.09.2016 (A-1 and A-2) respectively with all consequential benefits.

8.b) The Hon'ble Tribunal may further be pleased to direct the respondents to refund the amount already recovered from the salary of the applicant along with interest at the rate of 18%.

8.c) Cost of the application may pleased be provided for.

8.d) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

3. The Applicant has grievance that he has been wrongly held responsible for the pecuniary loss caused to the Government and he has been made scapegoat . By the impugned orders dated 11.11.2016 and 09.09.2016 (Annexure A-1 & A-2) the Respondent No.3, the Disciplinary Authority held him liable and directed amount of Rs.2,50,000/- to be recovered from his monthly salary in 25 equal monthly installment of Rs.10,000/- to make good the loss.

4. It is submitted by the learned counsel for the applicant that the employee who is actually responsible for misappropriation of the Government amount is dead and the respondents had transferred the burden on the applicant and others without establishing their delinquency.

5. The following interim relief is also sought in the OA;

"9.a) Pending final determination of the present Original Application, the Hon'ble Tribunal may be pleased to restrain the respondents from the implementation, operation and execution of the impugned orders dated 11.11.2016 and stay the

recovery which is currently being made from the salary of the Applicant every month.

6. After hearing learned Advocate for the applicant and on perusal of record, it is transpired that the applicant had challenged the order passed by the Disciplinary Authority in Appeal before the Respondents No.2 on 28.12.2016 vide Annexure A-4, which is still pending. Learned Advocate for the applicant tried to convince us that in similar matters arising out of same transaction of misappropriation of amount, this Tribunal in OA No.445/2017 filed by G.S. Gawali vide order dated 28.07.2017 granted interim protection and hence the applicant should be granted the same protection pending this OA.

7. However, since statutory appeal against the order passed by Disciplinary Authority imposing penalty of recovery of amount is still pending, we are of the considered view that the present OA is premature, since statutory remedy is not fully exhausted. In the case referred by the applicant, it is not made clear if any appeal was then pending or already decided. In view of this, it cannot be said that this Tribunal is bound to take similar view by entertaining the present OA and to grant the ad-interim relief regarding further recovery in favour of the applicant.

8. Further it is obvious from record that no exceptional case has been made out by the applicant, so as to exercise the power of judicial review vested in this Tribunal to entertain the OA, without fully exhausting statutory remedy of appeal and especially when it is preferred and is still pending.

9. Considering the peculiar facts of the case, we are of the considered view that ends of justice will be better served, if appropriate directions are issued to the respondents in the matter.

10. Respondent No.2, the Appellate Authority is, therefore, directed to consider and pass a reasoned and speaking order in accordance with law, on the pending Appeal dated 28.12.2016 (Annexure A-4) of the Applicant within a period of eight weeks from date of receipt of certified copy of this order .

11. The order so passed shall then be communicated to the applicant at the earliest, who will be at liberty to approach the appropriate forum in case his grievance still persists.

12. It will be open for the applicant to make a request to the Appellate Authority to stay the further recovery of the amount from his salary and appropriate order be also passed on it by Respondent No.2 pending decision on appeal.

13. The OA stands disposed of with the above directions at the admission stage, without issuing notice to the respondents and without making any comments on merits of the claim.

(R. Vijaykumar)
Member (A)

(A.J. Rohee)
Member (J)

dm.