

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 353/2013 with MA 158/2013

Reserved on: 16.08.2016

Jodhpur this the 31st day of August, 2016.

CORAM

Hon'ble Ms Praveen Mahajan, Administrative Member

Banshidhar Meena, S/o Shri Surajmal Meena, Aged about 49 years, R/o H.No. 2/2, P&T Colony, Shastri Nagar, Jodhpur, District- Jodhpur (Office Address:- Employed as Postal Assistant at Jodhpur HO).

.....Applicant

(By advocate : Mr S.P. Singh)

Versus

1. The Union of India through the Secretary, Govt. 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.

(By Advocate : Mr K.S. Yadav)

.....Respondents

ORDER

The present application has been filed u/s 19 of Administrative Tribunals Act, 1985, seeking following relief(s) :

- (a) That the impugned order Memo No. F-9-1/09/10/SO-I dated 19.06.2012 forwarded by respondent No. 4 (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 2,00,000/- with interest.
- (c) By an appropriate writ, order or direction the impugned order Memo No. STA/WR/44-A/27/12 dated 03.09.2013 (Annexure-A/1(a)) may kindly be declared illegal unjust and improper and deserves to be quashed and set aside.
- (d) 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. Applicant has filed MA No. 158/2013 for condonation of delay. It is always desirable to decide the matter on merit rather than technicalities. Looking to the facts and circumstances of the case, prayer of the applicant to condone the delay of 02 months and 20 days in filing the OA is condoned. Accordingly, MA is allowed.

3. The necessary facts giving rise to the present OA are that the applicant while working as Postal Assistant MPCM at Phalodi Post Office, was issued charge sheet dated 31.03.2011 (Annex. A/2) under Rule 16 of the CCS (CCA) Rules, 1965. The charges are that he issued Old Age Pension Money Orders on several dates without calling the cheque clearing list from the SPM. He merely showed the equal amount in his hand to hand book, handed over to TR Phalodi. Whereas, the cheques for the concerned MO's had already been sent to Jodhpur HO on earlier dates by the then SPM and Treasurer Phalodi LSG SO. He failed to enter remittances in Registration List and BO Slips and hence facilitated misappropriation committed by SPM Phalodi, LSG SO and TR Phalodi.

The applicant was charged with violation of Rule-111, 112, 113 of

Financial Hand Book Volume-I and Rule 13 of Postal Manual Volume-IV, Pt. II. In reply to the charge memo (Annex. A/2), the applicant vide representation dated 11.04.2011 (Annex. A/3) stated that he was unable to understand the charges leveled against him and hence, unable to represent. Nonetheless, he denied all the charges leveled against him. The Disciplinary Authority after considering his reply, passed punishment order dated 19.06.2012 (Annex. A/1) awarding penalty of Rs 2,00,000/- from the pay of the applicant to be recovered @ Rs 5000/- per month from his pay, with immediate effect. The applicant filed an appeal against the order of Disciplinary Authority stating that there is no mention of various details of charges leveled against him and raised various pleas before the appellate authority in ground (1) to (16) of his appeal dated 26.07.2012 (Annex. A/4). However, the Appellate Authority vide order dated 03.09.2013 {Annex. A/1(a)} rejected the appeal relying on his statement dated 17.09.2010 and 18.09.2010 to the ASP (East) Jodhpur. It was observed that if the charges were not clear, specific and elaborate enough for applicant to understand, he should have come forward to raise such issues before the Disciplinary Authority rather than keeping silent till the passing of final orders by the Disciplinary Authority. He should have sought for inspection of relevant records as provided in the disciplinary rules, for the purpose of ascertaining complete details about the allegations. It was stated in the order that there is no need to refer to admissions or confessions in the charge sheets issued in the cases of minor penalty proceedings. The lapses on the part of the appellant have apparently

resulted in temporary misappropriation of the Government money and also contributed in further fraud by the culprits. Had the appellant called for the cheques at the time of issuing the old age pension money orders, the fact regarding the cheques already cleared on earlier dates and misappropriating their amount by the SPM and Treasurer could have been brought out. Thereby, further fraud, which continued in the case till its detection on 04.06.2009 could have been avoided. Thus, the Appellate Authority in its order dated 03.09.2013 found that the applicant was wholly responsible for facilitating the continuous misappropriation of pension money orders by the SPM (Shri Arjun Ram) and Treasurer (Shri Pancha Ram). Aggrieved by the order dated 19.06.2012 (Annex. A/1) passed by the Disciplinary Authority and Appellate Order dated 03.09.2013 {Annex. A/1(a)} and the recovery of Rs 2, 00, 000/- the applicant has filed the present OA seeking relief mentioned above.

4. The applicant, in the OA has averred that charge memo has been issued on presumption. The respondents have not revealed how the applicant is liable to be punished for the alleged offence committed by the two aforesaid officials. The loss caused to the State by the contributory role played by the applicant and his link with the alleged offence are not explained. Punitive action has not been taken against those who committed the fraud nor any recovery ordered from those persons who are facing criminal, as well as disciplinary proceedings. The punishment of recovery has been awarded based on an erroneous decision arrived at on the question of law and material irregularity. He submits, that respondents have

initiated recovery without assessing his liability or any kind of a nexus to the main offence. The applicant has annexed copy of Rule 204, 106 & 107 of P&T Vol-III as Annex. A/5 & A/7 and relevant portion of DG, P&T order under Rule 11 of CCS (CCA) Rules, 1965 at Annex. A/8 of the OA. The applicant also annexed order of this Tribunal passed in OA No. 156/2011 (B.L. Verma v. UOI & Ors) as Annexure A/10 and Judgment of Hon'ble High Court passed in D.B.C.W.P. No. 1695/2014 (UOI & Ors v. S.K. Joshi) upholding the order of this Tribunal passed in OA No. 252/2012. In this regard, the applicant has averred that the case of B.L. Verma (supra) is identical to the current issue. He further submits that where the charge sheet does not contain the amount but it comes in the punishment order then the order of recovery needs to be set aside as decided by this Tribunal in OA No. 252/2012 in the same fraud case (Phalodi Fraud Case). Therein, the punishment order of recovery was quashed and OA allowed. The Hon'ble High Court has also dismissed the Writ Petition No. 1695/2014 challenging the order of this Tribunal in said OA vide judgment dated 20.03.2014 (Annex. A/12). The SLP (CC) No. 673/2015, filed by the respondents in the said OA, stands dismissed vide order dated 19.01.2015. Hence, the punishment of recovery is illegal, unjust and improper.

5. The respondents, in their reply have stated that it is not correct to aver that loss caused due to negligence of the applicant has not been reflected in the memo of punishment. Defrauded amount towards old-age pension money orders was Rs 30,59,070/- and the same was defrauded by

the then SPM and Treasurer Phalodi LSG SO due to negligence of the applicant. He did not follow the prescribed procedure while working as PA MPCM counter w.e.f. 02.04.2007 to 25.08.2009. The applicant himself admitted his fault in his self written statement dated 18.09.2010. Hence, it is baseless to say that the quantum of amount of punishment was not assessed before passing the punishment order. Rule 13 of the P&T Manual Vol. VI Part II clearly explains the procedure to be followed by the dealing clerk on presentation of Money Orders on the counter. The applicant was charged for violation of provisions contained in Rules 111, 112 and 113 of the Financial Hand Book Vol. I and Rules 13 of the P&T Manual Vol. VI Part II and not other rules as stated by the applicant. The applicant has failed to perform his duty as required by him vide Rule 3 (i) & (ii) of CCS (Conduct) Rules, 1964. Shri Pancha Ram Bishnoi, one of the main offenders has been dismissed from service w.e.f. 25.10.2012 and one Shri Arjun Ram Bishnoi is facing disciplinary proceeding under Rule 14 of CCS (CCA) Rules, 1965 which is almost at final stage. It is wrongly stated in the OA that no recovery has been made from the main culprits in the case since Rs 77.77 lacs has already been recovered from Shri Pancha Ram Bishnoi and deposited in UCR out of 1.97 Crores of defrauded amount. Efforts are being made by the Department, to recover the loss from the two main offenders under PAD Act, though the Revenue Authorities have informed that no movable or immovable property is held in the name of these offenders or their family members. Additionally, three criminal cases are sub judice against these main offenders in Special CBI

Court, Jodhpur. Though the fraud was committed by two offenders directly, but about 70 to 80 officials have also been identified as co/subsidiary offenders during the course of Divisional Level Inquiry conducted by the Department. These officials failed to follow the prescribed departmental procedure in performing their day to day work. These officials have facilitated the main offenders, by their grave negligence, to commit fraud. They were being punished with recovery to adjust the remaining loss, which is still lying un-recovered. The penalty of recovery is far too less, than the negligence shown by the applicant. The D.G., P&T vide order dated 13.02.1981 has clarified, that the penalty of recovery can be awarded in a case, where it has been established, that the negligence or breach of order on the part of the Government servant has led to the loss to the department and it is not possible to recover the entire amount of loss from the real culprit. Rule 11(iii) of CCS (CCA) Rules, 1965 also clearly stipulates that the penalty of recovery, from the pay of the whole, or, part of the loss, caused by the Government servant to the Government, by negligence or breach of orders, on his part, can be awarded to him. The respondents have inter-alia stated that the applicant was given an opportunity to represent against the memo of charges. It was only after due consideration of his representation and keeping in view the heavy amount of misappropriation committed by the two main offenders of Phalodi Fraud Case, due to negligence on part of the applicant, that the penalty was awarded. Hence, the action of the respondents in passing the

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penalty order Annex. A/1 and appellate order Annex .1/a cannot be said to be unjustified and illegal.

6. The respondents while replying to the averment made by the applicant in the instant OA , have submitted that the matter is identical to OA No. 156/2011. In the case of Sumer Singh and S.P. Bhatia in OA No. 568/2011 and 384/2011 of the same Fraud Case, wherein the penalty imposed by the respondents by way of same procedure has been held to be justified and legal by this Tribunal.

7. In rejoinder, the applicant while reiterating the averments made in OA has stated that the so far as matter in OA No. 568/2011 referred by the respondents is concerned, it is an absolutely different case. There, the applicant was working in the Account Section as Post Master, and the allegation leveled against him was accepted. Whereas, in B.L. Verma's case (supra), the Hon'ble High Court dismissed the writ petition filed by the Union of India & Ors and confirmed the orders passed by this Tribunal.

8. The respondents, in their 40 page additional affidavit, have reiterated the averments made in reply to the OA.


9. Heard Mr S.P. Singh, Ld. Counsel for applicant and Mr K.S. Yadav, Ld. Counsel for respondents.

10. The Ld. Counsel for the applicant argued that the charge sheet is extremely vague. The charge memo neither reveals the date of occurrences nor does it explain how the quantum of recovery was arrived at. The charge sheet does not mention how the rules have been violated. The

Charge Sheet, Disciplinary Authority order and Appellate order are based on presumption. The punishment of recovery of an amount is a special type of punishment and it can be awarded only when there is a proven loss to the Government and the nexus of the delinquent to that loss had been proved. He submitted that in similar matter of Sunil Kumar Joshi (supra), relief granted has been upheld upto the level of Hon'ble Supreme Court, and the recovery has been set aside.

11. Per contra, Mr K.S. Yadav, Ld. Counsel for respondents contended that in the present case, the applicant himself, vide his self statement dated 18.09.2010 accepted the lapses which amounts to confession. Rebutting the arguments of the counsel for applicant, he stated that this case is different on the account of almost a confessional statement, dated 18.09.2010, made by the applicant. With regard to the charge memo, he submitted that appellate authority in its order dated 03.09.2013 has mentioned the date and amount for which MOs were issued. He further stated that in Sunil Kumar Joshi's case the Hon'ble Supreme Court has given liberty to the department to initiate appropriate disciplinary action after giving due opportunity based on the outcome of the said disciplinary proceedings and pass appropriate orders.

12. I have carefully considered the rival contentions, and perused the record.



13. Vide charge memo dated 31.03.2011 (Annex. A/3), following charges have been leveled against the applicant for contemplating disciplinary proceedings under Rule 16 of CCS (CCA) Rules, 1965:

- “(i) The applicant while working as PA MPCM at Phalodi LSG SO issued Old Age Pension Money Orders on several dates without calling the cheque clearing list from SPM. He merely shown the equal amount in his hand to hand book handed over to TR Phalodi. Whereas the cheques for the concerned MO's were already been sent to Jodhpur HO in the earlier dates by the then SPM and then Treasurer Phalodi LSG SO.
- (ii) The applicant while working as registration & Account PA Phalodi LSG SO, he failed to mention the remittances made to SO's and BO's into Regd. List and BO Slips respectively. Thereby, he facilitated misappropriation committed by Shri Arjun Ram Bishnoi and Shri Panch Ram Bishnoi at Phalodi LSG SO in Old Age Pension Money Orders issue and by showing false remittances to SO's and BO's.
- (ii) By above acts, he failed to call for cheque clearing list while issuing Old Age Pension Money Orders and also failed to enter remittances in Regd. List and BO Slips. As such violated the provision of Rule 111, 112, 113 of Financial Hand Book Volume-I and Rule 13 of Postal Manual Volume VI part II.

On bare perusal of the above charges, it is clear that charge sheet does not set out all charges which the delinquent official has been called upon to show-cause against. The object of a charge sheet is that the delinquent employee must know what he is charged with and have an adequate opportunity to meet the charge and to defend himself by giving a proper explanation, after knowing the nature of the offence or misconduct with which he is charged. In the absence of relevant particulars and details, one cannot defend himself. It is settled proposition of law that when a vague charge sheet is given, it vitiates the entire proceedings. I do not buy the

argument advanced by the Ld. Counsel for respondents that alleged negligence on the part of the applicant while performing his official duties has been accepted by the applicant in his statement dated 18.09.2010 and thus, was not required to figure in the charge sheet nor the particulars of the incidents. Interestingly, the aforesaid statement dated 18.09.2010 has not been made available on record, for perusal. The Ld. Counsel for respondents stressed upon the point that had the applicant been alert enough, the main Phalodi Fraud Case could have come to light earlier. In this way, the applicant, has been guilty of facilitating the fraud. In my view, the charge sheet suffers from curable and non-curable defects both. The applicant in reply dated 11.04.2011 to charge memo (Annex. A/2) has specifically mentioned that he is not able to understand the charges leveled against him. Even then, no efforts were made by the respondents to inform him about the accurate and concise particulars and details of the charges leveled against him. The main charge of facilitating the fraud, has been leveled without giving details of the amount involved, dates when the lapse/negligence led to this fraud. Thus, an extremely serious charge questioning the integrity of an employee has been issued by the respondents in a very perfunctory manner.

14. The Hon'ble Supreme Court in Surath Chandra Chakravarty v. The State of West Bengal reported in AIR 1971 Supreme Court 752 has held that :

“.....The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have

to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstances which it is proposed to be taken into consideration in passing orders has also be stated.....

If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.” (Para 4)

15. The Disciplinary authority in his order dated 19.06.2012 (Annex. A/1) has reportedly taken into account applicant's statement dated 18.09.2010. While going through the charge memo and order of disciplinary authority, I find that the said statement was not part and parcel of the memo of charges or charge sheet and thus, the applicant was denied the opportunity to respond to it and defend himself. The said statement has also not been produced by the respondents. The Disciplinary Authority finds that the applicant made some error and guilty of grave negligence. The Disciplinary Authority failed to elaborately discuss the issue involved in the memo of charges. The order of the Disciplinary Authority does not reveal how he reached the conclusion that the charges are proved. No documentary or oral evidence has been relied upon in his order. Nor has the Disciplinary Authority clarified as to how the quantum of recovery of loss of Rs 2,00,000/- from the applicant has been worked out.

16. Against the order of Disciplinary Authority (Annex. A/1), the applicant filed an appeal dated 26.07.2012 raising various grounds. The

Appellate Authority decided the appeal of the applicant vide order dated 03.09.2013 {Annex. A/1(a)}. The appellate authority has tried its best to justify the charge memo and order of disciplinary authority rather than examining the same impartially and addressing the fundamental issues raised by applicant. Here again, the appellate authority has tried to cure the defects of charge memo and rationalize the order passed by the disciplinary authority. The Appellate Authority elaborately discusses the statement of the applicant which does not form part of the charge memo. No opportunity seems to have been provided to the applicant to defend the same making the entire proceedings unsustainable in law. The Appellate Authority, presuming the said statement held that there is no need to refer to such admission/confession in minor penalty cases. The Appellate Authority seems to have upheld the order of penalty of Disciplinary Authority on presumption, that the applicant had information of any kind about the irregularities/omissions/commissions taking place in the Phalodi LSG without establishing a nexus between the applicant and the main offenders by connecting the same, with documentary/oral evidence.

17. In the case of Sawai Singh v. State of Rajasthan, reported in AIR 1986 Supreme Court 995, has held that :

“Where the charges framed against the delinquent officer were vague and no allegations regarding it have been made by him before the enquiry officer or before the High Court, that fact that he has participated in the enquiry would not exonerate the department to bring home the charges. The enquiry based on such charges would stand vitiated being not fair.” (Para 15)

In the present case each charge was so bare that it was incapable of being intelligently understood. Nor was it sufficiently definite, or, concise to enable the applicant to defend himself. Therefore, in my considered view, the charge memo (Annex. A/2) is vague, and thus the whole disciplinary proceedings is vitiated. However, the applicant has only challenged the order passed by Disciplinary Authority and Appellate Authority and sought to quash the recovery order. But looking to the entire facts and circumstances of the case, the charge memo dated 31.03.2011 is quashed. Consequently, order of Disciplinary Authority and Appellate Authority is also quashed.

18. During the course of argument, Mr K.S. Yadav, Ld. Counsel for respondents contended that in the case of Sunil Kumar Joshi (supra), the Hon'ble Supreme Court has given the liberty to the respondents to initiate appropriate disciplinary action after giving due opportunity based on outcome of disciplinary proceedings. It appears that some-how the loss caused to the govt. which could not be recovered by the respondents from the main offenders, now being sought to be recovered, from the other, so called, subsidiary offenders by any means, being public money. In the reply the respondents have specifically averred that the efforts were being made by the Department to recover the loss from the main two offenders but no movable or immovable property is held in the name of these offenders or in the name of their family members. Officials who have facilitated the main offenders by their negligence towards work were being

punished with recovery to adjust the remaining loss, which is still lying unrecovered.

19. In the instant case, there is no allegation of misappropriation/embezzlement or any charge which may cast a doubt upon the integrity of the applicant, anything which may indicate even the slightest hint of complicity on the part of the applicant with the two main offenders. The charges relate to account and discharge of his function as RA MPCM. The sum and substance of the charges leveled against the applicant is that he remained negligent. It would appear that the respondents in their anxiety to recover the huge loss of public money are implicating employees without categorically establishing their guilt, current case being one such glaring example. Therefore, in these circumstances, I am not inclined to give any liberty to the respondents to proceed afresh.

20. In view of discussions hereinabove made, the OA is allowed. The charge memo dated 31.03.2011 (Annex. A/2) and the order of Disciplinary as well as Appellate Authority {Annex. A/1 & A/1(a)} are quashed. Accordingly, the respondents are directed to refund Rs 2,00,000/- recovered from the applicant towards penalty, within 01 month from the date of receipt of copy of the order. No costs.


[Praveen Mahajan]
Administrative Member

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