
(2009) 05 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

Sr. Supdt. Of Post Offices, Gpo Building

APPELLANT

Vs

Sharanjit Singh Bahm

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Citation : 2009 3 CPJ 281

Hon'ble Judges : B.N.P.SINGH , P.D.SHENOY J.

Advocate : G.C.BABBAR

Judgement

1. HEARD the learned Counsel for the petitioner. In this case, the respondent was the complainant before the District Forum. The case of the complainant in brief is that, daughter of the complainant had completed four years B D S Course from Ludhiana and became eligible for Part I National Board Dental Examination to be conducted by American Dental Association. On 16.4.2005, the complainant sent an envelope containing the application and necessary documents of his daughter through speed post booked by the postal department and sent to the Joint Commission on National Dental Examination, Chicago, USA.

2. THE said documents were to be delivered to the addressee on or before 6.6.2005 i.e. within 50 days from the date of despatch by speed post for the examination to be held on 17.7.2005. Daughter of the complainant left for USA on 8.5.2005, presuming that she will collect the roll number by herself. The said parcel was received back by the respondent/complainant on 18.5.2005 with the remarks mis -sent" and it was in an open and mutilated condition. Subsequently, he again sent the application and other documents by speed post on 4.6.2005. Therefore, the complainant filed a complaint before the District Forum alleging deficiency in service and claimed an amount to the tune of Rs. 1.00 lakh, apart from Rs. 50,000, claimed as compensation towards mental agony.

3. THIS was contested by the postal authorities stating that inadvertently the speed post article for which Rs. 425 was paid, instead of reaching Chicago it went to Paris and from Paris it was returned back to India, hence, there is no deficiency in service on the part of the postal authorities. The District Forum after

considering the merits of the case and hearing the Advocates for the parties and studied the Section 6 of the Indian Post Office Act, 1898 and held that Section 6 of the Indian Post Office Act is meant "for the articles booked with the post office in the home country and the Act is silent for the articles which are sent through post office including speed post to overseas countries" hence, this section is not applicable. Accordingly, it awarded a lumpsum compensation of Rs. 5,000 for the deficiency, mental tension, agony and cost of litigation.

4. EVEN though the compensation awarded in this case was meagre, the postal authorities choose to continue their litigation and filed an appeal before the State Commission. The State Commission after hearing the learned Counsel for the parties passed a detailed order upholding the decision of the District Forum and dismissed the appeal.

5. DISSATISFIED by the order of the State Commission, the postal authorities, Sr. Superintendent of Post Office, Chandigarh, has filed this revision petition before us. Main ground urged by the learned Counsel is that Section 6 of the Indian Post Office Act, 1898, protects the postal authorities and postal staff against loss, mis-delivery, delay or damage of any postal articles in the course of transmission by post, hence, no compensation is payable. He contended that the postal authorities are liable to pay only twice the amount paid for the speed post i.e. Rs. 950 or Rs. 1,000 whichever is lesser. Therefore, the amount of Rs. 5,000 awarded by the Forum below, is grossly exaggerated compensation; hence the postal authority was compelled to file the case upto the level of National Commission. Therefore, he seeks that the revision petition may be allowed and the complaint may be dismissed.

6. SECTION 6 of the Indian Post Office Act reads as follows: "The Government shall not incur any liability by reasons of the loss, mis-delivery or delay in damage to any postal article in course of transmission by post except insofar as such liability may in express terms be undertaken by the Central Government as hereinafter provided, and no officer of the Post Office shall incur any liability by reason of any such loss, mis delivery, delay or damage unless he has caused the same fraudulently or by his wilful act or default" (Emphasis added).

7. THIS section does not speak of speed post at all. Hence the observation of the District Forum, quoted supra, does not speak of International Postage Rules, which are governed by International Postal Union. The postal department has not shown any rule, which will protect their negligent action. Further in the case under consideration, instead of sending the postal article to USA, it was sent to Paris. This cannot be construed as inadvertent action or mis delivery. The postal authorities cannot be so negligent as to send the postal article to a country other than the country of destination and further assuming that it was sent to some other country instead of re directing it to the country of destination it was sent to the original addressee. This is nothing but a wilful act and default of the postal department.

8. THE learned Counsel quoted Judgment of this Commission in support of his contention in the case of Supdt. of Post Offices, Pauri Garhwal, Uttaranchal v. Atma Ram, IV (2006) CPJ 37 (NC). In this Judgment the letter was sent by registered post and not by speed post and within India. Speed post is a special mode of despatch and delivery for which higher charges are levied within India. So the ratio of this case is not applicable to the case under consideration.

9. FURTHER the compensation awarded by the Fora below is only Rs. 5,000 and instead of paying this amount gracefully, the petitioner has fought the case upto the level of the National Commission.

10. HENCE the Senior Superintendent of Post Offices, GPO Building, Chandigarh is directed to pay the amount of Rs. 5,000 within four weeks" from the date of this order. The petitioner shall also pay Rs. 10,000 as costs for dragging the complainant upto this level.

11. IN Lucknow Development Authority v. M.K. Gupta, III (1993) CPJ 7 (SC), the Hon"ble Apex Court has held as follows: "Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio - economic outlook. The authority empowered to function under a Statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bonafide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant are over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the Court directs payment of damages or compensation against

the State the ultimate sufferer is the common man. It is the tax payer's money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries."

12. THEREFORE , drawing support from this celebrated judgment of the Apex Court, we direct the postal department to conduct an inquiry and if deems fit, recover the amount from the delinquent employee. R.P. disposed of.