
(2004) 02 AHC CK 0089
In the Allahabad High Court
Case No : Second Appeal No. 1252 of 1982

Rafiq Husain

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 16

Citation : (2004) 2 AWC 1310

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : R.K. Jain, for the Appellant; K.C. Sinha and B.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—The plaintiff-appellant has lost from both the courts below and has preferred the present second appeal. The plaintiff was working as a clerk at Head Post Office, Kanpur and was on medical leave and reported for work on 17.4.1975. The plaintiff-appellant was posted to work in the Parcel Import Branch where he worked till the forenoon of 19.4.1975 when he again fell ill and took leave from 1.00 p.m. on 19.4.1975 and thereafter availed medical leave for ten days. After four months the plaintiff-appellant was served with a charge sheet dated 13.8.1975 issued by the Senior Superintendent of Post Office, Kanpur, proposing to take action against the plaintiff-appellant under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as the "Rules") for alleged misconduct.

2. The charge-sheet stated that the plaintiff-appellant failed to carry out the physical verification of the insured parcel on 18.4.1975 as a result of which one insured parcel No. 290 remained unaccounted till 22.4.1975 on which date the said insured parcel No. 290 was substituted by some miscreants with parcel No. 914, resulting in the loss of Rs. 10,000 to the department. The plaintiff-appellant was charged for gross negligence in not carrying out the physical verification of

the insured parcels violating Rule 200 (3) of the Post and Telegraph Manual Vol. 6 (hereinafter referred to as the "Manual"), thereby resulting in the loss by substitution of parcel No. 290 with parcel No. 914 which was valued at Rs. 10,000.

3. The plaintiff-appellant filed a reply to the charge sheet and admitted that on account of a clerical mistake one insured parcel No. 290, which was returned by the postman was not brought forward by him in the abstract register. The plaintiff-appellant further submitted that the loss of the insured parcel No. 914 occurred on 22.4.1975 on which date the plaintiff-appellant was on medical leave and therefore, he could not be held responsible for the loss of parcel No. 914.

4. The Senior Superintendent of Post Office, Kanpur by order dated 23.3.1977 held that the plaintiff-appellant was guilty in not verifying the parcels on 18.4.1975 thereby violating Rule 200 (3) of the Manual. Due to the careless discharge of checking duties on 18.4.1975 by the plaintiff-appellant, it allowed the insured parcel No. 290 to remain unaccounted and unentered in the insured parcel abstract register. On account of this carelessness it provided a loophole to some miscreants to remove parcel No. 914 on 22.4.1975 and substitute parcel No. 290 with parcel No. 914. The disciplinary authority further held that the lapse on the part of the plaintiff-appellant contributed to the loss of parcel No. 914 and therefore, the plaintiff-appellant was held partly responsible for the loss of insured parcel No. 914 and a sum of Rs. 2,400 was directed to be recovered from the plaintiff-appellant's pay in 24 monthly instalments at the rate of Rs. 100 per month.

5. Being aggrieved by the said order the plaintiff-appellant filed a suit for declaration praying that the punishment order dated 23.3.1977 passed by the Senior Superintendent of Post Office, Kanpur be declared illegal. The trial court dismissed the suit and the appeal of the plaintiff-appellant was also rejected.

6. The plaintiff-appellant has challenged the punishment order on various grounds namely, that the enquiry was not conducted in a fair and proper manner and was in violation of the principles of natural justice ; that the procedure contemplated under Rule 14 of the Rules was not followed ; that the charge-sheet did not contain the list of documents nor the names of the witnesses were mentioned, which had been relied upon by the department. It was also stated that Rule 200 (3) of the Manual was not attracted and that the plaintiff-appellant cannot be held responsible for the loss which occurred on 22.4.1975 when admittedly, he was on medical leave.

7. It may be stated here that no substantial question of law was framed at the time of the admission of the appeal. However, a substantial question of law has been formulated as under, namely, "Whether the appellant could be held responsible for the negligence of the loss of an article for which he was not directly responsible under Rule 11 (iii) of the Rules."

8. Heard Sri Raj Kumar Jain, the learned counsel for the appellant. No one has

appeared for the opposite parties inspite of the cause list being revised.

9. Without going into the fairness of the enquiry and the procedure followed and the other grounds raised by the plaintiff-appellant, I think that the appeal is liable to be allowed on the question of law as formulated above.

10. Admittedly, the charge-sheet was issued against the plaintiff-appellant proposing to take action under Rule 16 of the Rules. Rule 16 provides the procedure for imposing minor penalties as specified in Clauses (i) to (iv) of Rule 11. In the present case a minor penalty has been imposed under Rule 11 (iii) of the Rules, which provides as under :

"Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order."

11. The aforesaid Rule 11 (iii) of the Rules makes it clear that the penalty can be awarded only in a case where it has been established that the negligence on the part of the Government servant has led to the loss to the department. Merely establishing a certain lapse on the part of the Government servant is not sufficient for the authority to impose a penalty under Rule 11 (iii) of the rules until and unless it is proved that the lapse on the part of the Government servant had a direct link with the loss sustained by the department or that the Government servant in some manner attributed to the said loss.

12. In the present case, the plaintiff-appellant was only responsible for the lapse in not accounting the insured parcel No. 290 in the abstract register for which he can be punished. However, the insured parcel No. 290 was never lost and even though it remained unaccounted, no pecuniary loss was incurred by the department on the insured parcel No. 290. The plaintiff-appellant could not be held responsible for the loss of parcel No. 914, which was admittedly removed on 22.4.1975 on which date the plaintiff was on medical leave.

13. The department had imposed the penalty on the ground that on account of parcel No. 290 having remained unaccounted, it provided a loophole to some miscreants to remove parcel No. 914 and substitute the same with parcel No. 290.

14. In my view penalty cannot be imposed upon the plaintiff-appellant on this ground unless it is proved that the plaintiff-appellant was responsible or had a hand in some manner in the removal of parcel No. 914. The department has not found that the plaintiff-appellant had a hand in some manner with the removal of parcel No. 194. The department has only found that the plaintiff-appellant had committed a lapse and was negligent in not accounting parcel No. 290 in the abstract register and which eventually led to substitution of parcel No. 290 with parcel No. 914. In the absence of any finding that the plaintiff-appellant was in some manner responsible for removing parcel No. 914, in my view the punishment order cannot be sustained.

15. The recovery of the amount from the plaintiff-appellant on the ground that

he was in some manner indirectly responsible for the substitution of parcel No. 290 with parcel No. 914 is not justified. The Rules make it absolutely clear that the penalty can be awarded only in a case where it has been established that the negligence on the part of the Government servant had directly led to the loss to the department. In the present case there is no finding that the plaintiff-appellant was in some manner responsible for the loss of parcel No. 914.

16. It may be stated here that the department has nowhere stated as to what steps they had taken to punish the real culprits, who had actually removed parcel No. 914. It seems that the department without proceeding against the real culprits had taken the easier step of making the plaintiff-appellant a scapegoat and proceeded to recover the loss from him.

17. In view of the aforesaid, the punishment order dated 23.3.1977 cannot be sustained and is set aside. The second appeal is allowed. The judgment and decree of the appellate court and that of the trial court are hereby set aside and the suit of the plaintiff is decreed with costs.

18. I further direct the opposite parties to refund a sum of Rs. 2.400 along with simple interest at the rate of 5% per annum within a period of three months from the date a certified copy of the judgment is produced before the opposite parties.