

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2018

CORAM :

The Hon'ble Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.DURAI SWAMY

W.P. No.20874 of 2018
and W.M.P.No.24505 of 2018

- 1.Union of India,
Rep. by The Director of Postal Services,
O/o.Postmaster General, Western Region,
Coimbatore 641 002.
- 2.The Superintendent of Post Offices,
Pollachi Division, Pollachi-642 001. ... Petitioners

-vs-

- 1.K.Palanisamy
Postal Assistant, Udumalpet HO.,
Udumalpet 642 126.
- 2.The Central Administrative Tribunal,
Chennai Bench, Chennai-104. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records dated 04.10.2016 and made in O.A.No.1641/2013 on the file of Central Administrative Tribunal, Chennai Bench and quash the same in so far as it is against the petitioners.

For Petitioners : Mr.V.Balasubramanian

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O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

This petition is directed by the petitioners-Union of India, represented by the Director of Postal Services and the Superintendent of Post Offices, Pollachi Division, against the order dated 04.10.2016 passed by the Central Administrative Tribunal, Madras Bench, in O.A.No.1641 of

2013, preferred by respondent no.1. The prayer of respondent no.1 in the O.A. was to set aside the order of recovery of a sum of Rs.2,90,270/- and for directions to refund the entire amount recovered from him. The said O.A. came to be allowed.

2.The brief facts of the case are as under:

The respondent no.1 was working as Postal Assistant in Udumalpet HO under the petitioners. The respondent no.1 inadvertently issued six Kisan Vikas Patras (in short, 'KVPs') in contravention of Rule 6 of KVP Rules, 1988, while he was working as Postal Assistant, Udumalpet HO, during the years 1996 and 1997. Relating to the issuance of six KVPs, in the year 2013, the petitioners initiated disciplinary proceedings against him for misconduct, as, according to the petitioners, the KVPs were issued in contravention of Rule 6 of KVP Rules, 1988 and in contravention of communication dated 01.04.1995. The communication dated 01.04.1995, which was also communicated to the Udumalpet HO, stated that no KVPs can be issued to institutions. All the six KVPs in question were admittedly issued to institutions. They were issued in the names of Arulmigu Alkondammal Koil, Somawarpet Udumalpet Taluk; Arulmigu Prasanna Vinayagar Thirukoil, Udumalpet; and Arulmigu Mariamman Thirukoil, Udumalpet.

3.According to the petitioners, due to delay in repayment to the investors of the said KVPs, they approached the District Consumer Disputes Redressal Forum in Coimbatore and the District Consumer Forum awarded payment of full maturity value of the KVPs with interest at 12% till the date of payment of all six KVPs. Against the said order, the Postal Department filed an appeal before the State Consumer Disputes Redressal Commission. The State Consumer Disputes Redressal Commission, in case of four KVPs, modified the order of the District Consumer Disputes Redressal Forum and directed to pay the face value of the said four KVPs with 6% Simple Interest till realisation. In case of the other two KVPs, the appeal was dismissed by the State Consumer Disputes Redressal Commission. According to the petitioners, on account of this, the Postal Department had to pay Rs.7,882/- in case of 4 KVPs in the first case and Rs.2,82,388/- in the case of remaining two KVPs. On account of this, the petitioner no.2 issued memo dated 18.01.2013 to respondent no.1 to credit the loss incurred by the Postal Department.

4.Against the memo dated 18.01.2013, respondent no.1 submitted a representation on 22.02.2013, thereafter, petitioner no.2 initiated Rule 16 proceedings against

respondent no.1 imputing that he failed to maintain devotion to duty in terms of Rule 3 (1)(ii) of CCS (Conduct) Rules, 1964. Finally, the penalty of recovery of Rs.2,90,270/- was imposed on respondent no.1 by memo dated 25.06.2013. Being aggrieved by this act, respondent no.1 approached the Central Administrative Tribunal, Madras Bench.

5.It is seen that in relation to the issuance of these very same six KVPs, in the year 2004, disciplinary proceedings were initiated against respondent no.1 and penalty of reduction of pay by one stage for a period of six months was imposed by the disciplinary authority. This penalty was modified by the Appellate Authority to "Censure". Thereafter, the petitioners have initiated the second disciplinary proceedings on the same issue.

6.The learned counsel for respondent no.1 had submitted that since the department had initiated disciplinary proceedings against him on the same charge in the year 2004 and had also imposed the punishment of "Censure", it would not be open to the petitioners to again initiate second disciplinary proceedings on the same issue. This, according to respondent no.1, amounts to double jeopardy. In relation to this contention, the petitioners' case is that in terms of Rule 58 of FHB Volume I, the respondent no.1 was initially proceeded against for his lapses in issue of KVPs in contravention of Rule 6 of KVP Rules, for which punishment of "Censure" was awarded. At that time, the District Consumer Forum cases were not in existence. But, later on, the investors approached the District Consumer Disputes Redressal Forum and the Postal Department sustained a loss of Rs.2,90,270/- and hence, two proceedings were necessitated as provided in Rule 108 of the Postal Manual Volume III.

7.In our opinion, the loss was sustained by the Postal Department due to unexplained delay on account of the administration from the year 2002 to 2007 and respondent no.1 cannot be held responsible for the same. It is to be noted that the holders of KVPs made a complaint on 29.01.2001 protesting against the payment of KVPs without any interest and option was called for from the holders to accept payment of the KVPs with simple interest in April, 2001. In the meantime, the proposal for condonation of the irregular issue of KVPs was submitted by Udumalpet HO in April 2001. But the same was not disposed of by the Directorate till the investors submitted application to the District Consumer Disputes Redressal Forum. As the payment of the KVPs was delayed, the holders agreed to accept payment of KVPs with simple interest on 29.11.2002 and

15.07.2003, but, no action was taken by the administration to settle the complaint by ordering the payment of KVPs with simple interest.

8.It is not in dispute that respondent no.1 had issued the six KVPs in question to private institutions, which could not have been done in view of communication dated 01.04.1995. However, the only point that arises for our consideration is as to whether the amount is liable to be recovered by the Postal Department from respondent no.1. No doubt, the communication dated 01.04.1995 clearly stated that KVPs could not be issued to institutions and despite this fact, respondent no.1 issued KVPs to institutions. However, for the said act, he has already been imposed with punishment of "Censure".

9.As far as the contention of the petitioners that loss of Rs.2,90,270/- was sustained by the Postal Department, hence, it had to be recovered from respondent no.1 is concerned, we have already observed above that loss was sustained due to the unexplained delay on the part of the Postal Department from the year 2002 to 2007. Had the Postal Department taken prompt steps in the year 2001 or at least in 2002 to repay the amounts, there would not have been a loss of Rs.2,90,270/-. Moreover, we are of the opinion that it is only the Postal Department which can be said to be responsible for the loss in view of the fact that the investors would have issued notice to the Postal Department before filing a case before the District Consumer Forum. However, the Postal Department did not take any action on the notice and kept silent and allowed the investors to file an application before the District Consumer Disputes Redressal Forum and thus, invited an order from the District Consumer Forum. Thus, it is clear that the loss of Rs.2,90,270/- sustained by the Postal Department was actually on account of the carelessness and lethargy of the Postal Department and respondent no.1 cannot be said to be liable for the loss sustained by the Postal Department.

10.It is also pertinent to note that there is no monetary loss to the petitioners, as the money was all along lying with the Postal Department. It is not the case of the petitioners that respondent no.1 accepted the amount towards the KVPs and misappropriated the same. It is an admitted fact that the amount received from six KVPs was credited in the account of the Postal Department. Hence, it cannot be said that there was any monetary loss to the petitioners, as the money was all along lying with the Postal Department. The Postal Department is doing financial business and the interest had to be paid to the

investors till the repayment of the amount invested. The amount of the six KVPs was duly credited with the Department with the knowledge of the Superior officials and it cannot be said that there was a monetary loss to the Department, as the money was all along lying with the Department and earned its income/profit in its usual course like any other KVP deposits. For the lapses on account of respondent no.1, he had already been punished in the year 2004 by awarding the punishment of "Censure". Hence, it is not possible to penalise him again.

11.The Central Administrative Tribunal considered all these aspects and directed to refund the entire amount recovered from respondent no.1.

In view of the facts and circumstances of this case, we find no merit in this petition. Hence, this writ petition is dismissed. No costs. Consequently, W.M.P.No.24505 of 2018 is also dismissed.

Sd/--

Assistant Registrar(CS)

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Sub Assistant Registrar

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To

1.The Director of Postal Services,
O/o.Posmaster General, Western Region,
Coimbatore 641 002.

2.The Superintendent of Post Offices,
Pollachi Division, Pollachi-642 001.

+1cc to Mr.V.Balasubramanian, Advocate SR.No. 59109

W.P.No.20874 of 2018

ASK(12/09/2018)

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