

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 486/2012

Jodhpur, this the 13th day of March, 2015

CORAM

Hon'ble Mr. Justice K.C. Joshi, Judicial Member

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Baldev Singh s/o Shri Kartar Singh, aged about 55 years, r/o Bakhtanwali,
Tehsil & District – Sri Ganganagar (Office Address:- Working as Postal
Assistant at Hanumangarh Jn. HO)

.....Applicant

By Advocate: Mr. S.P.Singh

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, O/o Post Master
General, Western Region, Jodhpur
3. The Director I/o Post Master General, Western Region, Jodhpur
4. Superintendent of Post Offices, Sri Ganganagar Division,
Sriganganagar.

.....Respondents

By Advocate : Ms. K.Parveen

ORDER (ORAL)

Per Justice K.C.Joshi

By way of the present OA filed u/s 19 of the Administrative Tribunals
Act, the applicant has prayed for the following reliefs:-

- (a) that the impugned order Memo No. STA/WR/44-A/11/10

and unjust and improper and deserves to be quashed and set aside and consequential benefits may kindly be granted.

- (b) That the respondents may kindly be directed to refund the recovered amount @ interest p.a.
- (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.

2. Brief facts of the case, as stated by the applicant, are that while the applicant was posted at Sri Ganganagar HO as Postal Assistant and working as Correspondence Clerk, a Speed Post was received by Registry Delivery Clerk duly entered in delivery slip addressed to Postmaster Sri Ganganagar HO. The Postmaster opened the Speed Post and handed over to the applicant with a note to deliver to the Assistant Post Master. As per orders of the Post Master, the applicant delivered it to the Assistant Post Master for further action. The respondents issued a charge memo stating that the applicant ought to report because the pass book cannot be received in speed post however, there is no such rule because it is admitted fact by the respondent that someone dropped the envelope in delivery branch and no documents are provided that it was received through speed post and the Registry Clerk received the post where as the Speed Post Clerk was already detailed and Registry Clerk ought to have handed over it to Speed Post section. The two ATs No.61 and 62 and pass book TD A/c No.33711 and 33712 were dispatched to Suratgarh Post Office by direction of Postmaster Sri Ganganagar HO because the amount was to be opened on transferred documents, which were examined by the Postmaster. The amount of Rs. 4,26,640/- is withdrawn by Raj Kumar and Poonam and Raj Kumar and Sanjay Kumar, however, who withdrawn is not traced till date, neither by the

respondents initiated disciplinary proceedings under Rule 16 of CCS (CCA) Rules, 1965 for minor penalty. A charge memo dated 21.7.2009 was issued to the applicant. The applicant submitted his representation against the charge memo and a punishment order was passed by the Disciplinary Authority. The applicant also preferred appeal to the Appellate Authority and submitted his averments stating therein inability to present his case strongly due to absence of vital documents but without taking into consideration the substantial facts and evidence placed on record rejected the appeal of the applicant. The applicant has stated that action of the respondents clearly show the glaring example of arbitrariness and discrimination and an exercise of power adopting pick and choose policy. The respondents did not fix the liability and without assessing the realistic manner the contributory negligence on the part of the applicant, punished him. The DG P&T orders explained at para 12 the general condition that the penalty of recovery can be imposed only when it is established that the Govt. servant was responsible for a particular act and Disciplinary Authority should correctly assess in a realistic manner and the extenuating circumstances. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for the reliefs as mentioned above.

3. By way of filing reply to the OA, the respondents have denied the right of the applicant and submitted that a fraud took place at Suratgarh City Sub Post Office. Some miscreants have prepared bogus Advice of Transfer of TD Accounts and sent to the Post Master, Sriganaganagar Head Post Office by fake Speed Post from where these were sent to Suratgarh City Sub Post Office

Post Office has opened the Accounts and made payment of Rs. 4,26,640 to the miscreants from Suratgarh City Sub Post Office. The applicant who was working as Correspondence Clerk, has committed serious mistake by not checking the fact that ATs were received through Service Speed Post and not through Registered Letter and delivered the fake Service Speed Post Article to the concerned Assistant Post Master. For the lapses on the part of the applicant, charge sheet was given and after receipt of defence representation, the applicant was held responsible for contributory lapses on his part and a penalty of recovery of Rs. 60,000/- on monthly instalment of Rs. 2,000/- was imposed on the applicant vide memo dated 15.1.2010. The appeal preferred to the Director, Postal Service, Jodhpur Range, Jodhpur was also rejected vide memo dated 31.3.2011. The respondents have submitted that fraud at Suratgarh City SO took place mainly due to negligence of the applicant as while working as Correspondence Clerk he failed to bring this fact into notice of the Postmaster, Sri Ganganagar GO that the Advice of Transfer should have been received through Service Registered Post rather than Speed post. The negligence led to a fraud of Rs. 4,26,640/- and proportional penalty of Rs. 60,000/- as monthly instalments of Rs. 2,000/- each was awarded to the applicant vide memo dated 15.1.2010. By way of preliminary objection, the respondents have submitted that the applicant earlier filed OA no.394/2011 in respect of recovery of Rs. 60,000/- and this Tribunal while considering all the grounds quashed order dated 31.3.2011 of the Appellate Authority vide order dated 17.5.2012, therefore, the applicant has no right to raise any issue in respect of punishment order in question in the present OA except relating to supply of documents for

4. In rejoinder to the reply while reiterating the averments made in the OA, the applicant has submitted that Rule 11 of CCS (CCA) Rules, 1965 clearly says that the recovery of punishment will only be awarded when it is established that the loss is caused by the delinquent. The respondents say that someone dropped the envelop in registry section and sometimes stated that it was not speed post because there is no record in connection with speed post and the respondents did not disclose how the said act of the applicant caused the loss to the tune of Rs. 60000/-. The applicant has further submitted that if the real culprit is yet to be detected then how the respondents would punish the applicant and if loss is to the tune of Rs. 4,26,640/- have been collected then why Rs. 60,000/- extra amount is being recovered from the applicant. Further, the respondents have failed to prove his contributory negligence and without establishing his liability and without correctly assessing, the penalty has been awarded and respondents failed to recover the amount from the main culprit and in the garb of other alleged subsidiary offender, the amount is being collected to compensate.

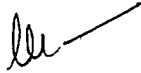
5. Heard both the parties. Counsel for the applicant contended that the respondents did not fix the contributory negligence on the part of the applicant and punished him in whimsical manner which is nothing but glaring example of arbitrariness. When there is no role of the applicant then why the recovery is being effected. Counsel for the applicant further contended that the total defalcation was for Rs. 4,26,640/- against which a realization of Rs. 4,30,000/- has already been made and in case the further realization of Rs. 60,000/- is made, the total realization would amount to Rs.

6. On the contrary, counsel for the respondents contended that the applicant was found guilty of contributory negligence of a fraud of Rs. 4,26,640/- and proportional penalty of Rs. 60,000/- in monthly instalment of Rs. 2000/- each was awarded to the applicant vide memo dated 15.1.2010, which was upheld by the Appellate Authority, therefore, there is no illegality in the order passed by the respondents. Earlier the applicant filed OA No.394/2011 challenging the order of penalty as well as the order on his appeal. The Hon'ble Tribunal set aside the appellate order and remitted the matter back for considering the matter regarding the issue - which of the documents would be necessary for proceedings and record of its findings. The Appellate Authority reconsidered the matter and passed order dated 6.11.2012. Therefore, the action of the respondents is perfectly legal.

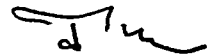
7. Considered the rival contention of both the parties and perused the record. This Tribunal while hearing the case for admission on 12.12.2012 considered the facts that the total defalcation was Rs. 4,26,640/- against which Rs. 4,30,000/- has been recovered as per CBI report dated 28.7.2010 and in case recovery of Rs. 60,000/- is to be made from the applicant, it would amount to Rs. 4,90,000/- which is excess to the defalcated amount and accordingly the recovery was stayed. Further, from the documents produced by the applicant, which is the information received by the applicant under RTI Act, it is clear that a recovery of Rs. 4,70,000/- is being made from other persons in addition to the recovery of Rs. 60,000/- from the applicant. Therefore, if the alleged negligence on the part of the applicant led

being recovered by the respondents from the applicant and other persons. If that is so, in view of this subsequent development noticed, it cannot be said that the action of the respondents is in accordance with the provisions of the law. Accordingly, penalty order dated 15.01.2010 (Ann.A/2) and appellate order dated 6.11.2012 (Ann.A/1) are required to be quashed and the same are quashed. The respondent department may proceed against the applicant as per the provisions of law after determining the proportionate loss caused by the applicant.

8. The OA stands disposed of accordingly with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member



(JUSTICE K.C. JOSHI)
Judicial Member

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R Joshi
30/3/15
For K. Parveen

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