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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.251/2012

Jodhpur this the 29th day of August, 2013

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J),

S.N.Singh Bhati S/o Late Shri Sultan Singh Bhati, aged about 61 years, by caste Rajput, R/o Plot No.18, Khajerla House, Paota 'B' Road, Jodhpur (office address: Retired and Last working place HO Jodhpur worked as APM Jodhpur HO in Postal Department)..

.....Applicant

Mr.S.P.Singh, counsel for applicant.

Versus

1. The 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

Smt. K. Parveen, counsel for respondents.

ORDER (Oral)

The applicant by way of this application has challenged the legality of the order at Annexure-A/1 by which the punishment of recovery of Rs.25000/- has been imposed upon the applicant.

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2. The short facts of the case are that the applicant was initially appointed as Postman in the year 1973. Thereafter he was promoted as Postal Assistant and retired on 31.12.2010 while working on the post of Assistant Post Master under Senior Superintendent of Post Offices, Jodhpur after rendering unblemished service for a period of 37 years. It has been averred that while the applicant was posted at Jodhpur in Accounts Section, a fraud case was lodged against two officials of Phalodi Post Office, and FIR was also lodged against them. It has been further averred that the applicant has no role in the alleged offence of misappropriation committed by officials of Phalodi Post Office in the year 2005 & 2008 but when the applicant was at the verge of his retirement, before 03 days of his superannuation, the respondent department passed the impugned order of recovery of Rs.25,000/- without fixing his liability. It has been further averred that the respondents have neither completed enquiry nor witnesses were examined and even no opportunity was extended to the applicant to keep his position against the punishment order. Further, the respondents without assessing the loss caused to the department, recovered the amount from the applicant before three days of his superannuation. Therefore, the applicant, by way of this application has sought the following reliefs:-

“(a) That the impugned order Memo No.F-9-1/10-11 dated 27.12.2010 (Annexure-A/1) may kindly be declared illegal unjust and improper and deserves to be quashed and set aside.

- (b) *That the respondents may kindly be directed to refund the recovered amount of Rs.25000/- with interest.*
- (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."*

3. The applicant in support of his application has annexed 11 documents from Annexurs-A/1 to A/11 and also filed a judgment on the similar facts delivered by the Single Bench of this Tribunal in OA No.156/2011.

4. By way of reply, the respondent department alleged that the applicant failed to supervise his work, and as the supervisory work was not conducted by the applicant properly and due to his negligence, the fraud was committed in the office of Phalodi Post Office. It has been further averred that the main offenders committed the offence of misappropriation in other than Saving Bank Schemes, because the misappropriation in Saving Bank Scheme was come to light much after the recovery from the delinquents. It has been further averred that the main offenders were posted at Phalodi Post Office and they started misappropriation in Saving Bank Scheme because they were confident that the vouchers at Jodhpur Head Post Office level were not properly checked. From the principal offenders, the department has only recovered Rs.7.78 lacs out of 1.97 crores. It has been further averred in the reply that the applicant cannot escape from

the charges prevailed against him and the recoveries have been imposed after thorough assessment of contributory negligence on the part of each identified offender including the applicant. The recovery was imposed due to the negligence towards duties by the Government servant. The recovery of government loss can be made from the Government servant who is found guilty for the loss to the Government.

5. By way of rejoinder, while reiterating the same facts as averred in the application, the applicant denied the facts averred in the reply and also annexed Annexure-A/13, the judgment passed by the Single Bench of this Tribunal in OA No.295/2011.

6. In contravention to the rejoinder, an additional affidavit was filed by Shri B.R. Suthar, Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.

7. Heard both the parties. Counsel for the applicant contended that the charge sheet issued to the applicant as Annexure-A/2 does not contain the fact that the loss to the Department to the tune of Rs.25,000/- was caused by the applicant, as the charge was only to the effect that the applicant checked the receipt for Rs. 800 in Saving Bank Account No.711324 in which balance after transaction

was not entered and the applicant has not challenged this irregularity and thereby violated the Rule 31(2) (iii) of the Post Office Saving Bank Manual, Vol-I, and therefore, he is guilty of sub-Rule 3(i)(ii) of CCS (Conduct) Rules, 1964. Counsel for the applicant further contended that the recovery of any amount has not been mentioned as minor penalty under Rule-11 and as per the proviso to Sub-Rule ix) of Rule 11 in any exceptional case any other penalty can be made. The enquiry officer while imposing the penalty of Rs.25,000/- has not considered this aspect that whether any exceptional case is made against the applicant for imposing of penalty of Rs.25,000/-.

8. On the other hand, counsel for the respondents contended that the amount for recovery has been fixed according to the level/duties which the concerned official had failed to discharge, and that determination of 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.

9. I am not quite convinced with the arguments put forth by the counsel for the respondents, especially so because charge sheet does not contain the fact that any loss has been caused by the

applicant to the department and secondly even the punishment order does not discuss the fact that how much peculiar loss has been caused by the applicant to the respondent department.

10. I have perused the Annexure-A/1 penalty order. The Annexure-A/1 order does not state about quantum 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 and 107 of the Post Office Savings Bank Manual Vol.I, and would essentially require the quantum of negligence on the part of the delinquent government official to be legally determined, which has not been done in this case. What was the total amount or quantum of loss suffered by the department in the Phalodi fraud case itself has not been correctly assessed and the respondent department cannot be allowed to state that the quantum of responsibility of the applicant caused the peculiar loss of Rs.25,000/- to the department. In the memo of charge sheet, it has not been mentioned that the applicant violated Rule 204 of the Postal Manual under which such recovery could have been ordered to be made from the applicant.

11. As per Rule 11 of the CCS (CCA) Rules, 1965, the recovery of any penalty can be imposed only in any exceptional circumstances and for special reasons recorded in writing. Thus, it

is seen that five category of minor penalties in Sub-Rules -(i), (ii), (iii), (iii)(a) and (iv) of Rule 11 and five categories of major penalties in Sub-Rules (v), (vi), (vii), (viii) and (ix) of Rule 11 and there is 11th category of penalty also described within Rule 11, which is included in the second proviso to the Rule.

12. It, therefore, appears that in case of any action taken against the delinquent Government servant, which does not fall under five categories of minor penalties or five 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 the India, the delinquent Government servant should have had a reasonable opportunity of being heard regarding the exceptional or compelling circumstances.

13. Accordingly, it is held that after having issued the charge sheet under Rule-16 of CCS (CCA) Rules, 1965, the penalty of recovery could have been ordered by the respondents only as exceptional 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.

14. Therefore, in the facts and circumstances of the case, the impugned order dated 27.12.2010 (Annexure-A/1) required to be quashed and the same is accordingly quashed. The respondents are directed to refund the amount already recovered from the applicant within a period of six months from the date of receipt of a copy of this order. No interest is awarded on the recovered amount.

15. The OA is accordingly allowed, as stated above, with no order as to costs.



(Justice K.C. Joshi)
Judicial Member