

(2014) 09 NCDRC CK 0115

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Superintendent, Post
Offices Head Post
Office, Alwar,
Rajasthan

APPELLANT

Vs

Amit Kumar Sharma

RESPONDENT

Date of Decision: Sept. 10, 2014

Citation: 2014 0 NCDRC 578 : 2014 4 CPJ 564

Hon'ble Judges: AJIT BHARIHOKE , Rekha Gupta J.

Advocate: ROSHAN LAL GOEL , S.M.ARIF

Judgement

1. THIS revision is directed against the order of the State Consumer Disputes Redressal Commission Rajasthan Jaipur (in short, "the State

Commission ") dated 11.12.2012 in First Appeal No.28/2011 whereby the State Commission dismissed the appeal preferred against the order of

the District Forum Alwar Rajasthan in CC No. 308/2010.

2. BRIEFLY put, the facts relevant for the disposal of this revision petition are that respondent Amit Kumar Sharma filed a consumer complaint

against the petitioner alleging that in the year 2009, he applied for selection to the post of Lower Division Clerk in the year 2009. The examination

was to be held on 24.01.2010. The application form of the complainant reached the office of Regional Director, Staff Selection Commission,

CGO Complex, Lodhi Road, New Delhi alongwith requisite fee within the prescribed period. The respondent complainant did not receive the

admission card for the competitive examination. The respondent complainant contacted the office of Staff Selection Commission, New Delhi and

he was told that admission cards of all the candidates have been dispatched. On this the complainant contacted the petitioner / Opposite Party

No.2 and he was told that the Dak has not been received by them. Thereafter, the respondent complainant contacted the office of Staff Selection

Board and requested for his roll number as also the examination centre allocated to him but in vain. Consequently, the respondent complainant was

prevented from appearing in the competitive examination held on 24.01.2010. It is alleged that subsequently, the complainant received his

admission card bearing the postal stamp dated 30.01.2010. Claiming this to be deficiency on the part of the respective opposite parties,

respondent Amit Kumar Sharma preferred the complaint.

3. THE complaint was resisted by both the opposite parties by filing their respective written statements. The Staff Selection Board in its written

statement took the plea that roll number was dispatched at the address of the respondent complainant in time, as such, the Board cannot be held

deficient in service. It was also pleaded by the Board that roll number with admission card could easily have been downloaded by the complainant

but he did not make any effort in this regard.

The petitioner OP No.2 in its written statement took the plea that the subject postal envelope addressed to the complainant was received as an

ordinary dak at Motidhungri Post Office Alwar on 30.01.2010 and it was delivered on the same date. Thus, there is no deficiency in service. The

petitioner / opposite party no.2 also took shelter of Section 6 of Indian Post Office Act, 1988 which absolves the post office from any liability for

loss, misdelivery, delay or damage to any postal article during the course of transmission by post except to such extent as the liability may be

undertaken by the government in the expressed terms.

4. THE District Forum Alwar on consideration of the pleadings and the facts of the case allowed the complaint holding the petitioner as also the

Staff Selection Commission New Delhi guilty of deficiency in service and ordered as under: ""It is ordered that both the respondents are jointly and

severally liable to pay within a period of one month, a compensation to the tune of Rs.35000/- on account of mental agony, Rs.3000/- as cost of

the complaint totalling to Rs.38000/- . Non compliance of said order within one month, both the respondents shall jointly and severally liable to

pay this amount of Rs.38000/- to the complainant with interest @ 18% per annum since 01.04.2010 till final payment "".

5. BEING aggrieved of the order of the District Forum, both the opposite parties preferred appeals. The State Commission Jaipur Rajasthan

taking note of the fact that admission letter was dispatched to the complainant by the Staff Selection Commission on 09.01.2010, allowed the

appeal of the Staff Selection Commission and set aside the order of the District Forum qua the Board. The State Commission, however, dismissed

the appeal preferred by the petitioner and confirmed the order of the District Forum. The State Commission also awarded litigation cost of

Rs.10,000/- in addition to the amount directed to be paid under the orders of the District Forum. The petitioner not being satisfied with the order,

has preferred this revision.

6. LEARNED counsel for the petitioner has contended that the impugned order of the State Commission is not sustainable as it has been passed in

utter disregard of section 6 of Indian Post Office Act, 1898 which exempts the petitioner from any liability by reason of loss, mis-delivery or delay

or damage to any postal article in the course of transmission by post. Thus, he has thus urged us to set aside the impugned order and dismiss the

complaint.

7. IN support of his contention, learned counsel for the petitioner has relied on the judgment of this Commission in the matter of The Presidency

Post Master and Anr. vs. Dr. U.Shanker Rao II (1993) CPJ 141 (NC) as also judgment of this Commission in RP No. 4567/2012 titled as Sr.

Superintendent of Post Offices Vs. Dharamveer Harijan decided on 11.09.2013.

8. LEARNED counsel for the respondent on the contrary has argued in support of the impugned order and contended that foras below have

rightly awarded compensation to the complainant irrespective of the protection provided under section 6 of the Indian Post Office Act, 1898

because in this case the petitioner Department has not conducted any inquiry to fix the cause of late delivery of admission card despatched by

respondent no.2. In support of his contention, learned counsel for the respondent has relied upon judgment of this Commission in RP No.

127/2012 titled as Sr. Superintendent of Post Offices & Ors. Vs. Manjit Kaur Sondhi decided on 13.04.2012.

9. ON consideration of the arguments of the parties, it is clear that the answer to the controversy in this matter depends upon the interpretation of

Section 6 of Indian Post Office Act, 1898 which reads as under:

""Exemption from liability for loss, misdelivery, delay or damage : The [Government] shall not incur any liability by reason of the 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 hereinafter provided; and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery,

delay or damage unless he has caused the same fraudulently or by his wilful act or default "".

10. ON reading of above it is clear that the postal department and its officials are exempted from any liability for loss, mis -delivery, delay or

damage to any postal article in the course of transmission by post unless it is established that such loss, mis -delivery or delay was caused

fraudulently or by way of wilful act or default. The issue pertaining to interpretation of Section 6 of the Indian Post Office Act, 1898 came up

before three Members Bench of this Commission in the matter of The Presidency Post Master & Anr.(supra) and the said Bench interpreted

section 6 as under:

""The Government shall not incur any liability by reason of the 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 hereinafter provided; and no officer of

the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage unless he has caused the same fraudulently or by

his wilful act or default. Counsel for the Revision Petitioner inter alia relies on the said provision and contends that no claim will lie against the Postal

Department or its officers merely on the ground that there has been loss/misdelivery, delay or damage or to any postal article in the course of

transmission by the Postal Department unless the same has been caused fraudulently by the officer complained against of the post office or by his wilful act or any default. Under the scheme of the Act the claim for compensation will lie at the instance of the consumer only if there is deficiency in service. According to the Revision Petitioners the statutory protection to the Central Government which is in absolute terms stands as an exception to the general law relating to the commercial carriers, Post Office is a branch of public service functioning under a statute and the liability for misdelivery or late delivery of an article can be fastened on the postal department of its officers only on the basis of express provisions of the Post Office Act. The services rendered by the Post Office are merely statutory and there is no contractual liability. Establishing the Post Offices and running the postal service the Central Government performs a Governmental function and the Government does not engage in commercial transaction with the sender of the article through post and the charges for the article transmitted by post is in the nature of charges, imposed by the State for the enjoyment of the facilities provided by the Postal Department and not in consideration of any commercial contract. The Post Office cannot be equated with a common carrier. We are of the opinion that both the claim petitions referred to above are not maintainable in view of Section 6 of the Indian Post Office Act. As noticed earlier there is no allegation that the loss, misdelivery or delay occurred on account of fraudulent or wilful act of any particular postal employee "".

11. SIMILAR view was taken by coordinate Bench of this Commission in RP No. 4567/2012 referred to above. We have no reason to disagree with the conclusion of the coordinate Benches of this Commission.

12. SO far as judgment of this Commission in the matter of Sr. Superintendent of Post Offices & Ors. Vs. Manjit Kaur Sondhi (supra) is concerned, the said judgment is of no avail to the petitioner because it is judgment of two Members Bench whereas judgment relied upon by the petitioner in the matter of The Presidency Post Master & Anr. Vs. Dr.U.Shanker Rao is that of the larger Bench. Otherwise also, the judgment relied upon by the respondent relates to non delivery of the postal article despatched by speed post wherein a detailed inquiry was conducted by

Jalandhar Post Office centre. The coordinate Bench while deciding the said revision petition was influenced by the fact that in that case, a

conclusive inquiry was not conducted and no action was conducted against the delinquent officials.

13. IN view of the discussion above, we are of the view that foras below has committed a jurisdictional error in allowing the complaint and

awarding compensation against the petitioner in violation of Section 6 of Indian Post Office Act particularly when there is no allegation that the loss,

mis -delivery or delay occurred on account of fraudulent or wilful act of postal employee. The impugned order of the fora below cannot be

sustained.

14. WE , therefore, allow the revision petition, set aside the impugned order and dismiss the complaint with no order as to costs.