

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.8233/2002**

% **Date of Decision: 16.02.2010**

Sh.R.C.Sharma Petitioner
Through Mr.K.K.Rohtagi, Advocate.

Versus

Union of India & Ors Respondents
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner has challenged the order dated 7th February, 2002 in O.A No.2408/1999 titled Sh.R.C.Sharma v. Union of India and Ors passed by the Central Administrative Tribunal, Principal Bench whereby petitioner's original application impugning the disciplinary

authority order dated 31st July, 1998 and Appellate Authority's order dated 17th February, 1999 was dismissed.

The petitioner was recruited as a Postal Clerk and on completion of 16 years of service he was first promoted under time bound scheme and thereafter on completion of 26 years of service he was given second time bound promotion in October, 1991.

During the period September, 1995 to February, 1996 the petitioner was working as Assistant Post Master, Post Office, Agra. While working as an Assistant Post Master, Post Office, Agra allegations were made against him that he allowed remittance to SPM, Idgah Colony, Post Office, Agra on fake liabilities and improper demand which resulted into double payment of National Saving Certificates/Kisan Vikas Patras at Idgah Post Office, Agra amounting to Rs.5,96,270/-.

Consequent to the allegations made against the petitioner a memo of imputation under Rule 16 of CCS (CCA) Rules was served upon the petitioner and an enquiry was initiated against him. During the enquiry proceedings the petitioner requested for some documents and respondent No.4 Senior Superintendent of Post Office, Agra division partly allowed the inspection of the documents on 29th June, 1998.

Pursuant to the enquiry initiated against the petitioner after considering the statement of defence and other materials on record and the chargesheet dated 29th April, 1998 disciplinary authority imposed the penalty of recovery of Rs.79,200/- in 36 equal installments of Rs.2200/- from the pay of the petitioner. An appeal preferred by the petitioner to the Director, Postal Service, Agra region, Agra was also dismissed by the Appellate Authority on 17th February, 1999. Aggrieved by the order of the disciplinary authority and the appellate authority, the petitioner filed an original application bearing No.2408/1999 titled R.C.Sharma v. Union of India before the Central Administrative Tribunal, Principal Bench, New Delhi on 28th October, 1999 which was also dismissed by order dated 7th February, 2002 which is impugned before this Court in this writ petition under Article 226 of the Constitution of India. A review petition was also filed by the petitioner being RA No.74/2002 which was also dismissed by order dated 1st April, 2002 by the Principal Bench, Central Administrative Tribunal.

Before the Tribunal the order of the disciplinary authority and the appellate authority was challenged primarily on the ground that the appellate authority has himself held that the remittance on the relevant dates had been rightly ordered and remittance was rightly done by the petitioner, therefore, he could not be held guilty of double payment as

his responsibility was confined to make remittance to the Idgah Colony, Post Office and not for its actual disbursement by the postal authorities. The Tribunal, however, rejected the plea of the petitioner holding that the petitioner had the cash in hand held by SPM, Idgah Colony, Post Office which had been checked by the petitioner with reference to relevant documents from time to time when remittance was sought and consequently without the involvement of the petitioner double payment could not have been facilitated.

The learned counsel for the petitioner has very emphatically contended that the petitioner only had to ascertain whether the SPM, Idgah Colony, Post Office, Agra had sufficient cash in hand in order to decide the remittance of the cash to said post office and the petitioner was under no duty to check whether the amount is to be paid for which particular Kisan Vikas Patras and National Savings Certificates. In the circumstances, it is contended that the remittance of amount to one of post offices will not reflect any involvement of the petitioner in any manner nor any negligence or implication of the petitioner can be imputed in the facts and circumstances. Since there was deficiency in the cash the SPM, Idgah Colony, Post Office, Agra, therefore, the remittance was correctly ordered by the petitioner calculating the cash liability for payment of Kisan Vikas Patras and National Savings Certificates etc., however, it was not to be checked by the petitioner as

to whether the amount remitted was to be paid to particular Kisan Vikas Patras and National Savings Certificates.

The learned counsel has also emphasized that there was no record available in the Head Post Office to ascertain whether the payment to particular Kisan Vikas Patras (KVPs) and National Savings Certificates (NSCs) had actually been made earlier or not made before releasing the payment by the head office to the SPM, Idgah Colony, Post Office, Agra. In the circumstances, it is contended that it is a case of no evidence against the petitioner showing his implication to the charges imputed against him nor any misconduct has been made out against the petitioner. The learned counsel for the petitioner has also relied on the decision in case of another employee on the same post during the period when the petitioner was not available, in whose case it had been held by the revisional authority that by remitting the amounts to sub post office, no misconduct was committed by such an employee who only had to check the availability of cash in the sub post office.

Perusal of the imputations and the charges against the petitioner reveals that the specific allegation is that during the period 1st September, 1995 to 22nd November, 1995 and 22nd December, 1995 to

12th February, 1996, the petitioner failed to check the liabilities of payment for cash properly shown on bill account dated 11th October, 1995; 16th October, 1995; 19th October, 1995; 20th October, 1995; 25th October, 1995; 23rd December, 1995; 29th December, 1995; 6th January, 1996; 12th January, 1996; 18th January, 1996; 20th January, 1996 and 23rd January, 1996.

The writ petition has been contested by the respondents and a counter affidavit dated 17th July, 2003 was filed, however, the grounds taken inter-alia are that the disciplinary authority has considered the facts and circumstances and has found the petitioner guilty of the charges against him which have been reiterated by the appellate authority vide its order dated 17th February, 1999. The respondents, however, have not averred specifically and refuted the allegations made by the petitioners that no record of Kisan Vikas Patras and National Savings Certificates was available in the head office which could be checked by the petitioner before releasing the cash payment to the Idgah Post office, Agra nor it was to be ascertained by the petitioner before releasing the amount as for which Kisan Vikas Patras and National Savings Certificates the amount is to be paid by the sub post office. Perusal of the counter affidavit filed on behalf of the respondent also reveals that the scope of the duty of the petitioner that is to release to SPM, Idgah Colony, Post Office, Agra after checking the cash in hand

with the same post office has not been denied. An additional affidavit was filed on behalf of respondents dated 24th July, 2004 giving the names of the offenders along with the action taken against them. Perusal of the additional affidavit dated 24th July, 2004 on behalf of the respondents reveals that the proceedings were also initiated against Sh.Parsadi Lal alleged to be a subsidiary offender under Rule 16 and he was awarded the punishment of Rs.20,000/- by memo dated 31st July, 1998.

The learned counsel for the petitioner has contended that during the period petitioner was not working, Parsadi Lal was discharging the same work which was done by the petitioner and for the similar acts that is release of payment to SPM, Idgah Colony, Agra disciplinary proceedings were also initiated against him. The learned counsel for the petitioner has further submitted that Parsadi Lal had filed an appeal against the punishment awarded to him which was dismissed, however, a revision filed by Sh.Parsadi Lal was accepted by order dated 18th February, 2005 and he was absolved of all the charges against him.

Though yet another additional affidavit dated 12th April, 2008 was filed on behalf of respondents indicating the details of the punishment awarded to different officials who were alleged to be responsible for making double payment in respect of Kisan Vikas Patras and National

Savings Certificates, however, the said affidavit did not stipulate that Sh.Parsadi Lal who had been functioning at the post of the petitioner in his absence had not been absolved of the charges against him in a revision filed by him and thus it is admitted that Shri Prasadi Lal against whom same misconduct was alleged had been absolved of any misconduct.

The petitioner had also filed an additional affidavit dated 27th February, 2009 along with CM No.3261/2009 which was allowed by this Court by order dated 13th March, 2009 and liberty was given to the respondent to file reply to the additional affidavit. Despite the liberty granted to the respondent to file response to the additional affidavit filed by the petitioner the response had not been filed.

The petitioner in the additional affidavit categorically deposed that he had worked on the seat of Assistant Post Master (Sub Accounts) at Head Post office, Agra for the period 1st September, 1995 to 22nd November, 1995 and 22nd December, 1995 to 12th February, 1995, however, his duty was to ensure that all the time adequate cash envelopes and postal stamps etc were available each day not only at the SPM, Post Office, Agra district but in 200 sub Post Office. The petitioner asserted that National Savings Certificates (NSCs) and Kisan Vikas Patras (KVPs) are basically fixed deposits of general public with the

specific post office and carry a specified interest rate as decided by the Government. According to the petitioner these transactions for obtaining National Savings Certificates and Kisan Vikas Patras are carried on at the concerned post office. On maturity as per the terms, the customers present the National Savings Certificates and Kisan Vikas Patras in original along with signatures seeking discharge to the same sub post office from where it is issued and after scrutiny the sub post office releases the matured amounts due on National Savings Certificates and Kisan Vikas Patras. It only after the release of the maturity amount due on National Savings Certificates and Kisan Vikas Patras which are also recorded in the books of accounts of the sub Post Office, the vouchers/information is released and sent to the head Post Office for reconciliation and record and consequently considering all these facts and circumstances there is no role of the petitioner in releasing the double payment of National Savings Certificates and Kisan Vikas Patras in any manner at all and it is a case of no evidence against the petitioner and consequently the punishment imposed upon him which has been even approved by the appellate authority is without any basis.

The petitioner has also relied on the order passed in case of Sh.Parsadi Lal who was carrying on the same work in absence of the petitioner on the same post. The revision petition filed by Sh.Parsadi Lal

was disposed of by order dated 18th February, 2005. While dealing with the case of Sh.Parsadi Lal the disciplinary authority had held that the charges leveled against the delinquent was vague and did not contain full facts leading to the loss and manner in which the said Parsadi Lal was linked to the alleged loss. It was also held that in any case the irregularity in discharging certificates by the SPM (Sub Post Master) cannot be linked to the remittance by the head Post Office to the sub Post Office. The relevant order of the revisional authority in the case of Parsadi Lal Srivastava had held as under:-

“ The petition has been carefully considered along with the relevant records of the case and it is observed that the petitioner who officiated as the APM (SB A/c) in a leave arrangement for four days had remitted Rs.20,000/- to the SPM, Idgah Colony Post Office as the latter had shown the liability and demanded cash which was also duly acknowledged. It is further observed that the petitioner was obliged to send the remittance requested by the Idgah Colony Post Office and had no means to check the fictitious liabilities maintained, if any, by the SPM Idgah Colony Post Office.

According to the instructions contained in Rule 11 of the CCS (CCA) rules, 1965, the penalty of “recovery from his pay of the whole or part of any pecuniary loss caused by him to the government by negligence or breach of orders” can be ordered for good and sufficient reasons. The Govt. of India’s instructions on this subject require that there should be a direct nexus between the acts of the petitioner and the loss sustained by the Government. In this case it is alleged that failure of the petitioner to check the liabilities and demand for cash properly had facilitated the double payment of NSCs/KVPs at Idgah Colony Post Office, Agra totaling amount Rs.5,96,270/- thereby causing huge loss to the Government. The charge sheet does not give details of

how the amount of total loss of Rs.5,96,270/- has been arrived at. **There is no nexus between the acts of the petitioner and the said loss to the Government.** In the circumstances ordering recovery from the petitioner would not be proper. The impugned penalty therefore deserves to be set aside.

In exercise of the powers conferred on me vide Rule 29 of CCS (CCA) Rules, 1965, I hereby order accordingly.”

From the perusal of the reasoning of the revisional authority it is apparent that even in the case of the present petitioner there is no direct nexus between the acts of the petitioner and the loss sustained by the Government as it was not the duty of the petitioner to check the actual disbursement of payment in respect of National Savings Certificates and Kisan Vikas Patras at Idgah Colony, Post Office, Agra before remitting the amount to sub post office.

Despite the opportunity no one is present on behalf of the respondent nor any statements have been made to refute the averments made in the additional affidavit. There is no fact on record to show the nexus between the petitioner and the loss sustained by the respondent on account of the double payment made in respect of National Savings Certificates and Kisan Vikas Patras. The petitioner and Shri Prasadi Lal who has been absolved of all the charges were working on the same post and departmental proceedings on account of same acts for different period were initiated. How in case of Prasadi Lal it was not his

duty to check about the payment of Kisan Vikas Patras and National Savings Certificates while remitting the amount to the sub post office and petitioner has committed lapse while performing the same duty has not been explained. If it was not within the scope of duty of the petitioner to check as for which Kisan Vikas Patras and National Savings Certificates the payment was to be released as the record was in sub post office and the duty of the petitioner was to ensure only that the sub post office had sufficient cash and stamps and other postal material, then no misconduct can be imputed against the petitioner. It is apparently a case of no evidence against the petitioner and the disciplinary and appellate authority and even the Tribunal has passed the orders mechanically. The error in the orders are such which are liable to be corrected in the facts and circumstances and the punishment imposed upon the petitioner cannot be sustained.

Consequently, the writ petition is allowed. The order of the disciplinary authority dated 31st July, 1998 and the order dated 17th February, 1999 of the appellate authority and the order dated 7th February, 2002 of the Central Administrative Tribunal, Principal Bench and the order dated 1st April, 2002 passed in R.A No.74/2002 of the petitioner are set aside. The punishment imposed upon the petitioner is also quashed. Consequently, the amount recovered from the petitioner pursuant to the penalty order dated 31st July, 1998 is liable to be

refunded to the petitioner within four weeks from the receipt of copy of this order. The petitioner shall also be entitled for a cost of Rs.10,000/- in the facts and circumstances. With these directions the writ petition is disposed of.

ANIL KUMAR, J.

FEBRUARY 16, 2010

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MOOL CHAND GARG, J.