

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 62/2008

Date of decision: 8th August, 2011.

**CORAM: HON'BLE DR. K.B. SURESH, MEMBER (J) &
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)**

Sukhdev s/o Shri Surja Ram aged about 49 years, r/o Indira Colony, Behind Roadways Depot, Bikaner. Presently working on the post of PA (SBCO), Bikaner Head Post Office Bikaner (Rajasthan).

..... Applicant

Mr. Salil Trivedi, Counsel for the applicant.

Versus

1. The Union of India through its Secretary, Ministry of Communication (Department of Post), Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur.
3. The Director, Postal Services, Western Region, Jodhpur.
4. Superintendent of Post Office, Shriganganagar Division, Shriganganagar.

..... Respondents

Mr. Ankum Mathur proxy for Mr. Vinit Mathur, counsel for the respondents.

ORDER

Per Sudhir Kumar, Member (Administrative)

The applicant is an employee of the Postal Department and is before us with the following prayers:-

- i) By an appropriate order or direction, the orders Annexure A-1, A-2, and A-3 passed by the respondent no. 4,3 and 2 respectively may kindly be quashed and set aside.
- ii) By an appropriate order or direction, the respondents may be directed to refund the amount of Rs. 15,000/- + 1750/- (total Rs. 16,750/-) which has already been

deducted along with interest at the rate of 12% per annum.

- iii) Any other appropriate order or direction which this Hon'ble Tribunal deems just and proper may also be passed in favour of the applicant.
- iv) The costs of the Original Application may be awarded to the applicant.

2. The facts of the case lie in a brief compass. While the applicant was working in Srigananagar, he was served with a Memorandum of charge sheet dated 6.2.2004 under Rule 16 of CCS (CCA) Rules, 1965 (A/4). The allegation in the charge sheet included with the Memorandum was that while the applicant was working as a Postal Assistant (SPO) at the Head Post Office, Srigananagar, he had received a bundle and the list of Savings Bank Vouchers of 11.1.2001 the next date on 12.1.2001, and he had failed to tally that list of the vouchers alongwith the accompanying vouchers. Later on, it was found that the withdrawal voucher in respect of Rs. 25,000/- from Saving Bank Account No. 136939 was found missing , and because of this lack of attentiveness on the part of the applicant, the bogus payment of Rs. 25,000/- made by the Savings Bank Branch of that Post Office on 11.1.2011 could not be detected on 12.1.2001, whereby the Postal Department had to suffer a loss of Rs. 25,000/-. It was alleged that the applicant has violated Rule 3 (i) (ii) of para 4 of the Postal Small Savings Scheme. The applicant submitted his detailed reply to the charge sheet on 9.3.2004, and without holding a detailed inquiry, the respondents imposed the minor penalty of recovery of Rs.

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15,000/- from his salary, plus 1750/- as interest, @ Rs. 1000/- per month under Rule 12 of the CCS (CCA) Rules, 1965.

3. Being aggrieved by this order dated 21.5.2004 Annexure A/1, the applicant submitted an appeal under Rule 23 before the Director Postal Services (Annexure A/6), and after considering it, but without giving the applicant an opportunity of personal hearing, the order of the disciplinary authority was affirmed by the Appellate Authority, i.e. Director Postal Services through his order dated 13.12.2004 (Annexure A/2). The applicant thereafter filed a revision under Rule 29 of CCA (CCA) Rules, 1965, before Respondent no.2 through his revision petition dated 1.3.2005, Annexure A/7, but this revision petition filed by the applicant also came to be rejected vide Memo dated 8.2.2007, forwarded to the applicant through the covering letter dated 21.2.2007 (Annexure A/3).

4. The applicant thereafter resorted to the Right to Information Act, 2005, and sought information under the RTI Act from the Superintendent Post Offices Sriranganganagar division as to when the applicant was posted as Supervisor, and also a copy of the said Savings Bank Account No. 136939, and the voucher's list, which was the basis of the proceedings against him. In reply thereof, the applicant was given a copy of the order book of the period in dispute, and a copy of a different Savings Bank Account number, and the vouchers' list was refused to be given. This reply received by the applicant under RTI Act has been produced by him at Annexure A/8. The applicant filed an appeal under Section 19 (1) of the RTI Act through Annexure A/9. The applicant has also submitted that

much earlier also, in the year 2004 itself, he had sought a copy of the receipt of vouchers of Savings Bank Branch, through his application dated 20.2.2004, Annexure A/10, but the same was denied to him then also through the reply dated 27.2.2004 (Annexure A/11), stating that he can come and inspect the documents and take extracts, and that the vouchers' receipt, which was the basis of the charge against him was not available at all, as the vouchers' list is kept in the records only for 2 years.

5. The case of the applicant is that the entrustment of job of supervisor to him was on account of Sh. Magraj Swami, the Incharge of SBCO, being on leave, and that being only a Postal Assistant (SBCO) it was not his duty to receive sealed cover bundle of Savings Bank Branch vouchers. He further submitted that the respondents have issued a charge sheet to Sh. Magraj also in respect of the same fraudulent transaction, but that the information in regard to the disciplinary proceedings against Sh. Magraj was denied to him under the RTI Act, stating that it cannot be given under the provisions of RTI Act.

6. Denying his complicity in the fraudulent transaction, the applicant explained that when any withdrawal form is submitted for withdrawing money from the Post Office Savings Account, it is first checked from the ledger, and if sufficient funds are found in the account then only, after the counter signature and verification of the Assistant Post Master, withdrawal is permitted. He submitted that the voucher in question was never made, and consequentially there was no question of counter signature of Assistant Post Master in the ledger, and it was

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precisely for this reason that the competent authority had never provided him information when he sought copies of the ledger under the RTI Act.

7. In the result, the applicant stated that the impugned orders Annexures A/1, A/2 and A/3 passed against him were without any evidence, perverse and illegal, and that these orders cannot be sustained in the eyes of law, and that the respondents have to consider the replies submitted by the applicant in their entirety and objectively. He denied that he was either working as Supervisor at the relevant time, or that it was his duty to receive the vouchers, which aspect of the matter has not at all been looked into. As a result he submitted that the charges of violation of Rule 3(i), 3(ii) of para 4 of the Post Office Small Savings Schemes levelled against him cannot be sustained. As a result, he pleaded that he can not in any way be held responsible either for receiving the sealed cover bundle of vouchers or for not having examined them, and therefore the charges levelled against him deserve to be quashed and set aside. He also submitted that a proper disciplinary inquiry should have been conducted, because the charges levelled against him required to be proved by positive documentary evidence, and that he should have been given an opportunity to cross examine the witnesses upon perusal of the documents, which was not done. He pleaded that he was not afforded a reasonable opportunity to defend his case except filing a written reply, which too was not looked into in its entirety and objectively by the disciplinary authority before levying the penalty. Thus he pleaded that the whole proceedings had been vitiated, and

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violated the principles of natural justice. In the result he had pleaded for the reliefs as cited above.

8. In their reply written statement the respondents averred that they have scrupulously followed the prescribed procedure and the O.A. is liable to be dismissed since the case of the applicant has already been considered at all levels by the departmental authorities after affording him a reasonable opportunity of hearing, and that he had participated at each and every level of inquiry. It was submitted that a judicial review can only be of the process, and not of the decision, and as far as the present case is concerned, since no irregularity has been committed in the procedure adopted by the competent authorities, this Tribunal may not like ^{to} sit as an Appellate Authority for the purpose of re-appreciating the available evidence. Detailing the facts leading to the loss of Rs. 25,000/- of the department due to one missing voucher, they justified the imposition of penalty of recovery of Rs. 15,000/- from the applicant towards the loss caused to the Government and interest of Rs. 1750/- thereupon. It was accepted that out of the 6 documents sought for by the applicant, only 5 had been supplied to him and the 6th could not be made available since it was not available on record. It was further stated as follows:-

" It is correct that the applicant was P.A. III but it is evident from the record that the Incharge SBCO was on leave on 12.1.2001 and the applicant was looking after the duties of In Charge also. The vouchers of 11.1.2001 were undoubtedly received by him and on enquiry....."

9. It was further submitted that since the applicant had never sought personal hearing from the Appellate Authority, no opportunity of personal hearing was given, and if any request for

personal hearing had been made by the applicant, the Appellate Authority would have provided that opportunity. They had further gone on ~~the~~ ^{to} explain their reply given under the Right to Information Act, and it was ~~they~~ reiterated that when Sh. Meghraj Swami, Supervisor, proceeded on leave on 10.1.2001, the Post Master had ordered in the Order Book that the applicant will be Incharge of the SBCO Branch w.e.f. 10.1.2001. It was admitted that the said Sh. Meghraj Swami had also been given a Charge Sheet, but it was submitted that the bogus withdrawal of Rs. 25,000/- took place on 11.1.2001, when the applicant alone was Incharge. In the result, the respondents prayed that the O.A. be dismissed, as on the date of 12.1.2001, the applicant was PA III as well as Supervisor of the SBCO Branch, and he ought to have verified the absence of the missing Vouchers that very day on 12.1.2001.

10. The applicant filed a rejoinder assailing that when the disciplinary proceedings were instituted on the basis of particular documents, the same could not have gone missing from the records of the respondents. He also denied that there was any specific order that the duties of Sh. Maghraj Swami were to be performed by him. He explained the procedure to be followed as per Rule 3(i) and 3(ii) of the Post Office Small Savings Schemes to contend that proper opportunity of explanation as to how he was not involved in the receiving and checking the contents of the Vouchers' Bundle, and could not be held responsible for the missing Voucher, was not provided to him by the respondents.

11. Heard the learned counsel appearing for the parties and we have carefully gone through the material on record.

12. The learned counsels for both the sides vehemently argued their respective cases on the basis of their written submissions. The learned counsel for the respondents specifically cited the paragraph 3(ii) of the Chapter 1 of Savings Bank Control Procedure, as prescribed under the Post Office Small Savings Schemes, which states as follows:-

"(ii) The official receiving these documents, will be responsible for seeing that all the lists of transactions, voucher bundles and journals as entered in the voucher list have been correctly received duly sealed. He will return one copy of the voucher list duly signed in token of having received the contents to the SB branch. The lists and documents will then be transferred to the P.A. concerned under receipt to be obtained on the voucher list. The voucher list will be filed in monthly bundles properly stiched. The P.A. will transfer the voucher bundles to the Supervisor after doing the needful. The transfer of voucher bundles to the Supervisor after doing the needful. The transfer of vouchers from P.A. to P.A. and PA to Supervisor will be done under receipt and for this purpose every official will maintain a hand to hand receipt book. (Para 3 of Manual of S.B. Control Procedure)"

13. Both the learned counsels tried to explain as to how the applicant was or was not responsible for checking the vouchers' bundle alongwith the list received. We have also gone through the detailed order dated 21.5.2004 of the Disciplinary Authority, (Annexure A/1), and of the Appellate Authority dated 30.12.2004 (Annexure A/2), and of the Revisional Authority dated 8.2.2007 (Annexure A/3). All the three orders have held that SBCO Branch, of which the applicant was the Supervisor temporarily on the date of the occurrence, is responsible for putting a check on the irregular activities, if any committed by the Savings Bank Branch, and on account of not performing their responsibility, the SBCO Branch cannot be absolved of

their responsibility in respect of any loss. They have come to the conclusion that for curbing fraudulent activities, severe punishment is needed, and imposition of punishment of recovery of/ recouping the loss is justified, and hence the penalty of recovery has been imposed upon the applicant, and it has been upheld by both the Appellate Authority as well as the Revisional Authority. The Revisional Authority has further gone on to state that serious negligence on the part of the petitioner frustrated the inquiry, and it can not be established as to by whom and how the amount of Rs. 25,000/- withdrawn on 11.1.2001 was paid, and he has justified the amount ordered to be recovered from the applicant, since as per the rules a recovery of the Govt. loss has to be made good from the official who facilitated the loss due to his negligence.

14. The plea of the applicant that recovery should be made only from the principal offenders has also been turned down and recovery of the major portion of the loss of the particular case from the applicant has been held to be justified.

15. We have given our anxious consideration to the facts of this case. The fact is that the fraudulent withdrawal of Rs. 25,000/- was made on 11.1.2001 in the Savings Bank Branch of the concerned post office. The principal offender(s) must therefore have been serving in the Savings Bank Branch. It is not clear from the orders of either the Disciplinary Authority, or the Appellate Authority, or the Revisional Authority, at Annexure A/1, Annexure A/2 & Annexure A/3 as to whether any of the principal offender(s) in the Savings Bank Branch of the concerned post office were also proceeded against, or not, and as to what

disciplinary action was taken against them, and as to how much of the loss suffered by the department was ascribed to be recovered from the principal offenders, the employees of the Savings Bank branch of the concerned post office.

16. Admittedly the applicant was an employee (and perhaps Incharge) of the SBCO Branch, which was only responsible for receiving the vouchers from the Savings Bank Branch on the next date, and the checking and cross checking the vouchers from the list of the amounts withdrawn supplied to them. Apparently the applicant has been held responsible for not doing this later part of the functions of the post office, which is said to have been his duty, which was to be performed by him on 12.1.2001, one day after the fraud had actually been committed by the employees of the Savings Bank Branch of the Post Office on 11.1.2001.

17. It can be nobody's case that when the department suffers a loss of Rs. 25,000/-, it can recover many times of that amount, and possible interest on that, by levying heavy penalty of recovery upon a number of officials. What is ~~the~~ the important in such proceedings is that the quantum of responsibility which can be ascribed upon an individual has to be determined/ ascertained, and the proportionate quantum of loss suffered by the department has to be recovered from all the employees concerned, in proportion to that determined quantum of responsibility. Such a finding is not apparent from ~~in~~ ~~the~~ any of the impugned orders Annexure A/1(of the Disciplinary Authority), Annexure A/2 (of the Appellate Authority), or Annexure A/3 (passed by the Revisional

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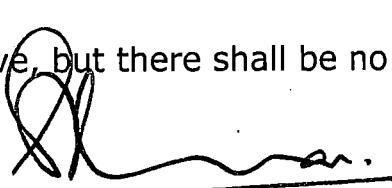
Authority). It may well be possible that similar heavy amounts of recovery may have been ordered to be made from the principal offenders of the Savings Bank Branch of the Post office, who primarily let the fraudulent withdrawal take place on 11.1.2001. If that be so, it would appear that the department would then end up recovering much more than the lost amount of Rs. 25000/-, the loss of which was actually suffered by the department, and possible interest thereupon. This is an unacceptable situation. All such cases should be treated as a bunch or clubbed cases, and the quantum of proportionate responsibility should be determined and ascribed to the individual officials and then only the recovery can be ordered to be made from all of them, proportionately only. That does not appear to have taken place in the instant case.

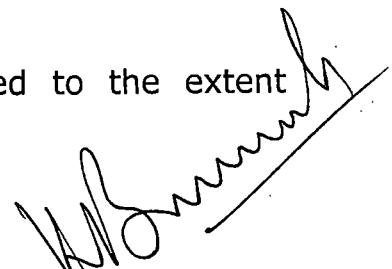
18. Further, no opportunity of personal hearing has been afforded to the applicant at any stage whatsoever, and no proper disciplinary inquiry has been conducted. Even if for the minor punishment of recovery of the amount, the conduct of a proper disciplinary inquiry was not warranted, at least the immediate superior of the applicant, the Disciplinary Authority ought to have given him an opportunity of being personally heard, in the interest of natural justice, which has also not been done.

19. In the result, we are satisfied that no such recovery can be made from the applicant without first actually apportioning the quantum of responsibility which can be ascribed to the respective principal offenders and the subsidiary offenders in such a case of fraudulent withdrawal and resultant financial loss to the department. In the result, the impugned

orders at Annexure A/1, A/2 and A/3 are set aside and quashed, and the amounts, if any, already recovered from the salary of the applicant, are ordered to be refunded to the applicant forthwith, within the next 3 months, alongwith the same rate of interest, which was ordered by the department to be applicable for the proposed recovery in the impugned order. But liberty is reserved for the respondents to hold either separate or a joint disciplinary enquiry against all the principal offenders, and the subsidiary offenders (including the present applicant), and then determine/apportion the quantum of the loss suffered by the Department due to the fraudulent withdrawal on 11.1.2001 in the concerned Post Office, and interest thereupon, which may be recovered from each of such principal offenders and subsidiary offenders (including the present applicant), and then pass resultant orders for the recoveries to be effected from the salaries/pensions of the concerned individuals.

20. In the result, the O.A. is allowed to the extent above, but there shall be no order as to costs.


(SUDHIR KUMAR)
MEMBER(A)


[DR. K.B. SURESH]
MEMBER (J)

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