(2004) 03 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition No. 8734 of 2000

Union of India (UOI) and Another APPELLANT

Vs

W.R. Sarode RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:

Post Office Savings Bank Manual Volume II — Rule 33 (2), 33 (4), 4 (3), 51, 52

Citation : (2004) ILR (Kar) 2100 : (2004) 7 KarLJ 179 : (2004) 3 KCCR 2101

Hon'ble Judges : Ajit J. Gunjal, J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : Krishna S. Dixit, Addl. CGSC, for the Appellant; M. Raghavendra Achar, for the Respondent

Final Decision : Allowed

Judgement

A.V. Srinivasa Reddy, J.—The Department has come up in this Writ Petition challenging the order dated 28th October, 1999 passed by the Bangalore Bench of the Central Administrative Tribunal, quashing the orders passed by the department directing recovery of Rs. 23,400/- out of the pay of the respondent and further directing the department to refund the amount already recovered by it from the respondent.

2. The respondent was charged with dereliction of duty and improper supervision resulting in continued fraud at Gulbarga RS. PO by the NSC Counter PA resulting in huge loss of Rs. 1,81,350/- to the department. The charge is based on the allegation that the respondent failed to notice the non-availability of two discharged N.S.Cs at Gulbarga HO on 25-2-1992. The disciplinary authority found the respondent guilty of the charge and taking into consideration that the role of the respondent in the fiasco is limited to supervision only, imposed the punishment of recovery of Rs. 23,400/- from the pay of the respondent. The various departmental appeals preferred by the respondent against the said punishment having proved futile, the respondent approached the Tribunal for relief. The Tribunal after hearing the parties quashed the punishment imposed

and directed refund of the amount already recovered. The said order of the Tribunal is impugned herein,

3. We have heard Mr. Krishna. S. Dixit the Addl. Central Govt. Standing Counsel and Mr. Raghavendrachar for respondent.

4. The respondent served in the H.O from 1-2-1992 to 12-3- 1992. The first head of the charge relates to encashment done on 1-6-1989 for Rs. 13,850/-. The N.S.C was again shown to be discharged on 24-2-1992. The discharge journal dated 24-2-1992 and the certificate were not sent to the Head Office. So, there was no way the respondent could have had any knowledge of the fact that in the sub-office the N.S.C was again shown as discharged on 24-2-1992. The N.S.C having been originally discharged on 1-6-1989 no responsibility could be foisted on the respondent if the discharged certificate was not received because the respondent took charge only on 1-2-1992 which is nearly three years after the N.S.C was discharged for the first time. In so far as the second discharge is concerned, no discharge journal was sent to the H.O. and in the absence of any such discharge journal there was no way the respondent could have verified whether the N.S.C was being discharged for the second time. The respondent could not have been held guilty of this head of charge.

5. The next head of the charge relates to encashment of NSC bearing No. G 088175 at Gulbarga RS PO on 24-2-1992 for Rs. 20,150/- for the first time and subsequently again on 28-2-1992. The discharge journal dated 24-2-1992 and the discharge certificate were not sent to the head office. The discharge journal for the second discharge on 28-2-1992 alone was sent along with the discharged certificate to the head office. In the absence of any communication from the sub-office about the first discharge there was no way the respondent in his supervisory capacity could have either detected or prevented the fraudulent discharge for the second time. The charge does not even spell out how the respondent could be held liable for the fraud committed when he had no inkling about it nor was there any record in his possession to gain knowledge about the fraud committed in the sub-office. What is the omission on the part of the respondent and how he could be held responsible for the fraudulent second discharge are not clear from the charge and nor is it understandable. This head of the charge also appears to be baseless.

6. The third head of the charge is that four certificates of 6 Yr NSC VI issue of Rs. 10,000/- denomination were shown as discharged at Gulbarga RS PO NSC No(a) G 56594 on 10-2-1992 and one NSC bearing No. (b)0088175 was shown discharged on 10-2-1992 but only two discharged NSCs bearing No. 565947 were received at Postal Accounts Office. The charge is vague again and does not mention whether the discharge journal sent by the sub-office disclosed the discharge of all these N.S.Cs. The pattern of charge under this head is also similar to the other charges where there is omission to mention whether or not the discharge journal showed the discharge of all the N.S.Cs or just a few of those actually discharged. Unless it is shown that all the discharged N.S.Cs found

mention in the discharge journal no negligence or omission on the part of the respondent in his supervisory role could be attributed to him. Therefore, the Tribunal is right in holding that the responsibility of the respondent commences when on the receipt of the N.S.Cs along with the discharged journal and if no mention is made in the discharged journal, the respondent cannot be held responsible for the fraud that had happened in the sub-office.

7. The next head of the charge relates to the discharged journal sent to the H.O in respect of 6 Yr NSC VI issue for Rs. 10,000/-without the NSC. The NSC returns for February, 2002 was sent to the Postal Accounts by the respondent. As the discharged journal from the sub-office was not accompanied by the discharged NSC the respondent should have contacted the sub-office and made sure that the discharged NSC is received and kept in safe custody and sent along with the other discharged NSCs. The respondent has apparently failed to carry out this task which in his role as the PM of the Head Office he was bound to perform. So far as the next head of charge which relates to five NSCs of 6 Yr NSC VI issue of Rs. 10,000/-denomination discharged on 10-1-1992 and four NSCs discharged on 23-1-1992 are concerned, the discharged journal was sent only in respect of NSC 565936 discharged on 10-1-1992 and as the discharged journal was accompanied by NSC, nothing more could have been done by the respondent in his supervisory role excepting keeping the said NSC in safe custody and sending it along with the monthly returns which he has done.

8. Of all the heads of charges, the respondent could be held to be guilty of contributory negligence only for his failure in taking steps to procure and keep in safe custody the N.S.C bearing No. 210320 discharged on 23-1-1992 which was mentioned in the discharged journal No. 19(a) dated 23-1-1992 but which had not accompanied the discharged journal. The failure to act even after noticing that the discharged N.S.C has not accompanied the returns submitted by the sub-office certainly tantamounts to failure on the part of the respondent in performing the supervisory role expected of him under Rule 33(4).

9. Learned Central Govt. Standing Counsel drawing our attention to Rules 4(3), 33(2), 33(4), 51 and 52 of Post Office Savings Bank Manual Volume II, submitted that the inaction on the part of the respondent in not procuring the N.S.Cs on their discharge amounts to misconduct and the loss that had accrued to the department can be recovered from the salary or service benefits of those on account of whose negligence the department had to suffer the loss. These rules have been produced at Annexure-E to the Writ Petition and we have gone through the rules. Of these, Rule 32(4) is relevant for our purpose and it reads:

"In Head Offices, the discharged certificates along with the respective identity slips, if any, and vouchers on account of payment of annual/six monthly interest should remain in the custody of the Postmaster until the time of their despatch to the Postal Accounts Office when they should be despatched in his presence."

If the above Rule had been strictly adhered to by the respondent the fraud played by the N.S.C clerk at the sub-office would have come to light and the further fraud played by him could have been avoided. The fact remains that the respondent while sending the returns to the postal accounts never ensured that the discharged N.S.C bearing No. 210320 was procured from the sub-office and sent to the postal accounts. This omission on his part amounts to failure to perform that part of the job which is assigned to him. Because of this omission on his part the fraud went undetected and lead to further fraud and the resultant loss. The reasoning of the Tribunal that when the amounts were already paid for the second time even before the returns were received in the H.O the respondent could not be held to be guilty of contributory negligence, is without substance because on 27-2-1992 when he sent the N.S.C returns to the Accounts Office the NSC voucher bearing No. 210320 shown in the returns as discharged on 23-1-1992 for Rs. 20,150/- was missing. Rule 4(2) which governs the custody of certificates reads:

"The Postmaster will be responsible for the security of certificates kept by him and all postal officials, entrusted with the certificates, will be personally responsible in case of loss or theft or misuse caused by their negligence. Blank certificates shall always be exchanged under proper receipt. The Official responsible for loss or theft or misuse shall execute an indemnity Bond indemnifying the cost against any fraudulent payment on such lost, stolen and misused blank certificates."

The Sr. Superintendent of Post Offices, Gulbarga Division while working out the actual loss that had occurred on account of the negligence of respondent at Rs. 60,450/- had ordered recovery of Rs. 23,400/-. But from our discussion above, it is clear that responsibility could be foisted on the respondent only in respect of Rs. 20,150/- for which he submitted the returns without the NSC. The basis on which the amount to be recovered worked out is not forthcoming from the order of the Sr. Superintendent of Post Offices. But, if we work out the amount recoverable from the respondent on the basis that the total loss that had occurred to the department on account of the negligence of the respondent is only Rs. 20,150/-, then the amount to be recovered from him would work out to Rs. 7,800/- only, if we employ the same proportion as employed by the enquiring authority. Therefore, the imposition of punishment of recovery of Rs. 23,400/- from the pay of the respondent is liable to be set aside. The impugned order of the Tribunal quashing the recovery of the amount and directing its repayment along with interest is also liable to be set aside.

10. In the result, we allow the Writ Petition and set aside the impugned order passed by the C.A.T, Bangalore. The application filed by the respondent in C.A.T, Bangalore is allowed in part and the respondents are directed to refund amounts recovered from the respondent over and above Rs. 7,800/- which alone the respondent is liable to make good for the department.

