

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution: 06.01.2017

Date of hearing: 19.09.2022

Date of Decision: 09.01.2023

FIRST APPEAL NO.- 13/2017

IN THE MATTER OF

MR. DAYA RAM,

S/O MR. GIRDHARI LAL,

R/O V&PO MALKAS, TEHSIL BHADRA,

DISTRICT: HANUMANGARH, RAJASTHAN.

(Through: Mr. Jolly Sharma, Advocate)

...Appellant

VERSUS

KAROL BAGH POST OFFICE,

GURUDWARA ROAD,

KAROL BAGH, NEW DELHI-110005.

(Through: Mr. Ashutosh, Advocate)

... Respondent

CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)

HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Appellant in person alongwith Ms. Sukhneet Kaur Dhir, proxy counsel for Mr. Jolly Sharma, counsel for Appellant.
Mr. Sanjay Bora, Postal assistant on behalf of Respondent along with Mr. Ashutosh, counsel for the Respondent.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,
PRESIDENT

JUDGMENT

1. The facts of the case as per the District Commission record are:
“Complainant filed this complaint on 03-02-2014 and alleged that he has dispatched items including one American Digital Weightless wrist watch and one American Digital Weightless Camera from Karol Bagh Post Office to Kota City vide speed post consignment no. ED131115859IN dated 28.02.2012. The total cost of consignments was Rs. 70,630/- and speed post charges was Rs.50. complainant further alleged that for more than 2 months the department of speed post did not deliver the consignment and despite so many reminders and letters the OP gave no response hence it is prayed that OP be directed to pay Rs 1,00,000/- as compensation for harassment and mental agony.”
2. The District Commission after taking into consideration the material available on record passed the order dated 21.09.2016, whereby it held as under:
“5. As OP has admitted that Speed Post Article No. ED131115859IN booked at Karol Bagh Post Office dated 28.02.2012 and the Speed Post Charges was of Rs.50 was taken hence complainant is a consumer.
6. Complainant in his affidavit deposed that he waited the post for deliver at given address for more than two months but the department of Speed Post did not delivered that so

far but he did not deny specifically the fact that article was returned to sender on 05.03.2012 in his, affidavit. On the other hand affidavit in support of OP by Smt. Disha Pannu that the article as alleged were deposed returned to the sender on 05.03.2012. As per the direction of the Postal Department for Speed Post (Services and Operation) there are prohibitions/restrictions regarding items cannot be sent which includes precious or semi-precious items. It is pertinent to mention herein that under the provision of rule 83A of Indian Post Office Rules 1993 when a letter or parcel contains government currency notes, bank notes, gold coins etc sender has to mention the value of the articles at the time of dispatch. There is nothing on the record that at the time of booking complainant declared the articles/items and the value of the articles/items. There is no where mentioned in the complaint that the loss caused to the complainant was willful and fraudulent act of the officer of the post office. In these circumstances, provision of section 6 of the Indian Post Office Act 1898 are applicable and no officer of the Post Office shall incur any liability by the reason of above loss. Therefore, in our considered opinion there is no deficiency in service on the part of the Post Office.

7. In these above aforementioned circumstances and facts we are of the considered opinion that there is no deficiency in of post office in this complaint and the complaint is not maintainable under the provision of Consumer Protection Act and dismissed accordingly.”

3. Aggrieved by the aforesaid order of the District Commission, the Appellant/Complainant has preferred the present appeal contending that the District Commission erred in observing that the subject parcel has been returned by the Respondent to the Appellant. However, the same has neither been delivered nor been returned to the Appellant till date. The counsel further contended that the District Commission

wrongly relied upon the provisions of section 6 of the Indian Post Office Act, 1898. Therefore, the District Commission failed to consider that there is clear deficiency of service on the part of Respondent. Pressing the aforesaid contentions, the Appellant/Complainant prayed to set aside the order of the District Commission.

4. The Respondent/Opposite Party on the other hand, denied all the allegations of the Appellant and submitted that there is no error in the impugned judgment as the entire material available on record was properly scrutinized before passing the said judgment.
5. We have perused the material available on record.
6. The *first question* for consideration before us is *whether the subject dispatched parcel has been returned to the Appellant by the Respondent.*
7. On perusal of record, we find that the parcel including two items was dispatched vide consignment no. ED131115859IN dated 28.02.2012 by the Respondent. Also, at the time of booking, proper investigation of the subject items was done by the officials of Respondent which is clear from the front photograph of the parcel attached with the present appeal, wherein particulars of the parcel have been mentioned.
8. Further, the Respondent failed to provide any documentary evidence in order to prove that whether the subject parcel has been delivered or the same has been returned to the Appellant. Therefore, in absence of any evidence on record, the district Commission erred in observing that the subject parcel has been returned to the Appellant.
9. The *other question* for consideration before us is *whether the provisions contained in Section 6 of Indian Post Office Act, 1898,*

exempts the government as well as officers of the post office from any liability for mis-delivery, damage or loss to the postal article.

10. To resolve this issue, we deem it appropriate to reproduce section 6 of the Indian Post Office Act, 1898, which says as follows:

“Section 6: Exemption from liability for loss, misdelivery, delay or damage.

The Government shall not incur any liability by reason of the loss, misdelivery or delay of, 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 willful act or default.”

11. The interpretation of the aforesaid section has been discussed by the Hon’ble NCDRC in case titled as ***Post Master General, West Bengal Circle, General Post Office (GPO) v. Dipak Banerjee & Anr.*** reported as ***IV (2015) CPJ 329 (NC)*** wherein, it discussed as:

“11. The Section is in two parts. The first part provides for a complete immunity to the Government, unless some liability is undertaken by the Government under the statute in express terms. Similar immunity is extended to the officers of the post office. The second part carves out an exception to the blanket immunity to its officers and provides that they can incur liability if it is shown that the loss, misdelivery, delay or damage, etc. had been caused fraudulently or by the willful act or default of such an employee. Thus, a plain reading of the Section leaves little scope for doubt that unless it is proved that the loss, misdelivery or delay has been caused fraudulently or by a willful act or default on the part of its officer, no claim would lie against the Postal Department merely by reason of the loss, misdelivery or delay or damage to the postal article, as the case may be, in the course of transmission of the article by post. In other words, the provision, an antiquated piece

of legislation, dating back to the year 1898, grants total immunity to the Postal Department from incurring any liability for delay in delivery of the article in the course of its transmission by post, unless a fraud or willful act or default on the part of its employee is proved.”

12. From the analysis of section 6 of Indian Post Office Act, 1898 and from the aforesaid dicta, it is clear that in case of wilful act or default, the officers of post office will be held responsible under this section.
13. Further, we deem it appropriate to refer to the **Revision petition no. 541 of 2016** titled as **Department of Post and Ors. vs. Gajanand Sharma** decided on **08.12.2016**, wherein the Hon’ble National Commission has held as under:

“16. In order to give effect to the objective of the Act, i.e., to provide for better protection of the interests of the consumers, if an addressee of the letter is able to create a reasonable degree of probability that there was willful default on the part of an employee of the Postal Department, the onus would shift on to the said department to discharge the onus to prove its denial, particularly when the addressee, the aggrieved party, does not have any access to the internal working of the post office.

17. The fact remains that the Complainant, though, had sent the article/Application Form by Speed Post, on 08.05.2010 at 11.30AM from Mahua Post Office, Mahua, addressed to the Principal Registrar, High Court of Jabalpur, Madhya Pradesh, for the Post of Civil Judge, Junior Division, the last date of receipt of the said Application Form was 12.05.2010, he lost an opportunity of attending the Examination as the subject article was delivered to the addressee on 14.05.2010.

18. To reiterate, Learned Counsel for the Revision Petitioners took shelter under Section 6 of the Indian Postal Act and despite two opportunities given by this Commission, on 11.03.2016 and on 27.04.2016, to file Affidavit and a Better Affidavit, respectively, stipulating the reasons for the delay in the delivery of the article,

the Department had stated in the Affidavits, that the relevant record was not available and, therefore, the exact reason could not be ascertained.

19. The only stand of the Postal Department in this case is that the relevant records are not available and therefore the reasons cannot be ascertained. The attitude of the Postal Department is a deliberate attempt to hide the real reason for the wrong doing of its employee(s) in not delivering the letter within the norms prescribed by the Postal Department itself. Such conduct of the Postal Department, leads to irresistible conclusion that there was a willful default on the part of its official(s) concerned, which is not being disclosed and, therefore, the case of the Complainant falls within the ambit of the exception carved out under Section 6 of the said Act. Having held so, and there being a clear deficiency of service under Section 2(1)(g) of the CPA, 1986, I am of the opinion that a reasonable compensation of 25,000/- awarded by the State Commission is completely justified.

14. Relying on the above settled law, it is clear that the burden of proof lies upon the post office (Respondent herein) to prove that there is no fraudulent or wilful default on its part. However, on perusal of record, the Respondent failed to adduce any such document which can compensate the reason for not returning the subject parcel to the Appellant.
15. From the above discussion and settled law, it is a clear case of wilful negligence on the part of Respondent, they cannot take the shelter under the provisions contained in section 6 of the Indian Post Office Act, 1898. In the present case, the Respondent not even failed to deliver the subject parcel in question of the Appellant but also lost the said parcel in transit which clearly establishes deficiency of service on part of Respondent under section 2(1)(g) of the Consumer Protection Act, 1986.

16. Therefore, we set aside the order dated 21.09.2016 passed by the District Consumer Disputes Redressal Commission (Central), ISBT Kashmere Gate, Delhi. Accordingly, the present Appeal is allowed as under:

A. We direct the Respondent/Opposite Party to pay a sum of Rs.1,00,000/- (including the cost of articles lost in transit by the Respondent) as compensation and mental agony to the Appellant/Complainant within a period of 30 days from the date of present judgment i.e. 09.01.2023.

B. In case the Respondent/Opposite Party fails to refund the amount as per the aforesaid clause (A) on or before on or before 08.02.2023, the entire amount is to be paid with an interest @ 9% p.a. calculated from 09.01.2023 till the actual realization of the amount.

17. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.

18. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.

19. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT**

**(PINKI)
MEMBER (JUDICIAL)**

Pronounced On: **09.01.2023**