

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O.A No. 156/2011

**Order reserved on 01.03.2012
Order Pronounced on 22.05.2012**

HON'BLE MR. SUDHIR KUMAR, MEMBER (A)

Sh. B.L Verma,
S/o Sh. Balu Ram,
R/o Plot No. 62, Balaji Nagar,
Near Bijli Ghar, Salawas Road,
Jodhpur.

..... Applicant

(By Advocate: Shri S.P. Singh)

Versus

1. Union of India through
The Secretary, Government of India,
Ministry of Communication,
Department of Post,
Dak Tar Bhawan, New Delhi.
2. The Chief Post Master General,
Rajasthan Circle, Jaipur-302 007.
3. The Director, O/o Post Master General,
Western Region, Jodhpur.
4. Sr. Superintendent of Post Offices,
Jodhpur Division, Jodhpur.

.... Respondents

(By Advocate: Shri Ankur Mathur for Shri Vinit Mathur)

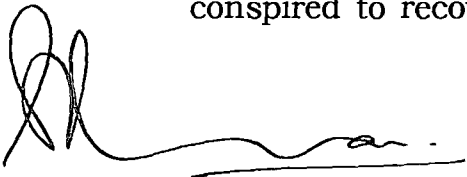
ORDER

The applicant of this OA was appointed as a Postal Assistant in the year 1972 and superannuated from his service on 30.06.2010, while he was working as Assistant Post Master under Senior Superintendent of Post Offices, Jodhpur, after unblemished service of 38 years. During the period of his service, he was for



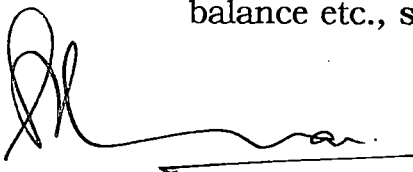
some time posted at the treasury Accounts section in Jodhpur Head Post Office. The applicant has pointed out that the respondents have, through the impugned order dated 31.03.2011 (Annexure A-1), passed the order for recovery of Rs.60,000/- from his retiral benefits, as earlier ordered by the Senior Superintendent of Post Office, Jodhpur through its order dated 21.06.2010 (Annexure A-2), and they have failed to consider his representation dated 14.06.2010 in response to the notice served upon him for imposition of minor penalty under Rule-16 of CCS (CCA) Rules, 1965 through Annexure A-3 dated 10.06.2010. Neither has his detailed representation dated 05.08.2010 against the order dated 21.06.2010 (Annexure A-2) been considered in detail while passing the impugned order of the Appellate Authority, Director Postal Services, Jodhpur, through Annexure A-1.

2. The applicant has pointed out that his name has unnecessarily been included as a subsidiary offender in respect of an offence of misappropriation detected by the department at ^{Sub-}Phalodi/Post Office far away from his place of posting, when it has still not been revealed as to how the applicant herein is liable for the alleged offences committed by the two named persons posted at Phalodi, when neither his name had been mentioned in the complaint/FIR, nor any show cause notice has been issued to him with respect to any enquiry proposed to be started against him. The applicant has alleged that the respondents did not even make out a proper charge sheet against him, and the respondents have conspired to recover the amount at the time of his retirement by



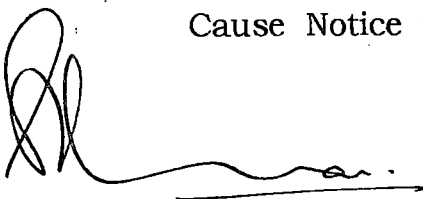
branding him to be a subsidiary offender in passing of certain vouchers, through Annexure A-3 dated 10.06.2010, just 20 days prior to the date of his superannuation, without initiating a disciplinary enquiry and fixing responsibility upon him for that offence, which had nothing to do with the applicant, and had occurred years back, and the action of the respondents in recovering the amount of Rs.60,000/- from him is nothing but a glaring example of arbitrariness, hostile and discriminatory action, as well as ~~colourable~~ ^{colourable} exercise of power.

3. The applicant has pointed out that the principal offenders had committed this offence from the years 2005 to 2008, which was detected in the year 2009, and the applicant could not have been held to be in anyway responsible for even having facilitated the misappropriation, since he joined at Jodhpur Head Office only on 08.05.2008. His contention is that even though not even a single penny has been recovered from the Principal offenders of the Phalodi Fraud case, knowing fully well that they would have to issue a 'No Objection Certificate' at the time of his retirement on 30.06.2010, they compelled the applicant to deposit an amount of Rs. 60,000/- in cash for obtaining the NOC at the time of his retirement, in spite of knowing that no such recovery can be made, except by virtue of an order passed under Rule 11 Sub Rule (iii) of CCS (CCA) Rules, 1965. The applicant had further given the details as to how he could not have had a hand in assisting the Principal offenders, and in making any mistakes in the ledger and balance etc., since all accounts have now been computerized. The



applicant alleged that the respondents have not revealed as to how he has been held liable for an offence allegedly committed by two delinquents posted at Phalodi Sub Post Office, and as to how he is linked with the alleged offence, and what contributory role he played, and as to what was the reason why disciplinary proceedings were not initiated, or even show cause notice was not issued to him till just 20 days prior to the date of his superannuation. It was further submitted that on the one hand the respondents have passed the punishment order of recovery of Rs.60,000/- from the applicant, while in the same matter other delinquents are still facing criminal proceedings filed by the CBI as well as departmental proceedings. He further submitted that there is no statutory provision to authorize the respondents to assess any loss caused by the Government servant without conducting a proper disciplinary enquiry, because it is not open to the respondents to be a judge in their own case, and to determine the liability of a Government servant without instituting relevant departmental enquiry proceedings.

4. It was submitted by the applicant that the impugned orders have been passed by the respondents without application of mind, and without the appreciation of the correct and factual aspects of the matter, and even though the fraud was detected in the year 2009, the respondents have, even as yet, not determined as to how he was involved in the matter, and have not issued to him any charge sheet, or commenced any enquiry, or even issued a Show Cause Notice to him. It was submitted that when neither any

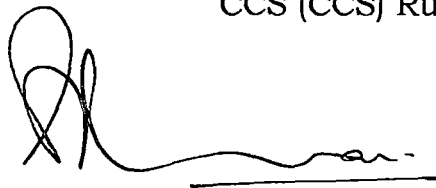


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disciplinary proceedings are pending nor initiated, the respondents were wrong in having denied to him all the service benefits in a whimsical manner and in a colourable exercise of power, with hostile and discriminatory action, in a glaring example of arbitrariness. The applicant submitted that the respondents have violated the principles of natural justice in not having considered the facts and circumstances of the evidence placed by him on record.

5. In the result, the applicant had prayed for the impugned Annexure A-1 dated 31.03.2011 passed by the Appellate Authority and Annexure A-2 dated 21.06.2010 passed by the Disciplinary Authority to be declared as illegal, unjust, improper, and to be quashed and set aside, and for directions upon the respondents to refund the recovered amount of Rs.60,000/- with interest, and any other directions in the interest of justice, apart from costs.

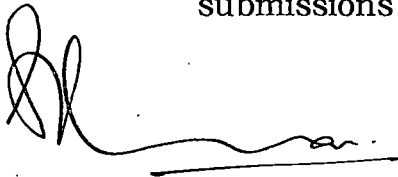
6. In their reply written statement filed on 03.01.2012, the respondents denied the submissions of the applicant. They took a stand that while working as the Assistant Post Master, Jodhpur Head Post Office, during the period from 12.05.2008 to 31.05.2010, the applicant did not perform the prescribed checks on various SB Accounts standing at Phalodi Sub Post Office and because of his negligence, a fraud to the tune of Rs.2 crores could be committed by the Principal offenders. It was submitted that the applicant was rightly served with a charge sheet under Rule 16 of CCS (CCS) Rules, 1965, on 10.6.2010, and the penalty of recovery



6

of Rs.60,000/- awarded vide Memo dated 21.06.2010 was justified. It was submitted that on detection of the fraud at Phalodi Sub Post Office on 04.06.2009 during the surprise visit, apart from taking action against Principal offenders then posted at Phalodi Sub Post Office, since each and every transaction at Phalodi Sub Post Office was checked and verified at Jodhour Head Post Office, the subsidiary offenders at Jodhpur H.O. had been identified, on the basis of responsibilities which they had failed to perform, and that the applicant alone was not awarded the penalty of recovery, and that there are many other subsidiary offenders also identified in the fraud case, who have been penalized with the penalty of recovery in proportion to their negligence. It was submitted that since more than Rs. 1.3 crore has yet to be recovered out of the total misappropriation in the fraud case, which could take place only because while working as a Supervisor the applicant failed to perform his duties to check the details of any payments more than Rs.20,000/-, which were made in cash by the Subordinate Office, the respondents had stated that the applicant cannot escape his liability only because the CBI criminal case had been filed only against the two Principal offenders, who had committed the fraud, since the responsibility of subsidiary offenders had also been determined and fixed by the department, and more than 60 other subsidiary offenders had been identified, depending upon their level of negligence, which had allowed the fraud to take place.

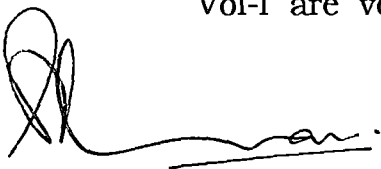
7. The applicant filed a rejoinder more or less reiterating his submissions in the OA. He submitted that the recovery of



7

Rs.60,000/- had been made from him in violation of Section 4 of the Public Accountants Default Act, 1850, which provides that "the person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his securities, for any loss or defalcation in his accounts, as if the amount thereof were an arrear of land-revenue due to Government". However, he submitted that for this purpose, it was necessary for the competent authority to first arrive at clear findings under Rule 204 of the P&T Manual Vol-III, that the departmental employee is held responsible for a particular act or acts of negligence, or breach of orders or rules, which had caused the loss. He has submitted that the respondents did not prove his fault, and have only punished him on suspicion, and on the basis of presumption, and the Hon'ble Apex Court has held in the case of Kuldip Singh Vs. Commissioner of Police & Ors. (1999) 2 SCC 10 that suspicion or presumption cannot take the place of proof even in domestic enquiry. He had further given the details about the level of his responsibilities as an Assistant Post Master, and had submitted that it was the responsibility of the Ledger Assistant to have checked up the bundles of vouchers received from Phalodi Post Office and to have maintained the objection register, as is apparent from Rules 48 & 92 of the Post Office Savings Bank Manual Vol-I (Annexures A-7 and A-8).

8. It was further submitted by the applicant in his rejoinder that Rules-106 and 107 of the Post Office Savings Bank Manual Vol-I are very clear in stating that in the case of proceedings



8

relating to recovery of pecuniary losses caused to the Government by negligence, or breach of orders by a Government servant, the penalty of recovery can be imposed only when it is established that the Government servant was responsible for a particular act or acts of negligence, or breach of orders or rules, and that such negligence or breach caused the loss. The Rule-107 further states that 'in case of a loss caused to the Government, the competent disciplinary authority has to correctly assess in a realistic manner, the contributory negligence on the part of an officer, and while determining any omission or lapses on the part of an officer, the bearing of such lapses on the loss suffered by the department have to be considered, and that the extenuating circumstances in which the duties were performed by the officer shall have to be given due weight'. It was stated that an order of recovery of loss suffered by the department under Rule-204 sub Rule-4 cannot stand on a standalone basis, without fulfilling the pre-conditions of Rules 106 and 107 of the same rules.

9. It was further submitted that punishment of recovery of an amount is a special type of punishment, and it can be awarded only when there is a proven loss to the Government, and the nexus of the delinquent official to that loss had been proved. It was submitted that in this case neither the nexus has been proved, nor any loss has been caused on account of any actions of the applicant, and therefore, the punishment of recovery has been awarded based on an erroneous decision arrived at on the question of law and material irregularity, which had resulted in a

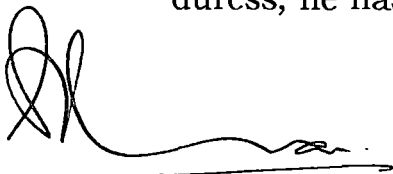


9

miscarriage of justice through the impugned orders Annexure A-1 & A-2. It was submitted that in the Phalodi Fraud case, neither the investigation is complete, nor has any recovery been made from the alleged Principal offenders, but still levying a penalty of recovery of Rs.60,000/- from the applicant is violative of the principles of natural justice, in the absence of any proof of the allegation that any loss had been caused to the Government by any act or omission on the part of the applicant. It was, therefore, prayed that neither the findings arrived at in the impugned orders are established on factual aspects, nor mandatory provisions have been complied with, and, therefore, the order of punishment deserves to be quashed and the OA deserves to be allowed.

10. Heard. The case was argued vehemently by both the sides.

11. In the instant case, the show cause notice and charge memo under Rule-16 of the CCS(CCA) Rules, 1965 was issued through Annexure A-3 dated 10.06.2010, which does not require a detailed departmental enquiry to be held. The applicant did submit his reply dated 14.06.2010, but the respondents proceeded ahead to pass the impugned order at Annexure A-2 dated 21.06.2010, which is a reasoned and speaking order up to the penultimate paragraph, holding the applicant to be one of the subsidiary offenders. However, nowhere in that order it has been stated or determined as to how the amount of Rs.60,000/- had been arrived at for being ordered to be recovered from the applicant. Since the applicant was to retire within 9 days, on 30.06.2010, under duress, he has had to pay the amount in order to obtain the NOC



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for drawing his retiral benefits. He submitted a detailed representation to the Appellate Authority on 05.08.2010 as Annexure A-5, but through the impugned order Annexure A-1, the Appellate Authority has upheld the imposition of minor penalty upon the applicant, and has further upheld the recovery of Rs.60,000/- ordered from the applicant under Rule-27 of the CCS (CCA) Rules, 1965.

12. It was submitted by the learned counsel for the applicant that the department has been acting in a partial manner in regard to more than 60 subsidiary offenders identified in the Phalodi Fraud case. In some of their cases, in respect of those who were in service, even MACP and other financial benefits are being granted in the routine, but from all those from that list of subsidiary offenders identified by the department who have been retiring, arbitrarily fixed amounts have been ordered to be recovered, and recovery of such arbitrarily fixed amounts has been effected before their retirement in each such case.

13. On the other hand, learned counsel for the respondents submitted that the amounts for recovery have been fixed according to the level/duties which the concerned official had failed to discharge, and that the determination of the amount for recovery from both the Principal and subsidiary offenders identified had been made depending upon the level of failure of performance of their responsibility.



II

14. I am not quite convinced with the arguments put forth by the learned counsel for the respondents, especially so because no amount has so far been determined for being recovered from the principal offenders of the Phalodi Fraud case, who are still facing the departmental enquiry, as well as the criminal case in the Special CBI Court.

15. The impugned orders at Annexure A-1 and A-2 also are partially defective inasmuch as while they have gone ahead to order for recovery of Rs.60,000/- from the applicant, apparently under sub-Rule 4 of Rule 204 of the Post Office Savings Bank Manual Vol-1, the orders themselves nowhere state about the quantum of or the amount of such recovery to have been determined in a proper manner, because that would have required adherence to the principles of Rules 106 & 107 also as cited above, which would essentially require the quantum of contributory negligence on the part of the delinquent Government official to be legally determined, which has not been done in this case. When the total quantum of loss suffered by the Department in the Phalodi Fraud case, itself has yet to have been correctly assessed and totalled up, the respondent department cannot be allowed to state that the quantum of responsibility for the loss suffered apportioned upon the applicant before this Tribunal had been arrived at in a realistic manner. Also, the show cause notice issued to the applicant herein through Annexure A-3 dated 10.06.2010 was only with reference to Rule-16 of the CCS (CCA) Rules, 1965, and in the charge memo enclosed, while mention had



12

been made of Rule-38(3) of the P&T Manual, and CCS (Conduct) Rules 1964 of Rule-3 (i) (ii), no mention had been made of any charge under Rule 204 of the Postal Manual, under which only such recovery could have been ordered to be made from the applicant.

16. It has also to be seen as to whether recovery from the applicant could have been ordered by the respondents under the CCS (CCA) Rules, 1965 itself. This brings me to the fallacy of there being only ten kinds of penalties under Rule 11 of CCS (CCA) Rules, as is commonly believed. A close perusal of Rule 11 of CCS (CCA) Rules reveals as follows:-

"The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely -

Minor Penalties

- (i) censure;
- (ii) withholding of his promotion;
- (iii) 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.
- (iii) (a) reduction to a lower stage in the time-scale of pay for a period of not exceeding 3 years, without cumulative effect and not adversely affecting his pension;
- (iv) withholding of increments of pay;

Major Penalties -

- (v) save as provided for in Clause (iii)(a), reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will



13

not have the effect of postponing the future increments of his pay;

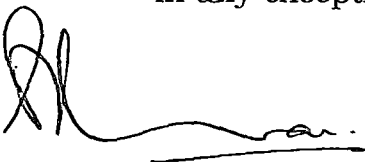
- (vi) Reduction to lower time-scale of pay, grade, post of service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post of Service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post of Service;
- (vii) Compulsory retirement;
- (viii) removal from service which shall not be a disqualification for future employment under the Government.
- (ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government;

Provided that, in every case in which the charge of possession of assets disproportionate to known sources of income of the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in Clause (viii) or Clause (xi) shall be imposed;

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed.

Explanation.....”

17. Thus, it is seen that apart from the five categories of minor penalties enumerated in Sub-Rules 11(i), 11(ii) 11(iii), 11 (iii) (a) and 11(iv), and the five categories of major penalties enumerated in Sub-Rules 11(v), 11(vi), 11(vii), 11(viii) and 11(ix), there is an 11th category of penalty also, described within Rule 11, which is included in the second proviso to the Rule 11 cited above, whereby, in any exceptional circumstances, and for special reasons recorded



14

in writing, any other penalty may also be imposed. Rules 14 and 15 of CCS (CCA) Rules, 1965, deal with the procedure for imposition of major penalties, and for action to be taken on the inquiry report. Rule 16 of the CCS (CCA) Rules, 1965, deals with the procedure for imposition of minor penalties. There is no such parallel specific rule or provision in the CCS (CCA) Rules, 1965, under which, as cited above, in any exceptional circumstances or case, and for special reasons recorded in writing, any other penalty may be imposed. Even Rule 19 of the CCS(CCA) Rules, 1965, providing for special procedure in certain cases, deals only with the procedure prescribed under Rule 14 to Rule 18 of the CCS(CCA) Rules, 1965. Therefore, it is obvious that the second proviso to Rule 11 is a stand alone and independent provision, for which no specific procedure has been prescribed.


18. It, therefore, appears appropriate that in case of any action taken against the delinquent Government servant which does not fall under the 5 categories of minor penalties, or the 5 categories of major penalties, but which has to be classified as an exceptional case, the only requirement is (a) that the special reasons may be recorded in writing, and (b) a corollary that under the Constitution of India, the delinquent Government servant should have had a reasonable opportunity of being heard regarding the exceptional or compelling circumstances.

19. Therefore, it is held that after having issued to the applicant a charge sheet under Rule-16 of CCS (CCA) Rules, 1965, the



He penalty of recovery could have been ordered by the Respondents only as an exception^{-al} case, for the reasons to be recorded in writing and the delinquent Government servant should have had a reasonable opportunity of being heard regarding the exceptional and compelling circumstances, on the basis of which such recovery was being ordered, which is not the case in the instant case. Therefore, the impugned orders dated 31.03.2011 (Annexure A-1) and 21.06.2010 (Annexure A-2) are set aside, and the respondents are ordered to refund the amount of Rs.60,000/- forcibly recovered from the applicant just prior to his superannuation, without determining the quantum of negligence attributable to him, and the exact amount of quantum of loss attributable to him on account of the negligence of the applicant, with GPF rate of interest from the date of recovery of such amount, till the actual date of refund of such amount.

20. The OA is, therefore, allowed, but there shall be no order as to costs.


(SUDHIR KUMAR)
MEMBER (A)

cc.

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