

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Original Application No.563/2013
With MA No.290/00035/2015**

Reserved on 17.10.2016

Jodhpur, this the 24th day of October, 2016

CORAM

Hon'ble Ms. Praveen Mahajan, Administrative Member

• Nathu Lal Vasita s/o Late Shri Champa Lal Vasita, aged about 46 years, resident of H.No.10, New Sadri Colony, Nayio Ki Talai, Udaipur 313001, at present employed on the post of Postal Assistant, Udaipur Shastri Circle, Udaipur - 313001.

.....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. Senior Superintendent of Post Offices, Udaipur Division, Udaipur.
3. Director of Postal Services, O/O Postmaster General, Raj. Southern Region, Ajmer - 305001.

.....Respondents

By Advocate : Mr. B.L.Bishnoi

ORDER

In the present OA, the applicant has challenged the penalty of recovery. In relief, he has prayed :-

- (i) That impugned charge sheet dt. 27.4.2011 (Annexure A-1), penalty order dated 30.3.2012 (Annexure A/2), imposing penalty of recovery of Rs. 3,99,996/-, passed

①

by 2nd respondent and appellate order dated 4.12.2013 (Annexure A/3), rejecting the appeal of the applicant, may be declared illegal and the same may be quashed. The respondents may be directed to allow all consequential benefits including refund of any amount deducted from his salary, as if the impugned orders were never in existence.

- (ii) 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.
- (iii) That the costs of this application may be awarded.

2. Brief facts of the case, as stated by the applicant, are that during the period from 12.8.2009 to 26.7.2010, he was posted as PA Sub A/c at Udaipur HO. Respondent No.2 issued letters dated 28.6.2004 and 30.6.2004 for remitting cash and it has been provided that there shall be no line limit of sending cash in sealed cash bag through Mail Motor (Ann.A/4). The Fatehpura Post Office was brought under the said system of sending the sealed cash bag through Mail Motor vide letter dated 7.8.2006 (Ann.A/5). The applicant was assigned duty of receiving the Accounts Bag and making entries of Daily Account of Sub-offices in the computer. He was not assigned any duty regarding dispatching of remittance of cash or cash bag. Otherwise also, the cash is remitted to various sub-post offices as per the orders of the Postmaster. The Postmaster is entrusted with the power to exceed even the line limit where applicable, keeping in view the safety aspect of the matter as per rules in force. The applicant

accordingly sent the cash to Fatehpura SO from time to time, as per orders of the Postmaster.

The applicant was issued a chargesheet vide Memo dated 27.4.2011 under Rule 16 of CCS (CCA) Rules, 1965 alleging that he failed to challenge the SPM, Fatehpura for mentioning full particulars in requisition or daily A/c showing liabilities of particular of MIS and SB Account Number and also failed to obtain the proper order of Postmaster before cash remitted to Fatehpura SO and facilitated the misappropriation of Government money by Shri Pankaj Kumar Nigam as mentioned therein (Ann.A/1). The applicant submitted a detailed representation vide letter dated 12.8.2011 denying the allegations. The charges did not relate to his duty as he was not assigned any duty relating to remittance of cash, thus the question of violation of Rule 20 of the P&T Manual Vol. VI Part-III does not arise. He also requested for holding a detailed inquiry as per instructions. The applicant states that respondent No.2 did not find it expedient to conduct a detailed confronted/oral inquiry as per rules and did not communicate any reasons for not holding the same. Thereafter, the applicant was imposed a penalty of recovery of Rs. 3,99,996 vide order dated 30.3.2012 (Ann.A/2). The order makes a mention that after deep examination of case file, and the relevant records, his version that the alleged act fell within the duty schedule of Postmaster is not acceptable. The irregularity should have been brought to the

notice of Postmaster. The applicant alleges that his defence version has been thrown overboard. The Disciplinary Authority merely established certain lapses on the part of applicant without explaining the facts leading to the loss. The manner in which the lapses on part of applicant had a link with the loss sustained by the Department has not been explained or established. The loss suffered by the Department due to the act of the applicant has not been assessed correctly or in a realistic manner. The alleged contributory negligence on part of the applicant has also not been ascertained as per the mandate of the rules. The applicant has referred to the Director General P&T Orders at Sl.No. 12 regarding imposition of penalty of recovery (Ann.A/8). The applicant has asserted that he did not facilitate anyone to misappropriate the Government funds. No details of action taken against the principal offender are forthcoming. Hence, the whole exercise seems to be only to recover the loss of Government funds due to fraud committed by staff of Sub-office, Fatehpura.

Earlier the applicant has also filed OA No.143/2012 before this Tribunal and the same was disposed of with a direction to file an appeal to the Appellate Authority. The applicant filed the appeal which was rejected vide order dated 4.12.2013 (Ann.A/3). The applicant avers that the grounds of appeal have not been objectively considered and the appeal has been rejected in a stereotyped manner through a non-speaking order. On similar

charges and under similar circumstances, appeal of Shri Neeraj Tak, has been accepted by the same Appellate Authority and the case was remanded to the Disciplinary Authority for framing fresh charges vide letter 4.12.2013 and that the applicant has been discriminated against. Therefore, aggrieved of the action of the respondents, the applicant has filed the present OA.

3. By way of reply to the OA, the respondents submit that the line limit fixed for remittance of cash from Udaipur HO to Udaipur Fatehpura NDTSO through locked LC Bag was fixed as Rs. 50,000/- vide SSPOs Udaipur Memo dated 17.7.2009 (Ann.R/1). Thus, Ann.R/1 has superseded Ann.A/3, A/4 and A/5. The applicant remitted the cash beyond the line limit of Rs. 50,000/- without ascertaining the proper liabilities and also failed to bring this to the notice of the Postmaster, Udaipur HO as well as failed to obtain proper order for remittance, on different dates, from Post Master Udaipur HO before remitting cash to Udaipur Fatehpura NDTSO. Thus, the applicant failed to observe line limit as well as violated the provisions contained in Rule 20 of the PO Manual Vol. VI Part III (Ann.R/2 and R/3). The applicant should have obtained proper permission for remittance to Fatehpura NDTSO after ascertaining proper liability. Hence, disciplinary action was initiated against the applicant for lapses on his part. Besides the applicant, two other officials working in Udaipur HO, the Post Master Udaipur HO and Treasurer, Udaipur HO were also

identified as subsidiary offenders in the case. As per DOPT OM dated 28.10.1985, it was not found suitable to conduct oral inquiry. However, the applicant was allowed to inspect the documents on 21.7.2011 which were related to charges levelled against him. Thus, the applicant was given full opportunity to defend himself. The penalty of recovery of Rs. 3,99,996 was imposed due to contributory negligence on part of the applicant, which is fully justified as the same was imposed after giving full consideration of the defence given by the applicant. As such, the orders passed by the respondents are perfectly just and proper. As regards recovery from the main offender Shri Pankaj Kumar Nigam, the respondents submit that he was dismissed from service and since he expired on 2.4.2012, no recovery could be made. Besides the applicant, two other officials were held responsible for the loss, hence, the penalty of recovery imposed upon the applicant is proportionate and justified. The applicant facilitated the main offender to commit a fraud and for his, this act of negligence, he was punished. The Appellate Authority considered the appeal of the applicant, but was not convinced with the pleas put forth by the applicant, and found that there is no reason to interfere in the order of the Disciplinary Authority. So far as the allegation of discrimination is concerned, the respondents submit that the appeal of Shri Neeraj Tak was considered according to the facts of his case. The irregularities committed by the applicant are

different from the cited case of Shri Neeraj Tak. Therefore, the respondents have prayed for dismissal of the OA.

4. In rejoinder to the reply, the applicant submits that the limits are provided for SO and there was no limit for remittance from HO to SO. The letter dated 17.7.2009 (Ann.R/1) does not supersede any of the letters relating to sending of Sealed Cash Bag through Mail Motor, which is otherwise sent under armed escort. In any case, even if Rs. 50,000 was authorised each day, the charge should have been the total amount, less Rs. 50,000, and not the full amount. Further, the specific instructions in regard to holding detailed inquiry in cases of Rule 16 of the CCS (CCA) Rules have not been adhered to, rather have been deliberately flouted causing great prejudice to the applicant. Inspection of documents is not a substitute for detailed inquiry. The applicant states that similar issue came up before this Tribunal in OA No.252/2012, Sunil Kumar Joshi vs. UOI and the same has been allowed vide order dated 29.8.2013 holding that any penalty of recovery can be imposed only in exceptional circumstances and for special reasons to be recorded in writing. The action taken against the applicant regarding recovery did not fall under five categories of minor penalties or five categories of major penalties prescribed under Rule 11 of CCS (CCA) Rules. The above order of this Tribunal has been upheld by the Hon'ble High Court in DB Civil

Writ Petition No. 1695/2014 vide order dated 20.3.2014 (Ann.A/12).

5. Heard learned counsels of both parties and perused the record.

6. The learned counsel for the applicant stressed on the point that request of a detailed inquiry was not considered and the penalty order has been passed without application of mind. The defence of the applicant has been thrown overboard and it is a clear breach of the principles of natural justice, which cannot be sustained in the eyes of law.

7. Learned counsel for the respondents, on the other hand contended that the applicant failed to perform his duty in true spirit and did not obtain proper permission for remittance to Fatehpura NDTSO after ascertaining proper liability. Therefore, the disciplinary action was taken against him and after fixing responsibility on two other officials, penalty of Rs. 3,99,996, as proportionate recovery was correctly imposed on him. The applicant was given full opportunity to defend his case and, the penalty order of recovery was ordered after due consideration, which is perfectly legal.

8. It would be relevant to mention here that this Bench of the Tribunal in OA No.290/00347/14 decided the case of Mrs. Neelam Ahuja vs. UOI on 03.06.2016. The order relied upon the judgment

of this Tribunal, in the case of Sunil Kumar Joshi vs. UOI and ors. in OA No.252/2012 decided on 29th August, 2013, dealing with a similar controversy. The order dated 29th August, 2013 of the Tribunal was challenged by the respondents by filing D.B. Civil Writ Petition No.1695/2014 which was dismissed by the Hon'ble High Court vide order dated 20.03.2014 upholding the order passed by this Tribunal. The relevant part of the order of this Tribunal in OA No.252/2012 upheld by the Hon'ble High Court in DB Civil Petition No.1695/2014 vide order dated 20.03.2014 is reproduced below:-

"10. As per Rule 11 of the CCS (CCA) Rules, 1965, the recovery of any penalty can be imposed only in any exceptional circumstances and for special reasons recorded in writing. Thus, it is seen that five category of minor penalties in Sub-Rules -(i), (ii), (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.

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) require 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."

9. The respondents further approached the Hon'ble Supreme Court by filing Petition for Special Leave to Appeal (C) 2015 (CC No.673/2015 (Arising out of impugned final judgment and order dated 20.03.2014 in CWP No.1695/2014 passed by the Hon'ble High Court at Jodhpur. The same was dismissed by the Hon'ble Apex Court. The Hon'ble Apex Court, upholding the said order of the Hon'ble Rajasthan High Court at Jodhpur observed as under:-

"We do not find anything wrong with the order of the Division Bench having held that without giving any opportunity, the respondent was penalised with the recovery of a sum of Rs. 50,000/- (Rupees Fifty thousand) and without holding him responsible for any misfeasance recovery of the above sum was ordered.

In circumstances, we do not find any scope to entertain this Special Leave Petition. The Special Leave Petition is dismissed.

However, the petitioner will be at liberty to initiate appropriate disciplinary action against the respondent after giving due opportunity and based on the outcome of the said disciplinary proceedings pass appropriate orders."

10. It is a fact that there has been a loss of huge public money, by misappropriation and connivance of certain officials. It is indeed a matter of grave concern. It is also a matter of record that – for the said loss, two other officials (namely, the Postmaster and the Treasurer at Udaipur HO) have been held responsible. However, to establish a clear nexus and exact role or the so called “contributory negligence” of the applicant, it was incumbent on the respondents to hold a regular enquiry and pass appropriate orders after examining the evidence, as well as, giving reasonable opportunity to the delinquent official, to present his defence. Punishment or recovery from the salary of a Government employee is a very serious matter, causing great financial and even social face loss to the employee, and should be treated as such. This power cannot be exercised in a cursory manner or as a knee jerk reaction to recover the loss, from all and sundry, without following proper course of law.

11. In view of the foregoing discussions and the judgments dealing with similar issue earlier, I quash the order dated 30.03.2012 (Ann.A/2) and 4.12.2013 (Ann.A/3). The respondents are directed to initiate appropriate disciplinary action/enquiry against the applicant after giving him due opportunity. Based on the outcome of the said disciplinary proceedings, appropriate orders may be passed.

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

13. In view of the order passed in the OA, no order is required to be passed in MA No.290/00035/2015 for vacation of interim order.


(PRAVEEN MAHAJAN)
Administrative Member

R/

Received
26/10/16

R/C
2/11/16