

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 336/2012
with MA No. 290/00324/2014

Reserved on : 03.07.2015

Jodhpur, this the 23rd July, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Valchand Patel s/o Shri Jeewaji Patel, aged about 57 years, resident of 1-T-27, Hiranmagri Sector-4, Udaipur 313002, at present employed on the post of Assistant Post Master (APM) in Udaipur Head Post Office 313004.

.....Applicant

By Advocate: Mr J.K.Mishra

Versus

1. Union of India through Secretary to the Govt. of India, Department of Posts, Ministry of Communications and IT, Dak Bhawan, Sansad Marg, New Delhi.- 110 001.
2. The Director, Postal Services, Office of PMG, Rajasthan Southern Region, Ajmer-305001.
3. Senior Superintendent of Post Offices, Udaipur Division, Udaipur
4. The Postmaster, Udaipur Head Post Office 313004.

.....Respondents

By Advocate : Ms. K.Parveen

ORDER

The applicant, Shri Valchand Patel, has filed this OA praying that the chargesheet dated 25.7.2011 (Ann.A/1), penalty order imposing penalty of recovery dated 30.3.2012 (Ann.A/2) and appellate order dated 25.7.2012 (Ann A/3) may be declared



illegal and the same be quashed with consequential benefits including refund of amount deducted from salary, as if the impugned orders were never in existence.

2. Brief facts of the case, as averred by the applicant, are that the applicant was initially appointed to the post of Postal Assistant on 20.3.1976 at Shastri Circle, Udaipur. He is presently working on the post of Assistant Postmaster, Udaipur HO. During the period from 2006 to 4.2.2012, the applicant was posted as Sub Post Master at Roshabhdeo and transferred from the post of SPM Roshabhdeo to the post of APM, Udaipur HO vide memo dated 1.2.2010 (Ann.A/4). It has been further averred that a fraud was detected and amount of Rs. 2,97,000 was embezzled by the Sub Postmaster, Fatehpura on 21.12.2009. The consolidation statement was prepared by the then APM, Udaipur HO. The actual culprit Shri Pankaj Kumar Nigam, SPM Fatehpura was caught on 4.8.2010 and the matter was put under investigation. The applicant was asked to prepare a seizure memo/sealed return from old record on 26.8.2010 and handed over the MIC A/c No.31374 dated 21.12.2009 which was kept in bundles at Udaipur HO, Inspector of Post at Udaipur (South) Sub Division (Ann.A/7) and there was no question of any checking or verification involved to be done by the applicant. Thereafter, a charge sheet vide memo dated 25.7.2011 under Rule 16 of CCS (CCA) Rules was issued to the

applicant alleging that he failed to ensure checking of LOT/vouchers before transferring to SBCO amongst other ancillary allegations as mentioned in the charge sheet and facilitated misappropriation of Government money by Shri Pankaj Kumar Nigam. The applicant submitted application dated 1.8.2011 requesting the Disciplinary Authority to supply copy of relevant documents and he was shown the relevant documents. He submitted a detailed representation against the allegations vide letter dated 13.8.2011 (Ann.A/8) denying the charges and inter-alia submitting that he was not employed at Udaipur HO at the time of incident and how he could stop the embezzlement while working at Roshabhdeo. He also gave details of duty list dated 7.5.2010 of APM (SB-SO), who is not assigned any duty relating to MIS. The applicant subsequently also came to know that one Miss Sangeeta Kukreja, PA Udaipur has also been charge sheeted for the alleged misconduct in respect of same MIS A/c No.31374 and also penalised vide penalty order dated 30.3.2012 (Ann.A/9). The applicant has averred that he was implicated due to some extraneous reasons and a penalty of recovery of Rs. 1,17,950 has been imposed upon him vide order dated 30.3.2012 (Ann.A/2) and his defence version has abruptly been thrown overboard. It is said that had the applicant checked the voucher before transferring, the misappropriation done by Shri Pankaj

has been further averred that this is said so despite the fact that the misappropriation had already been deducted much earlier to the date of submission of MIS vouchers by the applicant to the Inspector of Post Offices, but the penalty order was passed in a mechanical way. The Disciplinary Authority merely established certain lapses on the part of the applicant without explaining the facts leading to the loss and the manner in which the lapses on the part of the applicant had a link with the loss sustained by the department. The loss has been calculated as Rs. 2,97,000 and an amount of Rs. 1,17,950 has been ordered to be recovered from the applicant and nothing has been said regarding recovery from principal offender or co-offender and in the instant case, neither the loss alleged to have been suffered by the Department has been correctly assessed in a realistic manner nor the contributory negligence on the part of the applicant has been assessed as per the rules. The applicant filed a detailed and exhaustive appeal dated 10.5.2012 but the same has been abruptly rejected vide order dated 25.7.2012 and none of the contentions mentioned in the appeal has been considered. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for quashing the impugned orders as mentioned in para-1 above.

3. In reply to the OA, the respondents have submitted that the applicant while working as APM SBSO at Udaipur HO on 1.9.2010,

was supposed to check MIS consolidation with voucher and to transfer these vouchers as well as consolidation to SBSO Branch without delay. In view of Rule 50 of PO SB Volume-I and as per instructions contained in SB order dated 4.2.2008 by FS Division of Department of Posts, the Pass Book of closed/premature closed MIS account is to be collected by the single handed Postmaster and attach the same with account closure form while forwarding the same to Head Post Office. Further as per Rule 168(11) of PO SB Manual Volume-I any payment from MIS Accounts on premature/final closure including interest if becomes Rs. 20000 or more, the same should be paid by crossed cheque or by crediting into saving bank accounts. This is mandatory provision under section 269-T of Income Tax Act. It has further been averred that the applicant while checking of MIS LOT received from SOs failed to challenge about non-receipt of Pass Book from single handed office and while checking the vouchers failed to challenge the payment made in cash though the payment was exceeding Rs. 20,000 by the SPM Fatehpura in the MIS A/c No. 31374. Due to this serious irregularities committed by the applicant, Shri Pankaj Kumar Nigam, the then SPM Udaipur Fatehpura succeeded to commit misappropriate of Rs. 2,97,000 by making fraudulent withdrawal. Besides the applicant, APM (SBSO) Udaipur HO and two other officials working in Udaipur HO i.e. PA SBSO are also

fraudulent withdrawal from the above MIS account. Since no recovery could be made from Shri Pankaj Kumar, the main offender, as such during the CLI, the applicant was also identified as a subsidiary offender in the above case. Therefore, he was issued a chargesheet under Rule 16 of CCS (CCA) Rules on 13.4.2011 and a penalty of recovery of Rs. 1,17,950 [Rs. 2,97,000 + Panel Interest Rs. 70,850 (-) interest already paid Rs. 14,0000 = Rs. 35,38,850/ 5 = Rs. 1,17,950] being the share of Government loss caused due to contributory negligence on the part of the applicant was imposed by SSPOs Udaipur Division vide memo dated 30.3.2012. The main offender of the misappropriation Shri Pankaj Kumar expired on 2.4.2012 and no action could be taken against him under PAD Act, due to no immovable property found held in his own or his family members name. The respondents have further submitted that the applicant has already admitted in his statement that he has joined at Udaipur on 5.2.2010 and sent consolidation dated 22.11.2009 to SBCO on 1.9.2010. This work was done by the applicant after completion of six months of joining which is sufficient time for checking of vouchers and LOT but the applicant failed to perform his duty i.e. the vouchers should be checked before handed over to the IPO (South), Udaipur but he failed to do so. It has further been submitted that the Appellate Authority has decided the appeal as per Rule

each aspect of the case. The respondents have also submitted that the applicant should have preferred appeal to the Director Postal Service, Ajmer against the punishment awarded by respondent No.2 under Rule 23 of CCS (CCA) Rules, but the applicant without availing the departmental channels available to him approached the Hon'ble Tribunal, thus the case is premature. The penalty of recovery imposed upon the applicant is proportionate and commensurate with gravity of offence as has been assessed in view of the contributory negligence and is in pursuance to the instructions issued vide Rule 106, 107 and 111 of P&T Vol.III as well as in view of Postal Directorate memo dated 25.2.2003, which reiterates that the loss involved in the fraud etc. is fully recovered distributing the total loss among the offenders in a suitable proportion depending upon the proportion of gravity of offence of each of the offenders involved in the case. The respondents have further submitted that after going through relevant records as well as defence of the applicant and giving full opportunity to defend himself, the competent authority passed the orders of recovery which was due to his contributory negligence. Thus, the penalty awarded by respondent No.3 is just and proper and prayed that the OA is liable to be dismissed.

4. In rejoinder to the reply filed by the respondents while reiterating the averments made in the OA, the applicant has

submitted that the consolidation statement is required to be prepared on the next day and the same was prepared by then concerned PA/APM on 22.12.2009. This was done much earlier to the date of joining of the applicant on 5.2.2010. He was put to work as APM Accounts where he worked upto 31.3.2010. Thereafter he was posted to work as SPM Mail/Delivery Branch and he worked there during the period from 1.4.2010 to 4.8.2010 and he was assigned the duties of SPM SBSO Udaipur only after the fraud and handing over of the related papers would not make him in any way liable for the fraud already detected and investigated. There was also no such delay on the part of applicant as is being projected by the respondents. Further, Shri Pankaj Kumar Nigam is alleged to have misappropriated only an amount of Rs. 600000/- only on 22.7.2009 as per Article of Charge-I on which he has been held guilty and imposed the penalty of dismissal from service vide order dated 30.3.2012 (Ann.A/13) but no penalty of recovery of any amount has been ordered from the said principal offender under the departmental case. The applicant has further submitted that the concept of contributory negligence alleged to have been considered by the Disciplinary Authority is rather deceptive and thus it does not appeal to reason. Even in the instant case, the amount of alleged misappropriation by Shri Pankaj Kumar is Rs. 17 lakhs. The charge sheet or the penalty order does not make

offender. In original chargesheet as well as punishment order it is nowhere stated that the applicant was declared or treated a subsidiary offender. The applicant has further reiterated that recently, similar issue came up for adjudication before Allahabad Bench of this Tribunal in OA No.496/2008, B.R.Verma vs. Union of India and others and the same was allowed vide order dated 14.9.2011 holding that penalty order or recovery was not in accordance with Rule 11(3) of CCS (CCA) Rules, 1965. Therefore, the applicant has prayed that the OA deserves to be allowed.

5. The respondents have also filed additional affidavit. While reiterating the stand taken in the reply, the respondents have submitted, with regard to the submission that the applicant was assigned the duties of APM SBSO Udaipur only after the fraud was detected, that the applicant has joined on 5.2.2010 and he sent consolidation dated 12.12.2009 to SBCO on 1.9.2010. This work was done by the applicant after completion of six months of his joining and this is sufficient time for checking of voucher. The respondents have further stated that Shri C.P.Doshi, Supervisor was alleged for lapses noticed on his part which is a separate matter for second stage of checking at SBCO Udaipur but APM SBSO had failed to perform duty properly at first stage of checking at SBSO Udaipur HO, accordingly, he was penalised with penalty of recovery. Further, the chargesheet was issued on

the basis of lapses noticed on the part of the applicant due to which Shri Pankaj Kumar Nigam, SPM Fatehpura NDTSO succeeded to commit misappropriation and punishment order was issued for recovery of loss sustained to the Department under the provision of Rule 11 of CCS (CCA) Rules, 1965. The applicant was identified as subsidiary offender during the course of circle level investigation conducted by the DPS. This is not required to be mentioned in the charge sheet. All the charges which were identified under the circle level inquiry against the applicant were mentioned in the charge sheet as well as in the punishment order. It has been further averred that respondent No.2 is fully competent to pass punishment orders under Rule 11 of CCS (CCA) Rules, 1965. In the additional affidavit it has further been stated that Shri Pankaj Kumar Nigam succeeded in committing misappropriation of huge amount (Rs. 1,53,63,337) but the entire amount of loss need not be incorporated while reporting the case to the police. While alleging any subsidiary offender the loss which was caused due to his contributory negligence needs only to be included and the respondents have given break up of the total fraud committed by Shri Pankaj Kumar Nigam and prayed that the OA is liable to be dismissed.

6. Heard both the parties. Counsel for applicant Shri J.K.Mishra referred to Ann.A/4 and submitted that the applicant was

promoted and posted to Udaipur HO on 1.2.2010 and referring to Ann.A/6 he submitted that the applicant joined on 5.2.2010 in the Accounts Section and not in SBSO on that date, and further as can be seen from Ann.R/1 filed by the respondents that the applicant actually joined the SBSO in August, 2010 i.e. almost after six months of joining in the Accounts Section in Head Office. However, vide Ann.A/1 he was issued a chargesheet for minor penalty regarding misappropriation of Rs. 2,97,000 with regard to MIS A/c No.31374 in which the date of transaction is 21.12.2009 and consolidation is dated 22.12.2009 and the date of filing return is 1.9.2010. Counsel for the applicant contended that these dates are important as the applicant started working in SBSO in August, 2010 and he further referred to Ann.A/7, seizure memo, from which it is clear that this record was required for investigation and the applicant simply handed over the sealed bundle pertaining to MIS A/c No.31374 and justifiably did not check them because this could have led to other allegations like opening them or checking them without any orders from the higher authorities. The applicant gave detailed reply to the chargesheet at Ann.A/8 and even asked for a detailed enquiry but the same was refused and the Disciplinary Authority passed the order of penalty on 30.3.2012 (Ann.A/2) which was challenged by the applicant in a OA before this Tribunal in which the applicant was directed to file

has been rejected vide order dated 25.7.2012 (Ann.A/3) against which the applicant has filed the present OA. Counsel for the applicant reiterated that as is evident from the record, misappropriation actually took place on 21.12.2009 which is the date of transaction and 22.12.2009 is the date of consolidation, while the applicant was posted in Udaipur HO on 1.1.2010 and he actually joined on 5.2.2010 in Accounts Section and joined SBSO only on 6/7 August, 2010 and he simply sent the record, as lying in the sealed bundle, which was required for investigation, therefore, he cannot be held responsible for not checking the record again and causing misappropriation. Counsel for the applicant further contended that it was required from the respondents to first conduct the enquiry as to how many persons are involved regarding MIS A/c No.31374 and after assessing the contributory negligence of each person then only chargesheet should have been issued for any pecuniary loss or for contributory negligence, but in this case chargesheet does not bring out any such details. Further, another official Miss Sangeeta Kukreja has also been issued chargesheet for the same MIS A/c and awarded penalty as may be seen from Ann.A/9 and contended that procedure as at Ann.A/10 laid down in Rules for imposing penalty of recovery has not been followed by the respondents. He further contended that the checking of LOT is not

grounds he prayed for allowing the OA and quashing Ann.A/1, A/2 and A/3 with all consequential benefits.

7. Per contra, counsel for respondents submitted that as brought out in the reply, the entire misappropriation was actually of the amount Rs. 1,53,62,337 by one Shri Pankaj Kumar Nigam and the applicant has only been charged for not checking the MIS A/c No.31374 which resulted in misappropriation of Rs. 2,97,000.

Refuting the arguments of the counsel for the applicant, she submitted that the entire matter was enquired in a circle level inquiry and the applicant was only charged with the amount pertaining to him, and his contributory negligence was assessed as Rs. 1,17,950 which includes penal interest. The fact that the date of transaction and consolidation of MIS A/c is 21.12.2009 and 22.12.2009 respectively, does not absolve the applicant from his responsibility because it is clear that he was supposed to check them before sending the return and he did not do so as he has admitted in his statement, which has been filed with the additional affidavit at Ann.R/1. The applicant was aware of the large amount of embezzlement and misappropriation and it was his duty to check the accounts, which he failed to do so and being responsible for the same he has correctly been penalized for the loss and misappropriation that occurred due to his lapses and negligence and prayed for dismissal of the OA.

8. Considered the aforesaid contentions and perused the record. It is noted that in the chargesheet, the amount of misappropriation in MIS Account No.31374 has been shown as Rs. 2,97,000 and in the reply about the loss to the Government, it has been mentioned that besides the applicant, two other officials working in Udaipur are also responsible for facilitating Shri Pankaj Kumar Nigam in making fraudulent withdrawal from aforesaid MIS account. It has been further mentioned that a penalty of recovery of Rs. 1,17,950 being share of the Government loss caused due to contributory negligence on the part of the applicant [Rs. 297,000 + Panel interest Rs. 70,850 (-) interest already paid Rs. 14,000 = Rs. 35,38,850/- 5 = Rs. 1,17,950] was imposed by SSPOs Udaipur Division vide Memo dated 30.03.2012 (Ann.A/2). It, thus, appears that the loss caused to the Government was not only to the tune of Rs. 2,97,000 as mentioned in the chargesheet but included penal interest of Rs. 70,850 minus interest already paid of Rs. 14,000. However, it is not clear from where the figure of Rs. 35,38,850 has been arrived at and on what basis the proportionate responsibility of Rs. 1,17,950 was worked out. It is important to note that in the instructions regarding penalty of recovery (reference Ann.A/10) that in case of loss caused to the Government, the competent Disciplinary Authority

negligence on the part of an officer, and while determining any on-fission or lapses on the part of an officer, the bearing of such lapses on the loss considered and the extenuating circumstances in which the duties were performed by the officer, shall be given due weight. In this case, it is not apparent either in the order of the Disciplinary Authority (Ann.A/2) or of the Appellate Authority (Ann.A/3) as to how the amount of proportionate liability on the applicant has been arrived at nor has the issue of two other officials being co-offenders mentioned either in the order of the Disciplinary Authority or of the Appellate Authority, though there is reference in the reply filed by the respondents. It is further noted that another official Ms. Sangeeta Kujreja has also been issued charge sheet for the same MIS Account number i.e. 31374 and penalized for the same (Annexure-A/9).

9. Counsel for the applicant had emphasized the point during the arguments that the applicant had joined his actual duties as APM SBSO HO only in the month of August, 2010 and sent the return on 01.09.2010 which actually related to the transaction of 21.12.2009 and consolidated on 22.12.2009 and the applicant merely sent it as it was in the sealed bundle which was required for an investigation/inquiry and it was thus not required from him to check the return, rather checking would have attracted another fresh allegation. However, this contention of the counsel for the

applicant could be accepted at this stage, because this is to be decided on the basis of rules of which there is a reference in the chargesheet as well in the reply of the respondents.

10. From the above analysis, it appears that the orders of the Disciplinary Authority dated 30.03.2012 (Annexure-A/2) and of the Appellate Authority dated 25.07.2012 (Annexure-A/3) are not clear about establishing the contributory negligence of the applicant and his proportionate responsibility and are, therefore, liable to be set aside and, accordingly, the same are set aside. At this stage it is not considered appropriate to quash or set aside the charge sheet especially in view of the points that relate to violation of rules and non-adherence to prescribed procedures. Accordingly, the Disciplinary Authority is directed to reconsider and decide the case of the applicant afresh, after proper appreciation of facts and rules with a reasoned and speaking order and may also provide an opportunity of hearing to the applicant. After passing of such order by the Disciplinary Authority, the applicant would anyway retain the right to file an appeal as per rules, if so desired.

Accordingly, the OA is partly allowed as stated above with no order as to costs.

In view of the order passed in the OA, no order is required to be passed in MA No.324/2014, which stands disposed of accordingly.


(MEENAKSHI HOOJA)
Administrative Member