

(2009) 03 P&H CK 0145
In the Punjab And Haryana At Chandigarh

Union of India (UOI) and Others

APPELLANT

Vs

C.L. Meena and Another

RESPONDENT

Date of Decision : 19-03-2009

Acts Referred:

Citation : (2009) 154 PLR 164 : (2009) 4 SLR 180

Hon'ble Judges : Nirmaljit Kaur, J; Ashutosh Mohunta, J

Bench : Division Bench

Judgement

Ashutosh Mohunta, J.—The challenge in this writ petition is to the order dated 6.12.2007 passed by the Central Administrative Tribunal (hereinafter referred to as the Tribunal) vide which the Original Application filed by the respondent No. 1 herein was allowed and the order of recovery of Rs. 25,000/- from the respondent for the loss caused to the Government was set aside.

2. Briefly the facts of the case are that the respondent No. 1 while working as Postal Assistant (PA) at Chandigarh GPO on 24.4.1996 issued 6 years National Saving Certificates (NSCs) in the sum of Rs. 40,500/-. The said certificates were issued in the name of M/s Fertichem India through Sushil Kumar, its partner. Allegedly, as per the rules existing on the date of issue, such NSCs could not be issued in favour of a firm. The efforts of the concerned authorities to get the said issue of NSCs regularized failed, it being an irregular issue. Finally after about 8 years the principal amount of Rs. 40,500/- (without any interest thereon) was refunded to the holder as per the order of the Circle Officer by letter dated 17.1.2003.

3. The investor approached the District Consumer Disputes Redressal Forum U.T. Chandigarh for payment of full maturity amount of NSCs in question, resulting in payment of another Rs. 49,706.85 (including Rs. 8,599/- interest on delayed payment of full amount) to the investor as per the direction of the State Commission U.T. Chandigarh by judgment dated 30.1.2004. The payment of full maturity amount on the NSCs as above even when it was an irregular issue was considered to be a pecuniary loss to the government. Therefore, in the light of

the instructions of Director General Posts, New Delhi, it was decided to take action against the erring officials.

4. Consequently, on the report of Senior Post Master Chandigarh, that one Mr. R. Sodhi, APM, SBHO, and respondent No. 1 were responsible for the irregular issue of the NSCs in question, a departmental inquiry under Rule 16 CS (CCA) Rules 1965 was initiated against respondent No. 1. Respondent No. 1 was held guilty of the imputed misconduct and accordingly by order dated 31.12.2004/3.1.2005 it was ordered that since the respondent was not solely responsible for the irregular issue of NSCs so a sum of Rs. 25,000/- i.e. approximately 50% of the resultant loss caused to the government be recovered from him.

5. Appeal against the said order was rejected by order dated 6.4.2005. Aggrieved by the said order, respondent No. 1 preferred OA No. 389/CH of 2005 before the Tribunal, which was allowed by the impugned order dated 6.12.2007. The Tribunal allowed the said OA holding as under:

4. We have considered rival arguments advanced by both the sides. We find that the assessment of loss caused to the government is notional. Rightly or wrongly, respondents had taken the money from the firm in April 1996 while issuing NSC to an ineligible partnership firm, through one of its partners. The money remained with the Post Office for the entire life of the NSCs and, therefore, the interest was payable by the department for having kept the money received in 1996 and the payment due in 2002. The additional interest at the rate of 5% was levied on them when the dispute was taken to the Consumer Disputes Redressal Forum because of the fact that the interest amount was not paid by the respondents to the payee when it was due. In these circumstances, what the respondents were really made to pay was for keeping the money for a period of almost 8 years. This cannot be termed as a loss caused to the exchequer. The applicant could, at best, be held guilty for "dereliction of duty by ignoring the relevant instructions on the subject of issuing of NSCs whereby he issued the NSCs to an ineligible party. Since the certificates were issued under signatures of the concerned Incharge Assistant Postmaster, the fault in issuing NSCs to a firm was not at the level of applicant only but at the level of the Postmaster as well and it is surprising that respondents have not taken any action against him and have held the applicant responsible for the entire mistake.

5. Keeping in view the fact that we do not find any actual loss having been caused to the respondents due to payment of amount of the NSCs issued to an ineligible person, we have no hesitation to quash the order of recovery issued against the applicant. However, respondents would be at liberty to take appropriate action which they may chose for the dereliction in duty in issuing NSCs to an ineligible person in disregard to the instructions on the subject. This O.A. Stands disposed of accordingly. No costs.

6. Aggrieved by the order of the Tribunal as above the petitioners have filed the present petition praying for the setting aside of the impugned order. Learned

Counsel for the petitioners has argued that the Tribunal has shown undue sympathy to the respondent. It was argued that admittedly the issue of NSCs in favour of a firm is an irregular issue. The petitioners would not have had to pay a sum of Rs. 49,706.85 on the direction of State Commission had the respondent not issued the NSCs in favour of the firm. Moreover, the respondent is being burdened only with a sum of Rs. 25,000/- which is nearly 50% of the loss borne by the government because of his misconduct.

7. Per contra the learned Counsel for respondent No. 1 submitted that the findings of the Tribunal are well reasoned based on evidence and do not call for any interference. Further it was submitted that firstly this was only a case of irregular issue of certificates and secondly he was not solely responsible for the issue. The Assistant Postmaster (APM) is the competent authority to decide whether or not the NSCs have to be issued to an applicant whose forms are forwarded for acceptance or rejection by the Postal Assistant. The learned Counsel further relying on *Sangara Singh v. State of Punjab* 1983(3) S.L.R. 685 (S.C.), *A.L. Kalra v. The Project and Equipment Corporation of India Ltd.* 1984(2) S.L.R. 446 (S.C.), *Management of Indian Oil Corporation Ltd, Madras v. Presiding Officer, II Additional Labour Court, Madras and Anr.* 1993(3) S.C.T. 752 Mad (D.B.), *Shamsher Singh v. Pepsu Road Transport Corporation Patiala and Ors.* 2002(3) S.L.R. 144 (P&H) and *Union of India (UOI) and Others Vs. J. Ahmed*, submitted that it is discriminatory for the authorities to take action only against the respondent when the concerned authorities know that both R.Sodhi (APM) SBHO and the respondent were jointly responsible for the issue of certificates. After thoughtful consideration of the rival contentions of the learned Counsel for the parties we are of the view that arguments advanced by the learned Counsel for the respondent are unconvincing.

8. Undisputedly, the respondent did issue the NSCs in question in contravention of the Rules. He had committed an illegality by issuing NSCs to an ineligible person which were prohibited as per notification Annexure P1. For the said lapse, the petitioners had to pay a sum of Rs. 49,766.85 in pursuance to the orders passed by the State Commission U.T. Chandigarh.

9. There was obviously dereliction of duty on part of the respondent inasmuch as he had issued NSCs in favour of a firm namely M/s Fertichem India through its partner, which was prohibited. The NSCs could have been issued only in favour of an individual. The argument of the counsel for the respondent that the respondent has been discriminated against inasmuch as he was not the only person who was responsible for issuing of the National Saving Certificates is without any merit as the respondent has been burdened with only half of the loss caused to the Government against his misconduct. As far as Mr. R. Sodhi, APM, is concerned, the said official had already retired in August 2001 and, therefore, no appropriate action was taken against him. Nevertheless, the respondent cannot escape his liability for dereliction of duty. It is a well settled preposition of law that discrimination cannot be claimed as an illegality and since respondent No. 1

was responsible for issuance of NSCs in the name of a firm which was barred by notification Annexure P1, hence, he was liable to be penalised.

10. However, the fact which cannot be lost sight of is that the government has in fact used the funds of the firm in question for the whole of the maturity period of the NSCs. Therefore, in the peculiar facts of the case, we are of the view that the ends of justice would meet if the respondent is held liable for a sum of Rs. 15,000/- for loss caused to the government because of his misconduct.

11. Accordingly, the impugned order dated 6.12.2007 passed by the Tribunal is set aside. Respondent No. 1 is directed to deposit a sum of Rs. 15,000/- as penalty, with the petitioners which would be in consonance with the misconduct imputed to him.

The writ petition is partly allowed.