(1995) 01 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

SUPERINTENDENT OF POST OFFICES, BALUGHAT	APPELLANT
Vs	
MAHENDRA NATH BASAK, SECRETARY, SAFANAGAR HIGH SCHOOL	RESPONDENT

Date of Decision : 16-01-1995

Acts Referred:

Citation : 1995 0 NCDRC 115 : 1995 1 CPJ 177 : 1995 2 CLT 82 : 1995 2 CPC 471 : 1995 2 CPR 561

Hon'ble Judges : V.BALAKRISHNA ERADI , Y.KRISHAN , B.S.YADAV J.

Advocate : SANJAY AGRAWAL , B.P.AGRAWAL , N.R.MUKHERJEE

Judgement

1. THIS is an appeal against the Order of 21st of January, 1993 in case No. 949 of 1992 passed by the State Commission of West Bengal. By this Order the Superintendent of Post Offices, Balughat was directed to pay a sum of Rs. 1,26,997/-with interest at 18% from 1st January, 1988 till 31st December, 1992 to the Complainant before it, the Secretary, Safanagar High School. The appellant has challenged the Order of the State Commission on the ground that the amount claimed by the Respondent-Complainant had never been deposited in the account of the Respondent, that the balance in the account was only Rs. 462.56 on 25th October, 1983, that the Respondent-Secretary of the Safanagar High School as well as the Post Master late Shri N.N. Basak of the Post Office. Blughat were in collusion and that they have jointly misappropriated the amount which was deposited in the account of the School, that there is no proof of the deposit of the amount nor were the deposit slips produced before the State Commission and that the entries, in the pass books have been manipulated and forged.

2. THE facts regarding non-deposit and possible misappropriation were noticed when the Respondent-Complainant wanted the deposit amount to be transferred from the Post Office to the Government treasury in December, 1987. We are of the view that there is merit in the contentions of the Appellant.

3. THE relevant facts are that the Respondent Shri Mahendra Nath Basak, the

Secretary of the Safanagar High School had opened a Provident Fund Savings Bank Account for the teaching and non-teaching staff of the Institution in the Post Office at Balughat The Post Master is said to have entered a sum of Rs. 1,29,907/- in the Provident Fund Pass Book. When the Respondent wanted to withdraw this amount, he was told that no such amount" was lying in the custody of the Post Office to the credit of the Respondent. When the payment of this amount was refused, a complaint was filed before the State Commission leading to the decision recorded above.

4. AFTER going through the recordes and hearing the Counsel for the parties we have come to the following findings : Savings Bank Pass Book issued by a Bank or Post Office to the Account holder is not conclusive evidence for determination of balance in the account of an account holder. The amount at the credit of an account holder is to be determined on the basis of the entries contained in the ledger maintained in the books of a Bank of the Post Office. It may be noted that the Pass Books are in the custody of Account holders and the entries therein may not be upto date and they are also capable of being tampered with. The Pass Book is at best evidence of the possible balance in a depositor''s account but the correct balance at credit has to be determined from the ledger and not from the Pass Book.

5. NO deposit slips have been produced before the State Commission showing the amount deposited by the Respondent-Account Holder from time to time leading to the balance of Rs. 1,29,997.03. We cannot ignore the fact that atone point of time the balance in the Provident Fund Account was only Rs. 462.56 and in that context it was all the more essential for the Respondent-Complainant to produce deposit slips to show that by subsequent deposits the balance went upto Rs. 1,29,997.03 or more.

6. SO far as the Provident Fund Account Holders are concerned these accounts must be maintained for each individual by the school authorities and the school authorities are liable to make payment to the employees (teaching and non-teaching staff). The Provident Fund Savings Account was only intended to keep the amount in deposit so that it could not be utilised by the school authorities and it also at the same time earn interest for the benefit of the account holders. The State Commission has observed that it was established beyond doubt that misappropriation of Provident Fund A/c had happened due to the wanton and deliberate act of omission and commission on the part of the Post Master late Shri Nripendra Nath Basak and the Postal Authority. We are unable to agree with this view.

7. A fraud involving fake entries in the Pass Book alone cannot be deemed to constitute a deficiency in service on the part of the financial institution " Bank or Post Office as the case may be. There is no allegation that the Provident Fund Savings Account maintained by the Post Office did not contain correct entries for all the credits with reference to the deposit slips. In our opinion, it would not be just, right or proper to rule the Post Office guilty of deficiency in service merely

on the basis of the entries in the Pass-Book.

8. IT is also to be noted that the cause of action of the Complainant arose in 1987 and the Complaint was filed on 1st day of September, 1992 and hence it is highly belated. The appeal is allowed and the Order of the State Commission is set aside. There is no order as to costs.