

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24886 of 2018

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Dina Nath Prasad Sah S/o Late Dukhit Sah Resident of Mohalla - Kamla Prasad Lane , Diwan Road , District - Muzaffarpur .At present employed as SPM at Amgola Sub Post Office, Muzaffarpur - 842001

... .. Petitioner/s

Versus

1. The Union Of India and Ors null null
2. The Chief Postmaster General , Bihar Circle , Patna - 800001.
3. The Post Master General ,Northern Region, Muzaffarpur.- 842002
4. The Director of Postal Services , Northern Region , Muzaffarpur - 842002
5. The Sr. Superintendent of Post Offices, Muzaffarpur Division, Muzaffarpur. - 842002.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Hemant Kumar Karan, Advocate.
For the Respondent/s : Mr. Anshuman Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 22-12-2022

In the instant writ petition, petitioner has assailed the order of the C.A.T. passed on O.A No. 050/00148 dated 30.08.2018.

Brief facts of the case are that the petitioner while working as Sub-Postmaster he was alleged to have involved in certain transaction to the tune of Rs. 63,509/-. The aforementioned amount was stated to be of Smt. Neelam



Shrivastava and Shri Ajay Kumar who are account holders. Such withdrawal of Rs. 63,509/- is without knowledge of the account holders. The petitioner was custodian of the concerned record like maintaining the account of Smt. Neelam Shrivastava and Sri Ajay Kumar and others. Based on the aforesaid allegation petitioner was subjected to disciplinary proceeding in framing of article of charges on 04.08.2009. The Disciplinary Authority proceeded to appoint Inquiring Officer and Presenting Officer, the Inquiring Officer submitted report on 14.07.2014. On receipt of the Inquiring Officer, Disciplinary Authority issued second show-cause notice along with the Inquiring Officer report, for which petitioner had submitted his reply on 26.07.2014, thereafter, the Disciplinary Authority proceeded to impose penalty of recovery of Rs. 63,509 and withholding of two increments without cumulative effect.

Feeling aggrieved by the order of penalty dated 14.11.2014, petitioner preferred appeal on 12.12.2014 and it was rejected on 09.01.2018. Consequently, petitioner invoked Section 19 of the Administrative Tribunals Act, 1985 and filed O.A. No. 050/00148 before the C.A.T and it was rejected on 30.08.2018, hence the present writ petition.

Learned counsel for the petitioner vehemently



contended that he alleged to have involved in a fraud of withdrawal of sum of Rs. 63,509/- from the account of Smt. Neelam Shrivastava and Shri Ajay Kumar is not proved and it requires to be proved on due examination and cross-examination of the account holders namely Smt. Neelam Shrivastava and Shri Ajay Kumar and they have not been cited as witness to the departmental inquiry. Further, it was submitted that in all fairness respondent-Postal Department should have referred the matter relating to withdrawal of application and specimen handwriting and signature of the petitioner in order to ascertain as to whether, the petitioner was involved directly in respect of withdrawal of the amount of Rs. 63,509/- and it could be verified only with reference to handwriting experts read with the withdrawal application. The said exercise has not been undertaken by the Postal Department, therefore, fraud is not proved. On these accounts the C.A.T. has not apprised in entertaining O.A. and setting aside the order of the Disciplinary and Appellate Authority in allowing O.A. No. 050/00148 of 2018.

Per Contra, learned counsel for the respondent resisted the aforesaid contentions and submitted that the petitioner was custodian of the relevant section namely



maintaining accounts of Smt. Neelam Srivastava and Shri Ajay Kumar and others. It is learnt that such account has been closed, in such an event petitioner should have been alert in the event of withdrawal of a sum of Rs. 63,509/- from the account of Smt. Neelam Srivastava and Shri Ajay Kumar. If he was alert he could have stopped withdrawal of the aforementioned amount, therefore, he has been charge-sheeted in the departmental inquiry and punished. Therefore, there is withdrawal of amount and he has also supported the order of the Tribunal dated 30.08.2018 passed in O.A. No. 050/00148 of 2018.

Heard the learned counsel for the respective parties. The petitioner while working as a Sub-Postmaster he was in-charge of particular section relating to account of the customers like Smt. Neelam Shrivastava and Sri. Ajay Kumar and others. Whatever the transactions were made by the customer in that regard petitioner was functioning with reference to their accounts. From the aforesaid persons account a sum of Rs. 63,509/- has been withdrawn by stranger. When the accounts were stated to be closed in that event petitioner should have been alert in not allowing withdrawal, on the other hand there is negligence on his part in permitting withdrawal. In so far as, fraud is concerned it is not proved in the manner known to the



law. In the present case, fraud is required to be proved against the petitioner only on forensic examination and withdrawal application and other related papers with reference to specimen handwriting and documents of the petitioner read with his specimen signature. If it is disputed in that event Disciplinary Authority should have referred the matter to the forensic experts in order to have an opinion as to whether the manuscript in the withdrawal application is that of petitioner or not? To that extent the Disciplinary Authority/Inquiring Authority have not proved that there is fraud played by the petitioner. Further we have noticed that for the alleged misconduct penalty is only a recovery and withholding of two increments without cumulative effect. Imposition of withholding of two increments without cumulative effect is minor penalty. Recovery is impermissible for the reasons that there is negligence on the part of the petitioner in not noticing the account properly while permitting to withdraw a sum of Rs. 63,509/- to that effect he is not liable for the order of recovery of the Disciplinary Authority. In so far as, recovery order is concerned it is set aside. Withholding of two increments without cumulative effect is concerned it is upheld due to negligence on the part of petitioner like not noticing that account was closed etc. Accordingly, order of



Disciplinary/Appellate Authority and order of the Tribunal are modified. If any recovery of amount is effected in that event concerned authority is hereby directed to refund the same to the petitioner within three months from today.

Writ petition is allowed in part.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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