

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 295/2011

Jodhpur this the 18th January, 2013

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Judicial Member

Mr Teja Ram Nawal S/o Late Shri Jeeta Ram
R/o H.No. 46 B, Mandir Mahalla, Bhadwasia
Jodhpur

.....Applicant

(Through Advocate Mr S.P. Singh)

Versus

1. Union of India through the Secretary, 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

(Through Advocate Mr. Vinit Mathur, ASGI and Advocate Mr.D.P. Dhaka)

ORDER

This application is directed against the impugned order dated 20.6.2012 (A1) rejecting the appeal filed by the applicant against the punishment order for recovery of Rs.40000/- from the applicant and the order dated 3.11.2011 (A2) imposing penalty of recovery.

2. The brief facts of the case is that while posted at Jodhpur HO as Postal Assistant in 2007, an amount of Rs.4,90,000 was withdrawn & paid by the SPM Phalodi but the SPM did not sign on withdrawal form and he paid the amount in cash. In this connection a charge sheet was issued to the applicant with the allegation that applicant violated Rule 38(i) & provision vide LI-7/05 dated 3.3.2008. Applicant submits that the

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fraud is committed at Phalodi Post Office by two officials namely Pancha Ram and Arjun Ram. The punishment order of recovery of Rs. 40,000 was passed against the applicant without fixing the liability of the applicant. Applicant submits that he is working in Jodhpur HO at Jodhpur and he has no connection with the alleged offence which is committed by two officials of Phalodi Post Office. The applicant further submits that the respondents did not prove his liability and any breach of order as well as how he caused loss to the department due to his negligence. Without considering his representation and evidence placed on record, the respondents rejected the representation. He has alleged arbitrariness and discriminatory function against the respondents in exercising the power and adopted pick and choose policy. He has stated that the recovery of Rs. 40,000 is in violation of Section 4 of the Public Accountants Default Act, 1850 as also Rule 204 of the P&T Vol.III. He has referred to a Supreme Court judgment in the case of *Kuldeep Singh Vs Commissioner of Police & Others*, (1999) 2 SCC 10 and say that suspicion of presumption cannot take the place of proof even in domestic enquiry. The respondents did not consider Rule 106 and 107 of the Post Office Savings Bank Manual Vol.I. He has also referred to an order of this Tribunal in OA 156/2011 BL Verma Vs. Union of India, a similar matter to this OA praying that the impugned order dated 20.6.2012 (A1) passed by Respondent No.3 and Memo dated 3.11.2012 forwarded by Respondent No.4 [A2] be declared illegal, unjust and improper and to be quashed and set aside. He has also prayed for refund of the amount recovered from him.

3. The respondents have filed their reply opposing the application stating that the applicant did not perform the prescribed check of final closure voucher of MIS account No.6156 for Rs. 4,90,000 received from Phalodi Sub Office on 2.6.2007. As a result two main offenders of Phalodi fraud case succeeded to commit a fraud to the tune of Rs. 2 crores including fraud of Rs. 28 lacs solely in Saving Bank Scheme. Had the applicant checked the irregularity the misappropriation would have been stopped at an early stage. The applicant was charged as a subsidiary offender and a penalty of recovery of Rs. 40,000 was ordered vide memo dated 3.11.2011. Against this recovery the applicant has

filed the present OA. The respondents have refuted the claim of the applicant that he was posted in Jodhpur HO and has no link with the alleged offence. If the applicant would check the genuineness of the vouchers, the irregularity would have detected at that point itself. This the applicant has failed to do. The fraud in savings bank scheme was come to light during the course of verification of all types of transactions. They have refuted the allegation of pick and choose policy, stating that because more than fifty offenders/officials were identified as co offenders or subsidiary offenders including the applicant for not proper execution of duties allotted to them. The penalty order has been passed after careful assessment of contributory negligence on the part of the applicant on carrying out Divisional and Circle Level Investigation. They have further stated that the applicant has not exhausted complete departmental channel before approaching the Tribunal as he has not preferred any revision petition to the higher authority. The respondents, therefore, prays for dismissal of this OA.

4. I have heard the learned counsels for the applicant and the respondents. Learned counsel for the applicant vehemently contended that the appellate authority accepted the fact that the applicant was not responsible for comparison of the signature as the record was not available at Jodhpur and he further contended that as per Rule 38(a) of the Post Office Savings Bank Manual Vol.I as Phalodi was sub office the applicant was posted at Jodhpur, only procedure which is required to be completed at the HO that the list of the transactions and the charge will be supported by warrant of payment duly signed by the person to whom the payment was made. The balance entered by the depositor on the application shall be checked by the Ledger Assistant with the balance in the ledger card. As per the order of the appellate authority, the ledger itself was maintained in the sub office and the applicant was not in the possession of any record bearing the signature of the payee. The counsel for the applicant further contended that penalty of Rs.40,000 has been ordered by the disciplinary authority and no reasons have been assigned that how this amount has been calculated as a loss to the government. He further submitted that the order has been made for recovery of Rs. 40,000 from the applicant in violation of Section

4 of the Public Accounts Tax 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 a Postal Assistant, 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

5. It has been further contended by the applicant that Rule 106 and 107 of the Post Office Saving Bank Manual Vol-I are very clear in stating that in the case of proceedings 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.

6. In the instant case, the show cause notice and charge memo under Rule-16 of the CCS(CCA) Rules, 1965 was issued through Memo dated 27.7.2010, which does not require a detailed departmental enquiry to be held. The applicant did submit his reply, but the respondents proceeded ahead to pass the impugned order at Annexure A-2 dated 3.11.2011, 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.40,000/- had been arrived at for being ordered to be recovered from the applicant. He submitted a detailed representation to the Appellate Authority, but through the impugned order Annexure A-1, the Appellate Authority has upheld the imposition of recovery of Rs.40,000/- ordered from the applicant under Rule-27 of the CCS (CCA) Rules, 1965.

7. 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.

8. 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.

9. 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.

10. 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.40,000/- 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-4 dated 27.7.20100 was only with reference to Rule-16 of the CCS (CCA) Rules, 1965, and in the charge memo enclosed, while mention had 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.

11. 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 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."

12. 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

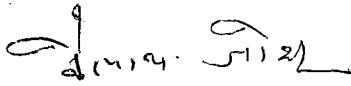
penalties enumerated in Sub-Rules 11(v), 11(vi), 11(vii), 11(viii) and 11(ix), there is an 11th category of penalty also, described within Rule 11, which is included in the second proviso to the Rule 11 cited above, whereby, in any exceptional circumstances, and for special reasons recorded in writing, 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.

13. 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.

14. Therefore, it is held that after having issued to the applicant a charge sheet under Rule-16 of CCS (CCA) Rules, 1965, the penalty of recovery could have been ordered by the Respondents only as an 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. Therefore, the

impugned orders dated 20.6.2012 (Annexure A-1) and 3.11.2011 (Annexure A-2) are set aside and further the respondents are directed to refund the amount already recovered, if any.

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



(Justice K.C. Joshi)
Judicial Member

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