(2018) 09 J&K CK 0031

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No. 70 Of 2009

Sr. Superintendent of Post offices and another @APPELLANT@Hash J&K S. C. D. R. C. Jammu and another

Date of Decision : 10-09-2018

Acts Referred:

Indian Post Office Rules, 1933 — Rule 6, 66B
Indian Post Office Act, 1898 — Section 6, 53

Citation : (2018) 09 J&K CK 0031

Hon'ble Judges : Dhiraj Singh Thakur, J;Sanjay Kumar Gupta, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

1. The present petition has been filed by the petitioners, challenging the order dated 16.04.2008, passed by the learned J&K State Consumer Disputes

Redressal Commission, Jammu/respondent No. 1 herein, whereby it allowed the appeal filed by the complainant/ respondent No. 2 and directed the

petitioner to pay the compensation of an amount of Rs. 50,000/- and litigation charges to the tune of Rs. 5,000/-.

2. Briefly stated, the material facts are as under:-

3. Respondent No. 2 herein qualified to appear for the second stage of Civil Service Examination, which was fixed for 21.10.2005. On 02.08.2005,

the Union Public Service Commission (UPSC) sent to him through speed post the requisite form, which was required to be delivered at his home

address. The case of the petitioners was that the form was delivered at the resident of respondent No. 2 on 23.08.2005, whereas as per the procedure

prescribed by UPSC, same was to be deposited in the office of UPSC on on 22.08.2005. One of the conditions prescribed by the UPSC was that if

the requisite form was not received by the candidate upto 15.08.2005, then he was required to contact the Commission or the facilitation counter for

getting a new form.

4. It appears that the complainant did not receive the form upto 15.08.2005 and thus contacted the UPSC Delhi, who then advised him to collect it

personally from its office. In this regard, the complainant visited Delhi on 19.08.2005 and collected the form, came back to Jammu on 20.08.2005 and

left again for Delhi on the next date, i.e., 21.08.2005 and after completing all the formalities submitted the same in the office of UPSC on 22.08.2005.

It was only the submission of the form on 22.08.2005 that the Postal Department delivered the earlier form on 23.08.2005 at complainantâ??s home

address. There was thus delay of 11 days. It was in those circumstances that the complainant filed a complaint before the Divisional Forum, Jammu,

seeking compensation for mental agony, deficiency of service, litigation expenses etc. The complainantâ??s case before the Forum was that the

delay of 11 days caused by the Postal Department is wilful and result of negligent conduct of the Department. Â

5. In the response filed by the petitioners before the Forum while delay was admitted, it was stated that the speed post parcel had remained untraced

for 15 days in Post Office Centre RMS Bhawan Jammu but denied its liability to reimburse the complainant by relying upon the provisions Section 6 of

the Indian Post Office Act 1898, read with clause 84 of Post Office Guide Part-I and Rule 66B of Indian Post Office Rules, 1933.

6. The Divisional Form came to a conclusion that the petitioners herein, who were respondents before the Forum had failed to satisfactorily explain

as to why the speed post in question had remained in the speed post Centre RMS Bhawan, Jammu from 10.08.2005 to 21.08.2005. However, the

Forum held that in terms of Rule 66B of Indian Post Office Rules, the complainant, in the event of delayed delivery of the speed post article would be

entitled to compensation equal to the composite speed post charges paid.

7. It further held that apart from Rule 66B, which was introduced with effect from 1.08.1986, relating to speed post, Section 6 of the Indian Post

Office Act 1898 provided complete immunity to the Department for against any compensation. In those circumstances, the Divisional Forum

proceeded to hold that the complainant would only be entitled to the amount equal to the composite speed post charges paid by him.

8. Aggrieved of the order passed by the Divisional Forum, the complainant preferred an appeal before the Consumer Disputes Redressal

Commission, Jammu, who vide order impugned dated 16.04.2008 allowed the same and awarded compensation to the tune of Rs. 50,000/- on account

of mental harassment, agony and financial loss suffered by the complainant as also Rs. 5,000/- as litigation charges. It held that the protection under

Rule 6 of the Indian Post Office Act was not available to the Central Government, where delay was caused due to fraud, wilful act or default of the

Postal employees and proceed to hold that since delay had not been explained by the authorities rather, it was proved that it had occurred due to the

negligent conduct of the employees, the department was liable.

9. Learned counsel for the petitioners submits that the view taken by the Consumer Disputes Commission was erroneous in law. It was urged that

the said Commission had failed to appreciate the provisions of Rule 6 of the Indian Post Office Act, 1898 in its correct perspective.

10. Learned counsel for the respondent No. 2 however, reiterated the stand taken by the Fora below.

11. Heard learned counsel for the parties.

12. Rule 6 of the Indian Post Office Act, 1898 is reproduced hereunder for facility of reference :-

â??Exemption from liability for loss, misdelivery or damage â?" The government shall not incur any liability by reason of loss, misdelivery, or delay or

damage, to any postal article in course of transmission by post except in so far as such liability may in express terms be undertaken by the (central

government) as here in provide and no officer of the post office shall incur any liability by reason of any loss, misdelivery, delay and damage unless he

has caused the same fraudulently or by his wilful act or default.â??

13. On a reading of the aforementioned section, it is clear that the first part of the section completely absolves the Government of any liability on

account of loss, misdelivery, delay or damage to any postal article in course of transmission except insofar as such liability may in express terms to be

undertaken by the Central Government.

14. The second part, however, provides that no officer of the post office would incur any liability by reason of such loss, misdelivery, delay or damage

unless the same has been caused fraudulently or by his wilful act of default.

15. The Apex Court in â??Ramachandre Narasimha Kulkarni Vs State of Mysoreâ?, reported in 1964 AIR(SC) 1701, while considering the affect of

the word â??wilfulâ?? in the background of Section 53 of the Indian Post Office Act stated thus:-

â??5. The words ""wilful"" and ""wilfully"" are frequently used in many statutes and have come up for judicial consideration in the courts of this country

as also elsewhere. The meaning given to these words have differed in different contexts. Sometimes, any intentional act has been held to be a wilful

act. (Re Young and Harstonâ??s Contract, (1885) 3 Ch D 174. Often, it has been said that the word wilful suggests bad conduct or action though it

does not necessarily connote blame. (Wheeler v. New Merton Board Mills, 1933-2 KB 669. Not infrequently the word has been used to mean that the

act had been done with a bad purpose or without justifiable excuse or stubbornly, obstinately or perversely. (United States of America v. Harry

Murdock.(1993) 78 Law ED 381 (389).

6. Some decisions stress the requirement of deliberation or reckless disregard of the fact whether the act was or was not in breach of duty in deciding

whether it has been wilful. (Hudson v. Official Liquidator, Dehra Dun Massorie Electric Tramway, Co., AIR 1929 Allahbad 826) and in re T.N.K.

Govindarajulu Chetty, 1951-2 STC 26 (Mad). In the last mentioned case, viz., 1951-2 STC 26 (Mad), the Madras High Court held that a submission of

a false return cannot be a wilful submission unless the dealer has deliberately made the return with the knowledge that he was excluding a taxable

item, though in almost similar circumstances another Bench of the same High Court took a different view and held that even though when an

assessee, under the impression that a particular item is not taxable and, therefore, need be excluded in the return, omits lo make a mention, of it in the

return which he furnished with the full knowledge of his having committed the same, he has ""wilfully"" omitted it. (In re Jayarama Chettiar, ILR (1949)

Madras 121).

7. A review of these various decisions brings out clearly the guiding principle that the meaning to be attached to the words "" wilful"" or ""wilfully"" has to

be ascertained on a close examination of the scheme and nature of the legislation in which the words appear and the context in which they are

used.â??

16. In the present case, while the Government enjoys complete immunity, but the officers of the post office, who may otherwise can be held liable

only, if it is proved that the loss, misdelivery, delay or damage was caused by him fraudulently or by his wilful act of default. In that event, the officer

concerned, would have to be sued in his personal capacity, by name.

17. On a perusal of the order passed by the Divisional Forum, it can be specifically seen that there was no fraudulent or wilful act or default on the

part of any of the officers of the Postal Department. It thus clear that the complainant had failed to clearly established that the officers had caused

delay on account of their wilful act or default.

18. It was finally proceed to hold that the office of wilful detention of a postal article as covered under Section 53 of the Indian Post Office Act would

mean only such detention which was deliberate and for some purpose. Reliance was placed upon AIR 1929 Allahbad 826 where â??wilful defaultâ??

was construed thus:-

The adjective 'wilful' in 'wilful acts or defaults' has evidently been used as a description and not as a definition. The idea intended to be conveyed is

that the default is occasioned by the exercise of volition or as the result of the non-exercise of will due to supine indifference, although the defaulter

knew or was in a position to know that loss or harm was likely to result. The word does not necessarily suggest the idea of moral turpitude. We have

also to eliminate the elements of accident or inadvertence -or honest error of judgement. The default must be the result of deliberation or intent or be

the consequence of a reckless omission. 'Wilful default', therefore, is indicative of some misconduct in the transaction of business or in the discharge

of duty by omitting to do something either deliberately or by a reckless disregard of the fact whether the act or omission was or was not a breach of

duty"".

19. Testing the facts of the present case on the touch stone of the ratio of the aforementioned judgments, it can safely be held that while there was

delay in delivery of the postal article to the complainant, but the complainant had failed to establish any fraudulent, wilful act or default on the part of

the officers concerned. Be that as it may, the present petition succeeds. Order impugned dated 16.04.2008 is set aside. The complainant/respondent

No.2 will be held entitled to compensation equal to the composite speed post charges paid by him.

20. Disposed of accordingly along with connected IA.

