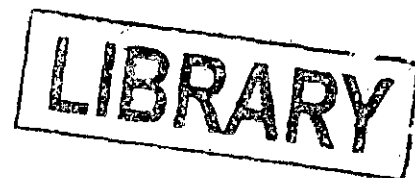


CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA



OA. 1591 of 2014

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Nemai Chandra Karmakar, son of late
Biswanath Karmakar, working as Post Master,
Belgharia P.O. (Now retired), residing at 967,
Block 'A', Ganga Apartment, 3rd Floor, Lake
Town, P.S. Lake Town, Kolkata- 700 089.

.....Applicant.

-versus-

1. Union of India service through the
Secretary, Department of Posts, Parliament
Street, Dak Bhawan, New Delhi- 110001.
2. Chief Post Master General, Department of
Posts, West Bengal Circle, Yogayog Bhawan,
Kolkata- 700 012.
3. Director of Postal Services, Department of
Posts, Kolkata Region, Yogayog Bhawan,
Kolkata- 700 012.
4. Senior Superintendent of Post Offices, North
Presidency Division, Barrackpore- 700 012.

.....Respondents.

For the Applicant : Mr. B.R. Das, Counsel

For the Respondents : Mr. L.K. Chatterjee, Counsel
Mr. M. K. Ghara, Counsel

Order reserved on : 19.06.2019

Date of order: 25.11.19.

ORDER (Oral)Per Ms. Bidisha Banerjee, JM:

This application has been preferred to seek the following reliefs:

"8(i) Rescind, recall, withdraw the charge-sheet and the punishment order being the impugned orders AI and A2 and the impugned order No. A3 issued by the Respondent no. 3 being appellate authority upholding the punishment order issued by the Respondent No. 4.

(ii) Refund the amount of Rs. 1 lakh (Rupees one lakh) which has been deducted and recovered from the monthly pays of the petitioner, as penalty, in 20 equal instalments starting from November, 2012 and continuing till June, 2014, with suitable interests thereupon till the repayment of the whole amount.

(iii) Certify that transmit the entire records and papers pertaining to the applicant's case so that after the cause shown thereof considerable justice may be done unto the applicant by way of grant of reliefs as prayed for in (i) and (ii) above."

2. The applicant's case in a nutshell is as under:

The applicant retired on superannuation as a Postmaster (HSG-I) from Belgharia Head Post Office on 30.09.2014. While serving as Sub-Postmaster in Bengal Enamel Sub-Post Office he had requisitioned Rs. 2,60,000/- for payments from the said S.P.O on 30.06.2009. The payments included pension, Senior Citizen Pension, Staff salary etc. The cash van which moved out from the Barrackpore Head Office with 15 cash bags for different S.Os, was high jacked after delivery of cash to five S.Os. Out of the total money amounting Rs. 33, 50,000/-, Rs. 24,55,000/- was looted which allegedly contained Rs. 2,60,000/- requisitioned by the

applicant. He was charged for having unnecessarily requisitioned money in excess of requirement despite having a cash amount of Rs. 9,16,173.50 in his hand on previous day. He mentioned about his payment liability which he had actually made that was far in excess of the said amount, as held for payment on 30.06.2009. Yet, he was imposed a penalty of Rs. 1,00,000/- that was recovered from his pay in twenty equal monthly installments, by the Disciplinary Authority vide his order dated 22.11.12. The appellate authority upheld the punishment vide his order dated 22.9.14 rejecting his appeal dated 7.1.13. Hence the OA.

3. The gravamen of indictments against the applicant, would run thus:

"Statement of imputation of misconduct or misbehavior against the Nemai Chandra Karmakar, Former Sub Postmaster, Bengal Enamel so now Deputy Postmaster, Belghoria HO.

Sri Nemai Ch. Karmakar former SPM, Bengal Enamel SO now Deputy Postmaster, Belghoria HO, worked as the SPM, Bengal Enamel SO on 29.06.2009 and 30.06.2009. The cash van of Barrackpore HO was hijacked on 30.06.2009 by some unknown miscreants. The cash van was plying with 15 sealed cash bags for remittance to 15 Sub Offices having total cash of Rs. 3350000/- (Rs. Thirty three lakh fifty thousand) only. Out of those 15 Sub Officers only 5 sub officers had been supplied cash bags containing total amount of Rs. 895000/- (Rs. Eight lakh ninety five thousand) only and thereafter said cash van was hijacked with contents of 10 sealed cash bags as detailed below:

Name of the Sub Post Offices	Amount Remitted
1. Bisha Laxmi Ghal S. O.	=Rs. 50000/-
2. Ghosh Para Road S.O.	=Rs. 150000/-
3. Talpukur S.O.	=Rs. 390000/-
4. Pampara S.O.	= Rs. 230000/-
5. Anandapuri S.O.	=Rs. 350000/-
6. Aandamath S.O	=Rs. 530000/-
7. Nilganj Bazar S.O.	=Rs. 60000/-
8. Jaffarpur S. O.	=Rs. 235000/-
9. N. C. Pukur S. O.	=Rs. 200000/-
10. Bengal Enamel S.O.	=Rs. 260000/-
<hr/>	
Total loss= Rs. 2455000/-	
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Thus, the dept. sustained loss of Rs. 2455000/- (twenty four lakh Fifty five thousand only).

Unnecessary requisition of cash for dated 30.06.2009 was made by the SPM, Bengal Enamel SO without showing details of liabilities in the prescribed column of the Daily Account Had the unnecessary requisition not been placed by said Sri Karmakar the Department would not have sustained the loss of requisitioned amount i.e. Rs. 260000/- (Rupees two lakh sixty thousand only). Hence, said Sri Karmakar is solely responsible for the loss of Rs. 260000/- (Rupees two lakh sixty thousand only) as he submitted the requisition violating the provision of Rule 101 of Postal Manual, Volumn-VI, Part-III (sixth edition).

Moreover, a sum of Rs. 9161735/- (Rupees nine lakh sixteen thousand one hundred seventy three and paise fifty only) was retained by Sri Karmakar on 29.06.2009 which is beyond the maximum authorized balance of Rs. 200000/- (Rupees two lakh only) violating the provision of Rule 102 read with Rule 31 of Postal Manual, volumn-VI, part-III (sixth edition).

Thus, it is alleged that Sri Nemai Ch. Karmakar former SPM, Bengal Enamel SO now Deputy Postmaster Belghoria HO while working as the SPM, Bengal Enamel SO violated the provision of 101 and 102 read with Rule 31 of Postal Manual , volumn VI, Part-III

(sixth edition) and failed to maintain devotion to duty and acted in a way which is unbecoming of a Government servant and thereby violated Rule 3(1)9ii), Rule 3 (1)(iii) of CCS (Conduct) Rules, 1964."

4. The Disciplinary Authority opined such retention as "unnecessary requisition" of cash was made by the SPM, Bengal Enamel SO without showing details of liabilities in the prescribed column of the Daily Account. Had the unnecessary requisition not been placed by said Sri Karmakar the Department would not have sustained the loss of requisitioned amount of Rs. 2,60000/- (Rupees two lakh sixty thousand only.) Hence, said Sri Karmakar was held solely responsible for the loss as he submitted the requisition violating the provision of Rule 101 of Postal Manual, Volum - VI, Part-III (Sixth Edition).

And observed that :

"Moreover, a sum of Rs. 916173.5/- (Rupees nine lakh sixteen thousand one hundred seventy three and paise fifty only) was retained by Sri Karmakar on 29.06.2009 which is beyond the maximum authorized balance of Rs. 2,00,000/- (Rupees two lakh only) violating the provision of Rule 102 read with Rule 31 Postal Manual, Volumn-VI, Part-III (Sixth Edition).

5. The applicant, in his defence placed the following facts to justify that the retention and requisition:

"I entered the department on 11.11.1976 as postal assistant and rendered 35 years of unblemished service in different categories with full devotion and integrity to the entire satisfaction of all concerned. In support of my above submission it may not be out of place to cite one example of my devotion and integrity. While working as SPM Bengal enamel p.o. on 23.06.2009 two person came with 2 i.v.p.s of deno Rs.. 2500/5000 for encashment which appeared to be genuine but the name of the p.o. and the pattern of signature on the i.v.p.s raised doubts in my mind. Hence I

ranged to the then superintendent of post offices north presidency division who directed an inspecting officer to Bengal Enamel p.o and the tow culprits were handed over to the police and the loss to the department by fraudulent encashment could be avoided. My devotion and integrity was acknowledged by the then superintendent of post offices vide memo no. F2/misc/09-10 dated 11.08.2009 which was circulated to the Sr. Postmaster Barrackpore, the p.m Belghoria HO all s.p.m.s. and all A.S.P.O.S under north presidency division would like to quote a sentence of the aforesaid memo verbatim for your kind necessary reference- "it gives me much pleasure to inform all of you the alertness and praiseworthy activities of Sri Nemai Karmakar while he was working as the s.p.m of Bengal Enamel p.o."

3. That Bengal Enamel p.o is an office with disbursement in excess of its receipt RULE- 101 (C) of postal manual volumn- 6 part 3 (sixth edition) provided that the amount to be remitted by a S.O with surplus cash to its H.O or cash office should be such as to reduce its balance to the minimum and the amount to be applied for from its H. O. or cash office in the case of an office with receipt in excess of its disbursements. In other words amount in excess of liabilities plus minimum authorized balance should be remitted to h.o. or cash office. On the other hand in the case of an office with disbursements in excess of its receipt amount in excess of liabilities plus maximum authorized balance should be remitted to H.O or cash office 29.6.2009 being the preceding date of 30.6.2009 which happens to be date of pension payment, salary disbursement and S.C.s.s interest payment huge amount of cash is required to meet the liabilities. That is why your good office authorized retention of cash upto Rs. 333000/-(Rs. Three lacs thirty three thousand only) for pension payment Rs. 367000(Rs. Three lacs sixty seven thousand only) for payment of s.c.s.s. interest in excess of authorized balance for such a date for Bengal Eanmel p.o. vide memo no. Lc 3/authorized balance revision/06-07 dated 06.04.2009. The amount of cash required for salary disbursement was in excess of Rs. 100000(Rs. One lac only). In fact the exact amount of bills paid on 30.06.2009 was Rs. 101938 (rupees one lac one thousand nine hundred thirty eight). The aggregate of maximum authorized balance. The authorized amount to be retained for pension payment, the authorized amount of retention for s.c.s.s. interest payment and the amount required for salary disbursement comes to Rs. 1000000(rules ten lac only)(Rs. 200000/- Rs. 333000/-+ Rs. 367000/-+ Rs. 100000). The amount of cash retained on 29.06.2009 was Rs. 916173/- (rupees nine lacs sixteen thousand one hundred seventy three and fifty paise only). The explanation

below rule 102 of postal manual volume 6 part 6(sixth edition) clearly states that the SPM can retain cash equal to the amount of existing liability plus minimum authorized cash balance which aggregates to Rs. 950000/- (rupees nine lacs fifty thousand only) (Rs. 150000/- being authorized cash balance + Rs. 33300 being authorized amount to be retained for pension payment in excess of authorized balance + Rs. 637000/- being authorized amount to be retained for S.C.S.S. interest payment + Rs. 100000/- being amount required for salary reimbursement). In both the cases the cash retained was within the limit as well as in conformity with the rules and orders. The liabilities were also shown in the daily account of the date. Thus it may kindly be seen that there was no violation of Rule 102 read with rule 31 of postal manual volume 6, part 3 (sixth edition).

4. That the actual amount of pension payment and s.c.s.s. interest payment is much more than the amount authorized (Rs. 333000/- and Rs. 367000) as can be seen from the amount of pension paid and s.c.s.s. interest paid on 30.06.2009 & 01.07.2009 (as total pension and s.c.s.s. interest could not be paid on 30.06.2009 due to non receipt of requisitioned cash). The total amount of S.C.S.S interest paid on 30.06.2009 & 01.07.2009 comes to Rs. 788561/- (Rs. 419777/- on 30.06.2009 + Rs. 368784/- on 01.07.2009) while total amount of pension payment on 30.06.2009 & 01.07.2009 comes to Rs. 624734/- (Rs. 191847/- being the railway pension paid on 30.06.2009 + Rs. 30454/- being pension paid on 30.06.2009 + Rs. 402433/- being pension paid on 01.07.2009). As the amount retained on 29.06.2009 was not sufficient to meet the actual liabilities of pension payment s.c.s.s. interest payment, salary disbursement and to permit retention of authorized cash balance requisition of Rs. 260000 (rupees two lakh sixty thousand only) was placed. The intention and the spirit behind the requisition was to pay s.c.s.s interest to the senior citizens and to pay pension to the old pensioners on the due date. Your goodself will certainly appreciate that harassment to old pensioners and senior citizens is not desirable. Requisition of cash was justified and in conformity with the rules of the department and there was no violation of rule 101 of postal manual volume 6 part 3 (sixth edition).

From what has been stated in the foregoing para it is quite evident that there was neither violation of rule 101 nor violation of rule 102 read with rule 31 of postal manual volume 6 part 3 (sixth edition). Hence, question of violation of rule 3(1)(2) rule 391(3) of CCS Conduct Rules does not arise at all.

6. The Disciplinary Authority gave his findings as under:

"Findings:

The argument of charged official is agreed upon that he was authorized to retain Rs. 333000/- for pension and Rs. 3,67000/- for payment of SCSS vide D.O memo dated 06.04.09. He actually retained the same which is evident from closing balance of Rs. 9,16,173.50. Further, he showed LBS of Rs. 770000/- in the D/A dated 29.06.09 justifying retention of Rs. 916173.50. But requisition of Rs. 2.6 lac for 30.06.09 does not assist him in any way which he had tried to justify by showing the payment made on 01.07.09 also which has no bearing with the liability shown by him in the D/A of 29.06.09. The charge against him stands proved. He deserves a deterrent punishment.

ORDER

I, Sri A. K. Maity, Senior Superintendent of Post Offices, North Presidency Division, Barrackpore, Kolkata- 700 120, in exercise of powers conferred upon me under Rule - 12 of CCS (CCA) Rules, 1965 do hereby punish Sri Nemai Ch. Karmakar, former SPM, Bengal Enamel SO, now Deputy Postmaster, Belghoria HO with recovery of Rs. 1 lakh from pay of Sri N.C. Karmakar in 20 equal installments commencing from the pay of Nov., 2012."

7. The applicant in his appeal further clarified the retention and requisition, in the following words:

"The overage payment of pension, bills paid and interests on SCSS a/cs came to Rs. 97771.00, Rs. 399836, Rs. 392480.00 respectively the total of such amounts of Rs. 890087/- are unseen amounts of liability which had to be paid on the last working day of Quarter ending.

But was not taken into account while the SSPOS fixed the minimum cash balance Rs. 150000/- only (The SSPOS however permitted to retain a sum of Rs. 333000/- and Rs. 367000/- for pension payment and interest payment on SCSS A/cs on the day before for payments on the next working day, the total of this came to Rs. 700000/-(seven lakh) only.

The monthly average amount of bills paid Rs. 100000/- lakh (one lakh) was not taken into account while fixing the minimum cash balance Rs. 100000/- (one lakh) only also.

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- (i) That on 29.6.2009 the requisition of cash for Rs. 260000/- was made on meet the liabilities of salary payments pension payment and payment of interest on SCSS a/cs on 30.6.2009 which stood to Rs. 976968.00 (were paid on quarter ending of march 2009). To meet the pension payment and interest payment on SCSS the SSPOS (as per annexure -B) already authorised to retain total cash Rs. 700000/- (seven lakh) only. But the amount of salary payment Rs. 100000/- (one lakh) only was not taken into consideration, retention of which as per note below Rule- 150(3) of Postal manual volume - VIII (Extract of the rule- is enclosed as annexure- D) was obligatory. Then the total liability for 30.6.2009 came to Rs. 976968 to the minimum. This apart the authorized cash balance as on 30.6.2009 was Rs. 150000/- (was revised to Rs. 800000/- eight lakh vide memo No. LC-3/Authorised cash balance/revision/09-10 dtd. 6.5.2010). As per note below Rule - 150 (3) of Postal manual volume - VIII the maximum cash Rs. 976968 plus Rs. 1 lakh (one lakh) the minimum authorised balance totalling to Rs. 1076968 (ten lakh seventy six thousand and nine hundred sixty eight only was to be retained) the note below Rule -150(3) of postal manual volume- VIII read- "When the total of the liabilities of a sub office exceed the maximum cash balance fixed for the office the sub post master will be justified in retaining a cash balance equal to the total of the liabilities only except when he has good reason to believe that he will be required to meet further liabilities before he can collect further funds in the ordinary way, in which case he may keep cash equal to the amount of existing liabilities plus minimum cash balance fixed for the office." It is therefore, evident the SSPOS did not apply his mind even did not consult the related rules but held the requisition for Rs. 260000/- (two lakh sixty thousand) only was unnecessary.

- (ii) It was also not taken into consideration that the office had to pay more than the receipt. In carrying out the day to day transaction the Office had to receive remittances from HO though private (Local) cash van, as the maximum authorised cash balance was fixed (Prior to revision in 2010) to Rs. 200000/- two lakh only.
- (iii) As discussed in the foregoing paragraphs as per note below Rule - 150(3) of Postal Manual volume- VIII (annexure B refers) and in accordance with the authority of the SSPOS (annexure-B) to retain Rs. 700000/- (seven lakh) only on the previous day of payment of pension and interests on SCSS and an average monthly amount of salary payment the total amount of retention at the close of 29.6.2009 would have been

For salary disbursement	Rs. 101938.00
For pension payment	Rs. 624734.00
For interest in SCSS A/c payment	<u>Rs. 788561.00</u>

Rs. 15,15,233.00

(Fifteen lakh fifteen thousand two hundred thirty three only)

Though the payments were made on 30.6.2009 and 1.7.2009 as there was no sufficient cash in hand and all types of counter transactions were closed on receipt of information of hijacking of private cash van, from divisional office.

It may kindly be seen from the above submission of facts on 29.6.2009 the SO had to retain a sum of Rs. 15,15,233/- (Fifteen lakh fifteen thousand two hundred thirty three) only for payments pensions, staff salary and interest in SCSS accounts as per the note below Rule- 150(3) of postal manual volume-VIII and SSPOS's own authority vide annexure -B, as all such amounts were to be paid on 30.6.2009. Anticipating the clearance of liability of payment of pension interest in SCSS accounts and salary payment this your appellant made a requisition of cash Rs. 260000/- (two lakh sixty thousand) only

on 29.6.2009 to the Sr. Postmaster, Barrackpore to face the payments on 30.06.2006.

(i) Cash was in hand at the close of 29.06.2009 Rs. 916173.50

(ii) Requisition made for Rs. 260000.00

Total cash would available Rs. 11,76,173.50
For payments of the liability
on 30.06.2009

(Rupees eleven lakh seventy six thousand one hundred seventy three only)

8. The Director of Postal Services, Appellate Authority while rejecting the said appeal affirmed the punishment vide his order dated 22.09.2014(Annexure A-3). In his order he observed as under:

"And whereas I have gone through the facts and circumstances of the case records and evidences, representation of the charged official against the charged sheet and representation in appeal and parawise comments of the SSPO, North Presidency Division on the appeal and observed that the appellant admitted in his Appeal that he had retained a sum of Rs. 9,16,135/- in cash on 29.06.2009 whereas the actual liability of his office was only Rs. 7,70,000/- (seven lakh and seventy thousand) only. As per Rule 150 of Postal Manual Volume- VIII, a post office is authorized to keep cash equal to the amount of the existing liabilities plus the minimum cash balance fixed for the office. Therefore, it is clear that the appellant retained cash in excess of the authorized balance on 29.06.2009. Retention of excess cash and unjustified requisition for cash of Rs. 2,60,000/- on 29.06.2009 did contribute towards loss to the government in the cash van hijacking that happened subsequently. The punishment

awarded by the Disciplinary Authority is, therefore, justified and commensurate with the gravity of offence."

9. Ld. Counsel for the applicant would vociferously contend that the retention and requisition were amply justified which the authorities failed to consider with proper application of mind.

10. The Ld. Counsel for the respondents, in a bid to torpedo and pulverize the applicant's arguments would iterate the facts stated in the orders.

11. We heard the ld. Counsels for the parties and perused the materials on record.

12. We would note that the applicant, by way of his repeated prayers, representations and appeal had amply justified the retention of cash and requisition showing his liability to pay at the quarter ending.

It is clearly evident from the appeal enumerated supra that the total liability towards salary disbursement, pension payment and interest was 15 lakhs. The applicant had Rs. 11,76,173.50 yet he was charged with excess retention on the presumption that the liability was only of Rs. 7,70,000/- which was without application of mind by the Disciplinary and Appellate Authority.

Only because the cash was looted, the authorities were not justified in labeling the "retention" and "requisition" as "unnecessary". The dispute being factual the authorities ought to have held regular enquiry against the applicant to ascertain the genuineness of his claim about the reason for "retention" and "requisition" instead of taking a decision without consulting the records with due application of mind.

13. The provisions of paras 31 and 32 of Postal Manual, Vol. VI, Part III states as follows :-

"31. Liabilities of sub-office.- (1) The liabilities of the SO will comprise the total amount of the M.O.s warrants of payment and acquittance rolls remaining unpaid in the S.O.; and, in order that the H.O. may be in a position to know whether any funds will be required by the S.O. or whether the balance retained by it is justified by its outstandings, the SPM must enter the total amount of his liabilities every day in the place provided for the purpose in SO daily account.

The SO account need not be made up during the day in order to arrive at the amount of the cash in hand; but the entry should be made after simply counting all the cash actually in the office at a quarter of an hour before the time for dispatch, without verifying the amount.

32. Details of remittances received and sent - Particulars of remittances received or sent whether from or to the head office or other SOs should be entered in the place provided for the purpose on the back of the SO daily account."

14. Paras 101 and 102 of the said Manual while referring to account of sub-office envisage as follows:-

"101. Principles regulating the supply and disposal of funds.-

- A. A SO at a treasury Bank station which ordinarily receives from the public and its B.O.s and also, if it is a cash office, from other S.O. more money than it pays away should, as soon as its maximum balance is reached, remit to the treasury the whole surplus in excess of the minimum balance. A S.O. at a treasury Bank station which ordinarily pays away more money than it receives, should, as soon as its minimum balance is reached replenish its cash balance up to the authorized maximum.
- B. In the case of S.O.s which are not situated at treasury Bank stations the Superintendent will prescribe the method by which each S.O. will be ordinarily supplied with funds and in which it is ordinarily to remit surplus funds as well as the method to be used for special emergencies. The procedure laid down by the Superintendent must always be strictly followed

except when, for some special reason, a different procedure is ordered in special cases by the H.O.

- C. As a general rule, the amount to be remitted by a S.O. with surplus funds to its H.O. or cash offices should be such as to reduce its balance to the minimum and the amount to be applied for from its H.O. or cash office, should in the case of an office with receipts in excess of its disbursements, be such as to raise the balance up to the authorized minimum, and in the case of an office with disbursement in excess of its receipts, such as to raise the balance up to the authorized maximum.
- D. ASPM may, however, remit or draw money otherwise than in accordance with the principles stated above, whenever actual existing liabilities necessitate a departure from the ordinary procedure but in every such case, he must write an explanatory remark justifying his action on the reverse of the S.O. daily account in which the transaction is shown.

NOTE- In order to determine whether the maximum or minimum balance has been reached, the sub-postmaster should take into account his own actual existing liabilities, such as applications to withdraw from S.B. accounts, payments for post office certificates to be discharged, money orders received for payment, amounts of pay to be disbursed, and remittances to be made to B.O.s on account of their liabilities and to other S.O. but not probable liabilities as the probable receipts and disbursements of the office will already have been taken into account by the officer who fixed the authorized balances.

102. Authorised Balances. - A. The minimum and maximum cash balances and the maximum balance to be held in postage and other (non-postal) stamps will be fixed for each S.O. by the Superintendent. The memo, of authorized balances [Form Pa. 14(s)] received from the Superintendent should be pasted to a board or card-board and hung up inside the S.O. The maximum cash balance of a sub-office will include the amounts with its village postmen.

B. The SPM will be held responsible that the amount of cash and value of stamp retained by him and his village postmen is never unnecessarily large. As far as possible, he must work with balances within the authorized limits, and should not retain cash in excess of the authorized maximum, except when it is necessary in order to meet actual existing liabilities. He will also be responsible that his B.O.s are not allowed without sufficient justification, to retain balances in excess of the authorized limits. Whenever the cash balance retained by a S.O. (including the amount with its village postmen) exceeds the authorized maximum, or the total of the cash and stamp balances, held by branch offices is in excess of the total of the maximum cash and stamp balances fixed for those offices, the sub-postmaster must furnish reasons on the reverse of the S.O. daily account. Whenever the cash balance of a sub-office, including the amount with its village postmen, is less than the maximum limit fixed for the purpose, the SPM should record an explanation for the same in the place for remarks on the reverse of the S.O. daily account.

Explanation.- When the total of the liabilities exceeds the maximum cash balance fixed for the office, the SPM should retain cash equal to the amount of the liabilities only, except when he has good reason to believe that he will be required to meet further liabilities before he can collect further funds in the ordinary way, in which case he may keep cash equal to the amount of the existing liabilities plus the maximum cash balance fixed for the office."

It is probably in the aforesaid context, where total liabilities exceeded maximum cash balance the SPM is permitted to retain cash equal to the amount of the liabilities, that the applicant had made an honest endeavor to explain the requisition and retention of excess cash.

15. In **O.K. Bhardwaj vs. Union of India & Ors.**, (2001) 9 SCC 180, Hon'ble Apex Court has succinctly held as under:

".....Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice" and the said requirement cannot be dispensed with."

16. In **B.C. Chaturvedi Vs. Union of India & Ors.**, (1995) 6 SCC 749, Hon'ble Apex Court held as under:

"Judicial review is not on appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal."

(emphasis added)

17. Accordingly, we are of the considered opinion that at least an opportunity of hearing ought to have been provided to the applicant before imposing a penalty of recovery.

18. Authorities having thus failed to clarify how the requisition ^{it} could be labeled as an "unnecessary requisition", we quash the impugned orders and direct the authorities to refund of the recovered amount within 8 weeks, with liberty to act in accordance with law. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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