IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No. 330 of 2011

Reserved on:17.4.2012 **Date of order: 4 /5/2012**

CORAM

Hon'ble Mr. B K Sinha, Administrative Member

Prakash Chandra Bothra S/o Shri Chitamani Dass,
Aged about 59 years, B/c Oswal R/o 208 Dhani Bazar,
Dist. Barmer, working in HO Churu (postal dept)
Dist.Churu, on the post of Postal Assistant. ...Applicant

(By Advocate Mr. S.P.Singh)

Vs.

1. Union of India, through the Secretary
Government of India, Ministry of Communication,
Department of Posts, Dar Tar Bhawan, New Delhi.

2. Director General of Posts, Department of Posts,
Dak Tar Bhawan, New Delhi.

3. The Chief Post Master General,
Rajasthan Circle, Jaipur-302007.

4. The Director O/o Post Master General,
Western Region, Jodhpur.

5. Superintendent of Post Offices,
Churu Division, Churu. ....Respondents

(By Advocate Mr. Vinit Mathur)

ORDER

1. The instant OA has been filed against impugned order dated 21.7.2011[**A-1**] reducing the pay of the applicant by one stage for a period of six months and directing recovery of Rs. 8564/- in four installments from his salary from the month of July, 2011 onwards.

2 The OA seeks the following relief for the applicant.

(a) The impugned order vide Memo No.L2-14/111/2009-10 dated 21.7.2011 (Annexure.A1) may kindly be declared illegal unjust and improper and deserves to be quashed and set aside.
(b) That all consequential benefits may kindly be awarded in favour of the applicant.
(c) That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
(d) That the costs of this application may be awarded to the applicant.

Facts of the case.

3. The applicant is working as Postal Assistant. He has crossed 59 years of age and is at the verge of retirement. While he was posted at Barmer HO, he opened a Saving Account vide SB Acc No0509137 in the name of BDO Panchayat Samiti Balotra. Subsequently, as per the DG New Delhi's letter no. 60/13/87-SB dated 28.7.1987 **[A/4]** it was presumed that the amount deposited in the said account was irregular. The account was closed and the Post Master Barmer HO recovered the interest paid to the account for the period 1996-97 to 1999-2000 amounting to Rs. 159197.75 from the afore account and balance Rs. 36,67000/- was returned to Account Holder, the Block Development Officer, Balotra as per the directive of DG, New Delhi communicated vide his Memo dated 28.7.1987. No interest was paid to the Account holder, the account being declared a State Account. The depositor i.e. the BDO, Panchayat Samiti Balotra issued an Advocate's notice dated 7.2.2001 under 80 CPC which was followed by letter from the Collector stating that the amount involved constituted the income of the Panchayat Samitit Balotra and since it had not been drawn from the State exchequer the Panchayat Samiti was entitled to interest thereon. The question involved was that whether the Account opened by BDO PS Balotra is account of local authority or not. **Rule 2 (c)** of the Post Office Saving Accounts Rule 1981 states that "***Local authority means a Panchat, Distt. Boar, Municipal Committee (whether known as Corporation, Municipality or by any other name) body of port commissioners or other authority legally entitled to or entrusted by the Govt. with the***

control or management of any Municipal or Local Fund." The depositor, BDO Panchayat Samiti Balotra approached the District Court vide ***CO-09/2003 – Panchayat Samiti Balotra Vs. Union of India and others. The District Court*** decided case treating the account to be regular and ordered payment of Rs. 1,59,197.75 plus interest thereon @ 3% 1.4.200 to 28.2.2001 and @ 2% from 1.3.2001 onwards till the payment of the amount and the expenditure on the case amounting to Rs. 10,929. The SPO, Barmer informs that the interest of Rs. 1,80,000/- up to 31.12.05 has been paid to the BDO Balotra and sanction was issued for payment of Rs.Rs.6,198 as interest w.e.f and Rs.10,929 as the cost of litigation the total being Rs.17,127/-**[A/8].** However, the SPO, Barmer reported vide his communication dated 1.12.2006 to the PMG that no employee is responsible for this episode and that there was no justification in making recovery from any of the employees.**[A/6]** When proceedings for recovery from the employees concerned were initiated the applicant made a representation for a declaration that there since there was no fault on the part of the officials, recovery should not be made from them. The applicant has submitted in his representation to the PMG that in the case that he is held guilty so would be the other officers [**A2**]. To the contrary, the applicant represented that the fault lay on part of the Department in not paying the interest and deciding to contest the case before the lower court. The principal argument of the applicant is that he was merely carrying out the orders of the Department faithfully and he cannot be charged for the same. The applicant states that the recovery has adversely affected his personal life and has resulted in humiliation and mental harassment to him. However, the respondents rejected his representation. The appellant has referred to an earlier OA No.90/2010 whereby the Tribunal had granted him some relief in matters of a punishment of loss of withholding of 2 increments imposed upon him for vide its order dated 25.3.2011. [**A3**].

Stand of the Respondents.

4. The respondents have filed their CA contesting the OA. It has been submitted that while working as Postal Assistant in Churu Division, the applicant irregularly closed the Balotra SB Account No.509137 of BDO Panchayat Samiti, Balotra on 31.12.1996/1.1.1997 for Rs. 1000000/- on 10.2.2011 by deducting the interest amount from 1996-97 to 1999-2000 Rs. 159197.75 and balance amount Rs. 36, 67000/- was returned to BDO Panchayat Samiti, Balotra as per the directive contained in the letter dated 28.7.1987 of DG Posts, New Delhi. In this connection BDO Balotra filed a case before the District and Sessions Court, Balotra on 7.4.2003. The Court of competent jurisdiction directed the Postal Authorities to pay Rs. 10929/- as court expenses and interest with effect from 1.1.2006 to 15.3.2008 Rs. 6198/-. Thus a total amount of Rs. 17127/- was paid by the Department, as a consequence of negligence and wrong interpretation of instructions of DG on part of two officials, applicant and another. A charge sheet was issued to the applicant vide memo dated 10.5.2010. On the request of the applicant, he was permitted to inspect the relevant documents on 14/15.2.2010 and he submitted a representation dated 25.9.2010. The disciplinary authority passed order vide memo dated 21.7.2011 awarding punishment of recovery of Rs. 8564/- in four installments and reducing his pay by one stage to Rs. 16660+4200 GP for period six months without cumulative effect. The respondents have stated that the applicant has approached Tribunal without having exhausted the departmental remedies available under Rule 23 of CCS (CCA) Rules, 1965 or Revision under Rule 29 of CCS (CCA) Rules, 1965 is available to him. The respondents have also stated that the SB Account No.509137 opened by the BDO, Panchayat Samiti, Balotraq was a "***official capacity account***" as per rule 4(D) (8) of Post Office Saving Account Rules, 1981 and SB order No.51/87 but the applicant wrongly interpreted and irregularly closed the said account on 10.2.2011. In reply to the grounds raised by the applicant, the respondents stated that the punishment awarded to the applicant is perfectly just and proper as the applicant had violated the instructions issued

by DG vide letter dated 28.7.1987 due to which the department sustained loss of Rs. 17127/-. The respondents have therefore prayed for the OA being dismissed.

5. In the rejoinder filed by the applicant to the CA, the applicant has reiterated the contentions in the OA stating that the "***Official Capacity Account***" may be opened by (i) a gazetted Government Officer or an officer of a Government Company or Corporation or Reserve Bank of India or Local Authority in his official capacity on behalf of persons or bodies whose money are held as deposit or otherwise with such officers and (ii) a receiver appointed by a Court of Law in respect of money received by him" and that the applicant closed the account on the basis of letter dated 11.1.2001 [**A5**]. He has produced a letter [**A6**] to show that the competent authority sought permission to protect the applicant from any recovery. The applicant has also stated that multiple punishments have been awarded to the applicant which is against the mandate of the Constitution of India.

Facts-in-issue:

6. Having gone through the pleadings of the rival parties, the documents adduced by them and the arguments submitted in the court, the following facts-in-issue emerge:

(i) ***Whether the instant OA has been filed without having recourse to other modes of the amelioration of grievances prescribed?***
(ii) What is the scope of intervention of the Tribunal in such cases?
(iii) Whether the proceeding is hit by some procedural latches/ violation of rules?
(iv) What relief, if, any can be provided to the applicant?

Whether the instant OA has been filed without having recourse to other modes of the amelioration of grievances prescribed?

7. The contention of the respondents in their CA is that the applicant has approached this Tribunal directly even without exhausting any of the prescribed official channels, namely appeal under Rule 23 of the CCS(CCA) Rules, 1965 or a revision petition under Rule 29 of the same Rules. Hence, the respondents contend that the OA may be dismissed as premature without even going into the merits of the case. In answer to this the applicant has stated in para 8 of his Supplementary Rejoinder Application: ***"The***

averments made in para 8 of the reply is not admitted, hence denied, in this regard it is submitted that the respondent on one side started recovery and on the other hand stating to adopt the official channels which is not sustainable in the eye of law". In other words the statement of the applicant amounts to an admission that the provisions of Section 20 of the Act have not been exhausted. The applicant submits that this was due to the coercive action on part of the respondents to recover the amount without waiting for decision on the appeal.

8. It is also necessary in this regard to have a look at what Section 20 of the Administrative Tribunals Act, 1985 provides:

> ***"20. Applications not to be admitted unless other remedies exhausted.–***
> ***(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all remedies available to him under the relevant services rules as to the Redressal of grievances.***
> ***(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,–***
> ***(a) if the final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievances; or***
> ***(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.***
> ***(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by the way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be deemed to be one of the remedies which are available unless the applicant had elected to submit to such memorial."***

9. It is pertinent to note that exhaustion of all remedies has been made mandatory with exception provided to it resides in sub-clause (3) of Section 20. Rule 11(b) of the Central Administrative Tribunal Rules of Practice provides that a scrutiny of the application shall be undertaken under the provisions of Rule 11(a) shall be in form no.2 and the scrutiny report is to be annexed to the application/petition. Item 13 of Form 2 is in form of a question that has the applicant exhausted all available remedies. In the instant case the applicant has provided in column 6 of the OA: "***The applicant has***

already exhausted all the remedies available under statutory services rules. He does not have any other equally efficacious speedy and adequate remedy except to invoke the extraordinary jurisdiction of this Hon'ble Tribunal". However, the facts appear otherwise. There is nothing on record to indicate that the remedies for redressal of grievances available under the CCS (CCA) Rules, 1965 have been exhausted. It is worthwhile to see what remedies are available in the Act. It has been ordered that a sum of Rs.8,564/- at the rate of Rs.2,141/- in four installments starting from the month of July, 2011 be realized and he has also been awarded with punishment of reduction in pay scale 9300-34800 + grade pay Rs.4200 and pay scale of Rs.16660+4200. This order is appealable under Rule 23 of the CCS (CCA) Rules, 1965. The second avenue available to the applicant was a revision under Rule 29 of the Rules. It is obvious that the applicant has not exhausted the available venues of appeal. The plea of the applicant in this regard is contained in para 8 of the Rejoinder: ***"That the averments made in para-8 of reply is not admitted hence denied, in this regard it is submitted that the respondent at one side started recovery and on the other hand stating to adopt the official channels which is not sustainable in eye of law."*** It has to be, now, examined here that whether the above plea of the applicant is a sufficient justification to bye-pass the provisions of Rule 20 of the Administrative Tribunals Act, 1985.

10. It is to be remembered that Section 20 of the Act is prefixed by the word **'ordinarily'** implying thereby that there could be conditions wherein there would be exceptions to this Rule. Sub-clause 3 of this Rule provides one such condition. The question is that are there such other conditions. In a decided case OA No.15 of 1994 of the Madras Bench, ***R.Ratnam vs. Union of India & Ors.*** Held: ***"this Tribunal has been generally treating the requirement of exhausting remedies available under the service rules in disciplinary matters to have been satisfied once an appeal has been preferred against an order of penalty. Although there is a provision for Revision in the CCS (CCA) Rules, it has not been the view of this Tribunal that this remedy should also be***

exhausted in every case before an application is made before this Tribunal. In the present case, where there has been a gross violation of the principles of natural justice by both the disciplinary and the appellate authorities, we have to reject the contention of the respondent that the applicant has not exhausted his remedies and that the application is premature."

11. In another case ***K.B. Bharadwaj vs. Union of India & Ors.*** in OA No.706/2001 of the Central Administrative Tribunal at its Lucknow Bench has held that the plea of alternative remedies will not be acceptable in such cases where the application has been filed for enforcement of some fundamental rights or where there has been violation of some principles of natural justice. The Hon'ble Tribunal has held that: ***"As regards, the contention raised on behalf of the respondents that the OA deserves to be dismissed on the ground that the alternative remedy of appeal has not been availed by the applicant as provided in Section 20 of the AT Act, 1985, reference may be made to the decision of the Hon'ble Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, 199 (17) LCD page 219. In this case it was held by the Apex Court that the plea of alternative remedy will not be acceptable in cases where a W.P. has been filed for enforcement of a fundamental right or where there has been violation of Principles of Natural Justice or where the order under challenge is wholly without jurisdiction."***

12. In another decided case of ***G.K. Veghela Vs. Union of India*** (Special Civil Application No.8985/1998), the question before the Court was that whether the CAT Ahmedabad committed an error of jurisdiction or error in law in declining to hear an OA where the remedies had not been exhausted. The Hon'ble Gujarat High Court has held : ***"6. Now so far the order passed by CAT not entertaining the petition is concerned, in our opinion, no error in law and/ or of jurisdiction can be said to be committed by the CAT. To us sub-section (1) of Section 20 is clear and specific. It states that CAT shall not ordinarily admit an application where a statutory remedy is available under the***

relevant service rules. Looking to the Rules referred to hereinabove, any order passed by an authority under Rule 11 is subject to appeal under Rule 23 of the Rules. The rules are statutory in nature. Ordinarily, when a statutory remedy is available to the aggrieved party to approach the Appellate Authority, CAT would refuse to entertain an application, and by doing so, CAT has not committed any error of law or of jurisdiction. In fact, CAT has taken into account the legislative intent reflected in Section 20 (1). It is true that the bar is not absolute and in certain circumstances, CAT may entertain an application. Mr. Patel is right in submitting that the provision is merely enabling one but taking into consideration, the phraseology used by Parliament, if the CAT has directed the petitioner to go before an Appellate Forum, no exception can be made against such a direction."

13. It is quite clear from the aforementioned two decisions that when a forum of appeal have been provided in the statutes, there should be adhered with and coming directly to the Tribunal by passing such fora of appeal is to be included amongst the rarest of the rare exceptions. There is another question involved: whether the Tribunal can dismiss an OA in consideration of Section 20 (1) of the Act while making observations. In the case of **Tin Plate Co. of India Ltd. Vs. State of Bihar and others, AIR 1999 SC 74** the Hon'ble Supreme Court held as follows: *"In the present case, admittedly, the appellant had an alternative and equally efficacious remedy by filing an appeal before the Appellate Authority against the order of assessment and in view of such a remedy being available to the appellant, the High Court was right in dismissing the writ petition on the ground that the appellant has an alternative remedy available under the Bihar Sales Tax Act. However, we do not subscribe to the view of the High Court when it made a number of observations touching upon the merits of the case while dismissing the writ petition on the ground of alternative remedy. If the writ petition under Article 226 is to be dismissed on the ground of alternative remedy, the High Court is not required to express any opinion on merits of the case which is to be*

pursued before an alternative forum. It is true that in the present case the appellant's counsel in his effort to get over the objection of existence of an alternative remedy, addressed the Court on merits of the case and thereby invited the observations on merits of the case by the High Court. But in such a situation if the High Court is to dismiss the writ petition on the ground of alternative remedy, it would be a sound exercise of jurisdiction to refrain itself from expressing any opinion on the merits of the case which ultimately is to be taken up by a person before an alternative forum." In answer to this issue one can conclude that the channels of appeal provided have not been concluded. The moot question here is that whether this Tribunal would be justified in treating the instant matter an exception to Section 20 of the administrative Tribunal Act, 1985. This can only take place when there has been an abject invasion of the rights of the individual resulting in gross violation of the laws of natural justice. Assuming that this Tribunal treats the instant OA to be the rarest amongst the rare cases, a question would be to what extent it can go.

What is the scope of intervention of the Tribunal in such cases?

14. It is seen that in the case of ***State of Meghalaya & ors. Vs. Mecken Singh N. Marak*** *reported in 2008(7) SCC 580*, the Hon'ble Supreme Court has held that in the case of penalty/punishment awarded in departmental enquiries, the scope of judicial review is very limited, and unless punishment is shockingly disproportionate, it should not be subject to judicial interference, and the employee's mental set up and the nature of his duties are also relevant while considering/awarding the proportionality of punishment. In this case the Learned counsel for the respondents submitted that the Revisional Authority has rightly come to the conclusion that only secondary responsibility for the incident, which could have led to a major train incident, could have been attributed to the applicant as a part of the Engine Cabin crew, and, considering the responsibility of the applicant to be secondary and not primary, his punishment had been reduced from that of compulsory retirement to a lower major penalty of withholding of increment for three

years with cumulative effect. It was submitted by the appellants that the punishment ultimately imposed upon the applicant could not be held to be disproportionate, requiring any judicial review or interference. The Hon'ble Court agreed with the submission of learned counsel for the respondents in this regard that considering the gravity of the incident which had occurred, endangering public safety, the punishment ultimately imposed upon the applicant is disproportionately low, rather than being disproportionately high, which might have shocked one's conscience.

Whether the proceeding is hit by some procedural latches/ violation of rules?

16. The grounds adopted by the applicant, as already discussed, include that he was acting under superior orders; the account had been closed and the interest was recovered on orders from the superior authorities; and the legal notice was also referred to the higher ups who had directed otherwise. The applicant has further pleaded that the documents were not provided to him as per his demand. I take up the first part plea of acting under the superior orders. One finds that there is substance in this allegation. It is to be noted that the account under consideration had been opened and interest was being paid in the usual course. It was at the behest of the audit that the question of irregular account cropped up. The account was closed under the operation of the orders circulated under letter no. SB/1-R/73 dtd 19.01.01 of the PMG. When request of the BDO, Balotra, letter of the Collector and the legal notice were received they were all referred for directives of the superior officers but no orders for payment were given to the Post Master Balotra or to the APM SB BMR. I fully agree with the content of the letter of the SPO Balotra that no one individual employee is responsible for this act. Having given the orders for closing the account initially and having failed to give proper directives for refund of the interest amount the superior officers are now estopped from taking a view that the responsibility rests with the applicant and some other employees. If responsibility were to be fixed I fail to understand as to why the superior officers are not being held

responsible. I, of course, do not find substance in the contention of the applicant that the relevant documents were not supplied as he had been permitted to see the documents.

17. Another problem relates to fact that the respondents have gone in for recovery without having waited for the channels of appeal to exhaust them. In the normal course it is expedient that the authorities wait for the delinquent employee to file appeal. The act of going in for recovery without having waited for the normal course to take place indicates coercive action on part of the respondents and, hence, a breach of the laws of natural justice.

(iv) What relief, if, any can be provided to the applicant?

18. It would appear from the afore discussions that the scope for judicial intervention is indeed limited. The accepted principle is that the Tribunal cannot take the place of the disciplinary authority or supplant the chain of appeal provided in the statutes. Hence, a harmonious construction would have to be attempted:

i. The impugned order dated **Memo No.L2-14/111/2009-10 dated 21.7.2011 (Annexure.A1)** quashed.
ii. The respondents are free to initiate another exercise for fixing responsibility and realization of the losses to the Post Office, in the case so desired keeping the principles enunciated in this Order in mind.

19. The OA is disposed of accordingly. There will be no order to the costs.

(B.K SINHA)
ADMINISTRATIVE MEMBER

pps

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