

RESERVED**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH****Original Application No.20/463/2014 & MA 1042/2016****Hyderabad, this the 24th day of January, 2020**

Hon'ble Mr. Ashish Kalia, Member (Judl.)
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

R. Gyana Chary, S/o. late R. Laxmi Rajam,
 Aged about 57 years, Occ: Sub Postmaster,
 Basanthnagar SO – 505 187,
 Peddapalli Division.

... Applicant

(By Advocate Sri M. Venkanna)

Vs.

1. Union of India, Rep. by Secretary,
 Ministry of Communications & IT,
 Department of Posts – India,
 Dak Bhavan, Sansad Marg,
 New Delhi – 110 001.
2. The Chief Postmaster General,
 A.P. Circle, Dak Sadan, Abids,
 Hyderabad – 500 001.
3. The Director of Postal Services,
 Hyderabad Region,
 O/o. the Postmaster General,
 Hyderabad Region, Hyderabad – 500 001.
4. The Superintendent of Post Offices,
 Peddapalli Division, Peddapalli – 505 172.

... Respondents

(By Advocate: Mrs. K. Rajitha, Sr. CGSC)

ORDER
{As per B.V. Sudhakar, Member (Admn.)}



2. The OA is filed challenging the Order of the 4th respondent dt. 31.12.2013, imposing the penalty of recovery of an amount of Rs.1,42,925/- and reduction of pay by one stage from Rs.15,380/- to Rs.14,810/- in the Grade Pay of Rs.4200/- for one year and with a further covenant that during the said period of reduction, the applicant would not get increment and the order of the 3rd respondent dt. 28.03.2014, upholding the order of the 4th respondent.

3. Brief facts of the case are that the applicant was appointed as Postal Assistant on 18.04.1982 and he has rendered 32 years of service. While working as PA Godavarikhani SO from 28.06.2006 to 04.07.2010, he had officiated as SPM Godavarikhani. During the said period, in connection with frauds committed by SPM, SCAB SO, for which the Godavarikhani SO is the office of cash supply, applicant was identified as subsidiary offender and he was proceeded under Rule 14 of CCS (CCA) Rules, 1965, vide Charge Memo dt.30.11.2010, with two articles of charge. Applicant submitted his defence statement denying all the charges. 4th respondent, not satisfied with the reply, decided to proceed against the applicant by appointing an Inquiry Officer. Applicant sought certain documents, which were not supplied. However, IO proceeded with the inquiry and submitted a report on 16.11.2013 to the 4th respondent holding that charges under Articles I & II as not proved. The 4th respondent, issued a Memo dt. 05.12.2013 wherein he disagreed with the findings of the IO and held the

charges as proved and directed the applicant to submit his defence on the disagreement note within 15 days. Applicant submitted his representation on 12.12.2013. Thereupon, the 4th respondent issued the impugned order dt. 31.12.2013 ordering recovery of a sum of Rs.142925 from the applicant and reduction of his pay from Rs.15380 to 14810 with effect from 01.01.2014 for a period of one year, during which period, he shall not earn increments and the same will not effect his future increments. Against the said penalty order, applicant preferred an appeal to the 3rd respondent on 17.01.2014. Thereafter, applicant approached this Tribunal in OA No. 91/2014, which was disposed on 27.01.2014 with a direction that the appeal be disposed of within two months. Consequently, the 3rd respondent passed the impugned order dt. 28.03.2014 rejecting the appeal preferred by the applicant. Hence, the OA.



4. The contentions of the applicant are that when he sought for additional documents and also copies of 3 original listed documents, during the Inquiry, which were, in principle, admitted by the Inquiry officer, but the 4th respondent, being the disciplinary authority, expressed his inability to make them available to the applicant. One of the important documents sought was register maintained for additional cash credit to SCAB SO, which was not supplied on the ground that it was not available. Thus, the disciplinary authority failed to provide the said register, which is the basic document, to show whether the applicant violated the prescribed limits of the cash to be supplied to SCAB SO. Since the said register is basic document to sustain the charges levelled against him, the findings thereon

are also not sustainable. Moreover, in view of the MGNREGA, the limits of supply of cash have been dynamically changed with no limits and therefore, the rule of additional credit has no relevance. The further contention of the applicant is that IO, after examining the witnesses and perusing the documentary evidence and hearing both sides, held the charges as not proved. However, the 4th respondent disagreed with the findings of the IO, based on tentative reasons, against which, the applicant submitted a detailed reply with supportive evidence. The 4th respondent without considering any of the points raised by the applicant, arbitrarily and illegally imposed harsh punishment of recovery. The 3rd respondent, being appellate authority, has mechanically rejected the appeal without appreciating the evidence on record and vital objections raised by the applicant.



It is further contended by the applicant that it is settled law that penalty of recovery can be imposed only when the official commits a breach of orders or the rules and such breach has a bearing on commission of fraud or the loss sustained by the department and since the functioning of the applicant has a remote nexus with the alleged loss sustained by the department, he cannot be held responsible. The disciplinary authority ought to have assessed whether there was any lapse on the part of the applicant in discharging his duties and that lapse has caused loss to the department and without any lapse attributable to the applicant, exorbitant penalty of recovery was imposed on him. Disciplinary authority has not even assessed the contributory negligence. That, unless a finding to the

effect that the applicant had misappropriated the amount, recovery or the punishment of any kind cannot be imposed.



5. Respondents contested the OA by filing reply statement inter alia, stating that Sri Ch. Venumadhava Rao, SPM, SCAB SO (Godavarikhani) committed fraud to the tune of Rs.1,20,93,634/- in SB, RD, TD, MIS and KVPs during the period from 02/2008 to 05/2009, which was detected by Sri J. Srinivas, ASP (Inv.), Office of the Postmaster General, Hyderabad Region, Hyderabad during his surprise visit to the said office. Thereupon, a squad was formed and Circle Level Investigation was carried out, in which, the applicant, being Treasurer, Godavarikhani SO, has contributed for the frauds committed by Sri Ch. Venumadhava Rao, SPM. Applicant failed to follow the provisions of Rule 7 and 9 of Postal Manual Vol. VI Part-III, Sixth Edition. It is stated that, the applicant being Treasurer of Godavarikhani SO, supplied cash Rs.3,30,000/- on 18.06.2008 to SCAB SO against the orders of the SPM, Godavarikhani SO for supply of cash to the extent of only Rs.30,000/-, and thus, there was an excess remittance of cash for Rs.3,00,000/-.

Respondents contend that the applicant is trying to take shelter on non-production of register of additional credit by the prosecution. Reasons for not producing the same were already intimated to the IO by the PO. There is no such register prescribed to be maintained at the cash office as admitted by the applicant in his representation dt. 12.12.2013. Thus, even if such a register is maintained, the same is not relevant to the charge levelled against the applicant. Applicant was provided with the required documents

such as EXAD-4 (File containing additional credit letter received from Peddapalli HO and maintained by SPM Godavarikhani SO).



The further contention of the respondents is that as per Govt. of India Order N. 11012/2/79-Estt.(A), dated 12.03.1981 and Order No. 11012/8/82-Estt.(A), dated 08.12.1982 below Rule-14 of CCS (CCA) Rules, 1965, disciplinary authority has inherent power to review and modify articles of charge or drop some of the charges or all the charges after the receipt and examination of the written statement of defence submitted by the charge official under Rule 14(4) of the CCS(CCA) Rules. It is stated that, dynamic supply of cash limits applies only to BOs/ SOs in which NREGS Accounts are existing and payments are in flow, but the same does not apply to either Godavarikhani SO or to the SCAB SO, as they do not have NREGS accounts for effecting payments. As the SPM of the Cash Office and Treasurer, applicant is responsible for the huge remittance of cash to SCAB SO violating the provisions of the Rule 7, 8, 9 and Rule 20 of Postal Manual Volume VI Part III (sixth edition) which facilitated Sri Ch. Venumadhava Rao, SPM SCAB SO to commit huge fraud to the tune of Rs.1,20,93,634-00 and liable for action as a sub-offender in SCAB SO. But, taking his past record of service into account and taking a lenient view, it was ordered for recovery of Rs.1,42,925/- from the pay of the applicant being his share amount of the loss sustained by the department, to be recovered in 36 instalments. The loss sustained to the department was assessed in a realistic manner vis-à-vis the contributory negligence on the part of the applicant.



It is further stated in the reply statement that, the IO in his report gave a finding that the prosecution has not produced the additional credit register as additional document and if the additional credit register was produced, the official would have proved his version. On the other hand, the I.O. stated that as per Rule 7(1) of Postal Manual Vol. VI Part III, functioning of a Sub Office as cash office to other Sub Offices, the SO may remit surplus cash direct to cash office and also indent on it direct for funds up to the monthly limit fixed by the Divisional Superintendent. But, when this limit is reached, the authority of the HO must be obtained for further drawings in the month in question. It is the responsibility of the cash office to see that the prescribed limit is not exceeded by maintaining a record of the remittances made to the office in a separate error book. The Rule-7 clearly shows that the cash office should maintain the record. Ex. EXAD-4 shows that the file was maintained but the register was not maintained. It may be correct that the applicant has supplied cash on the phonic instructions of the Postmaster in which the confirmation copies were not obtained from the Postmaster, but it is the primary duty of the authority of the cash office to obtain the confirmation copy from the competent authority who has issued the phonic instructions for supply of cash to the need office. Thus, the basic procedure was not followed by the applicant. Applicant was penalised after following the procedure, for his lapses in discharge of his duties and the amount in regard to the fraud due to the negligence of the applicant was assessed and accordingly, punishment was awarded to him.

6. Heard both the counsel and perused the pleadings on record.

7(I) At the time of ordering notice to the respondents on 29.04.2014, this Tribunal granted an interim stay of impugned recovery till filing of the counter and the same extended until further orders on 11.06.2014. Subsequently, on MA 443/2017 filed by the applicant, the respondents were directed to withhold Rs.1,42,925/- and pay the remaining pensionary benefits to the applicant. The respondents also filed MA 1042/2016 for vacating the interim order.



II. Applicant while working in the respondents organization was holding an important position wherein he was called upon to disburse cash to Sub Offices, which were relying on the office in which he was working for cash. While disbursing cash, there are certain guidelines issued by the respondents to be followed. Important among them is that the applicant has to disburse cash to the Sub Offices only within the credit limit sanctioned by the respondents. In the instant case, the cash supplied to SCAB SO from Godavarikhani SO, which is the cash office for the SCAB SO, was not in accordance with the credit limits fixed as per the relevant rules. Had the applicant taken precautions in ensuring that the cash was supplied within the prescribed credit limit, the scope to commit fraud by the SCAB Sub Office would have, more or less, been eliminated. Particularly, it was also noticed that on a particular date, the applicant has supplied cash through Grameen Dak Sevak and also through Sub Postmaster, SCAB SO. Such supply of huge cash to the Sub Post Offices are generally done after close scrutiny of the demand made and as per rules pertaining to supply of cash. A perusal of the respondents' reply also indicates that the Postmaster

Godavarikhani has been fixing credit limit and affirming the same through relevant letters written to the SPM, Godavarikhani.



III. Learned counsel for the applicant has also stated that in view of the disbursement of wages to NREGS beneficiaries, the line limits are dynamic and therefore, supply of excess cash to SCAB SO need not be within the credit limit prescribed. However, this contention does not hold water because the SCAB SO is not identified for disbursement of wages to NREGS beneficiaries. Therefore, application of dynamic line limits in supplying cash to SCAB SO does not arise. Though it is not the applicant who has been directly involved in the fraud, but, yet, the applicant failing to follow the provisions of Rule 7, 8, 9 and Rule 20 of Postal Manual Vol. VI, Part III has facilitated the Sub Postmaster of SCAB SO to commit a huge fraud to the extent of Rs.1.20 Crores. It is this aspect which is of concern, particularly in the context of public trust reposed in the Post Office being dented by certain staff members by directly committing frauds and by some others through contributory negligence, in an age-old trusted public organization like India Post.

IV. The learned counsel for the applicant has argued that on the dates on which the cash was supplied without adhering to the rule of credit limit, there was no fraud committed in SCAB Sub Post Office. However, this assertion of the learned counsel for the applicant does not impress this Tribunal for the simple reason that the fraud was occurring over a period of time. In this regard respondents have clarified that the applicant was

supplied with letters of additional credit limits by the Postmaster, Peddapalli HO in respect of SCAB SO and Vittalnagar SO for the period from 2/2008 to 10/2009, which were marked as Ex.Ad-4 and the file does not contain any additional credits issued by the Postmaster, Peddapally HO for the dates mentioned in the Article I of the charge, which directly proves that the applicant has supplied cash to SCAB SO without additional credit from Postmaster, Peddapalli HO. The charge against the applicant was for not obtaining the additional credit from the Postmaster Peddapalli HO and not for non-maintenance of additional credit register as claimed by the applicant. Violation of this fundamental axiom has facilitated the fraud and therefore the adverse consequences of disciplinary action and penalty.



V) Further, the learned Counsel for the applicant has claimed that the I.O has held that both the charges as not proved. In this nexus the disciplinary authority has correctly pointed that the IO on one hand gave a finding that prosecution has not produced the additional credit register as additional document and if the said register was produced, the applicant would have proved his version. On the other hand, the IO gave a finding that as per Rule 7(1) of Postal Manual Vol. VI, Part III, functioning of a Sub- Office as cash office to other Sub Offices specifies that Sub Office may remit surplus cash direct to Cash Office and also indent on it directly for funds up to the monthly limit fixed by the Divisional Superintendent. Therefore, the IO is taking contrary stands which goes against the very spirit of an inquiry process. When this limit is reached, the authority of the Head Office must be obtained for further drawings in the month in question. It is the responsibility of the cash office to see that the prescribed limit is not

exceeded by maintaining a record of the remittances made to the office in a separate error book. Hence, the disciplinary authority disagreed with the observations of the IO and the note of the disagreement was also furnished to the applicant to represent against, which he did. Applicant was given fair opportunity, which he has exercised and thereupon, the disciplinary authority, exercising his power conferred under the rules, has imposed the penalty on the applicant.



V. Nevertheless, the track record of the applicant is that he was not involved in any fraudulent act, but his negligence in following the relevant rules has led to defrauding the public exchequer to the extent of Rs.1.20 crores and odd. Therefore, the respondents have proceeded against him and (i) imposed the penalty of recovery of Rs.1,42,925/- and (ii) reduction of pay by one stage for one year, without increment for the said period of one year. We would like to deal with the components of the penalty, as under, keeping in view the rules on the subject and in accordance with law.

a) In regard to the charge that the applicant failed to maintain absolute devotion to duty as required under CCS (Conduct) Rules, 1964, he has not abided by the rules he was supposed to follow in supplying cash to Sub Offices when indented. In fact, the applicant claims that he has supplied cash on phonic instructions, but he did not get it confirmed in writing after supplying cash. This is another serious lacuna in discharging his role as Sub Postmaster of a Cash Office. Hence, for lack of maintenance of devotion to duty, the applicant has to face the consequences as are laid down in the Rules. The respondents have reduced his pay by one stage

from Rs.15380 to Rs.14810/- for a period of one year and the same holds good for the reasons discussed above.



b) In respect of the impugned recovery, it is well settled law that penalty of recovery of alleged loss cannot be imposed on Government servant for his failure or negligence in following the procedure, which might have resulted in committing of fraud by a third party, as was observed by this Tribunal in OA No. 1091/2013, cited by the learned counsel for the applicant and the relevant observations made in the said order are extracted as under:

“25. In view of the settled position of law that a penalty of recovery of loss cannot be imposed on a Government servant for his failure or negligence in adhering to procedures/ instructions, which might have resulted in the committal of fraud by a third party, the respondents not justified in imposing a penalty of recovery on the applicant. The issue is answered in favour of the applicant.”

Further, recovery should not be made for contributory negligence as per the DG P & T guidelines dated 13.02.1991 as well as the Rules 11 of CCS (CCA) Rules, 1965. No doubt, one of the punishments enlisted under Rule 11 of CCS (CCS) Rules under the head “Minor Penalties” is “recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders”. However, as observed by the Inquiry Officer, the loss sustained to the department on account of the alleged negligence or breach of orders on the part of the applicant was not even mentioned in the charge sheet nor proved by the prosecution. In the absence of such charge or finding, recovery of alleged pecuniary loss is

not sustainable. Therefore, the impugned order to the extent of recovery of Rs.1,42,925/- from the applicant, is not valid in the eyes of law.



VI. Generally, courts are not expected to interfere with the penalty imposed by the disciplinary authority after due process of inquiry.

However, in view of the fact that there is no direct involvement of the applicant in the fraud and the charge levelled itself is only of contributory negligence on the part of the applicant and also in view of the DG, PT instructions dated 13.02.1991 wherein it is laid down that recovery may not be ordered for contributory negligence, this Tribunal is of the view that, the recovery ordered vide the impugned order is not warranted and accordingly, the impugned recovery of Rs.1,42,925/- from the applicant is set aside, leaving the penalty of reduction untouched. Consequently, the amount of Rs.1,42,925/- withheld at the time of payment of pensionary benefits to the applicant, as directed by this Tribunal vide order dated 08.09.2017, be released to him, within a period of two months from the date of receipt of copy of this order.

VII). Accordingly, the OA is partly allowed. MA 1042/2016 stands disposed of. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER (JUDL.)

/evr/