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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.252/2012

Jodhpur this the 29th day of August, 2013

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

Sunil Kumar Joshi S/o Shri Chandra Prakash Joshi, aged about 41 years, by caste Brahman, R/o Plot No.61, Amrit Bihar, Shubarto ki Dhani, Jodhpur (office address:- presently posted at KUM Bhagat ki Kothi, Post Office as Postal Assistant).

.....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/2 by which the punishment of recovery of Rs.50000/- has been imposed upon the applicant, and

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the Annexure-A/1 by which the same was confirmed by the Appellate Authority.

2. The short facts of the case are that the applicant was appointed as Postal Assistant in the year 1991. Thereafter he was posted at Krishi Upaj Mandi, Bhagat ki Kothi, Jodhpur as Postal Assistant under Superintendent of Post Offices, Jodhpur. It has been averred that the applicant while posted at SOSB Jodhpur HO, 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 which was detected in the year 2009. The case is pending before CBI Court, but the respondent department passed the impugned order of recovery of Rs.50,000/- without fixing his liability. It has been further averred that the respondents failed to assess the loss caused by the applicant to the Department and have recovered the amount therefore, they have become judge of their own case which is against the principle of natural justice. The applicant further averred that the punishment order has been passed irregularly as the applicant has no role in the fraud committed at Phalodi Post office. Therefore, by way of this application the applicant has sought the following reliefs:-

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- “(a) *That the impugned order Memo No.STA/WR/44-A/16/11 dated 16.4.2012 (Annexure-A/1) and Memo No.F-9-1/10-11 Suppl dated 19.05.2011 (Annexure-A/2) 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.50,000/- 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 justice.*
- “(d) *That the costs of this application may be awarded to the applicant.”*

3. The applicant in support of his application has annexed 05 documents from Annexurs-A/1 to A/5 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 discharge his duties properly and had the applicant performed his duties properly, the fraud committed by main offenders could have been stopped. 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.77 lacs out of 1.97 crores. It has been further averred in the reply that the applicant cannot escape from the

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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/7, the judgment passed by the Single Bench of this Tribunal in OA No.295/2011.

6. Heard both the parties. Counsel for the applicant contended that the charge sheet issued to the applicant as Annexure-A/3 does not contain the fact that the loss to the Department to the tune of Rs.50,000/- was caused by the applicant, as the charge was only to the effect that the applicant did not check the balance after transaction and that the short signature was not made by the SPM Phalodi, but the applicant has not challenged this irregularity and thereby violated the Rule 38(1) (a) of the Post Office Saving Bank Manual, Vol-I, and he is also guilty of Rule 3(i)(ii) of CCS (Conduct) Rules, 1964. Counsel for the applicant further contended

(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.

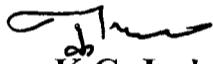
11. It, therefore, appears that in case of any action taken against the delinquent Government servant, which does not fall under five categories of minor penalties or five categories of major penalties, but which has to be classified as an exceptional case, the only requirement is - (a) that the special 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.

12. 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.

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13. Therefore, in the facts and circumstances of the case, the impugned orders dated 16.04.2012 (Annexure-A/1) and 19.05.2011 (Annexure-A/2) required to be quashed and the same are 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.

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



(Justice K.C. Joshi)
Judicial Member

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