

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.177/Jodhpur/2013
with
Misc. Application No.290/00376/14

Jodhpur this the 27th day of November, 2014

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)

B.L. Jatia, S/o Shri Dev ji, aged 52 years, Postal Assistant, Head Post Office, Bhilwara, R/o village Bej Nathia, District Chittorgarh.

.....Applicant

By Advocate: Mr. Vijay Mehta.

Versus

1. Union of India through the Secretary, Ministry of Communication
(Department of Post) Sanchar Bhawan, New Delhi.
2. Superintendent of Post Offices, Bhilwara.

.....Respondents

By Advocate: Smt. K.Parveen, for respondents.

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)


This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"The applicant prays that the impugned order Annexure-A/1 may kindly be quashed and the respondents may kindly be restrained to make recovery from the applicant pursuant to order Annexure-A/1. In case pending decision of the OA if any amount is recovered the same may kindly be ordered to be paid to the applicant with interest at the rate of 12%. The applicant may kindly be awarded all consequential benefits. Any other order, as deemed fit giving relief to the applicant may kindly be passed. Costs may also be awarded to the applicant."

2. The brief facts as stated by the applicant are that the applicant is a Postal Assistant under the respondent No.2 and is posted in Saving Bank

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or

Control Organization in Head Post Office at Bhilwara. The respondent No.2 vide memo dated 07.02.2013 issued charge of memo to the applicant under Rule 16 CCS (CCA) Rules and it was alleged therein that while the applicant was working as Postal Assistant in Saving Bank Control Organization in Head Post Office, Mawali, Shri Keshav Lal Meena, Sub Post Master, Jahmarkotda fraudulently drew a sum of Rs.3,86,000/- before its maturity on 04.03.2005, the LTO and voucher whereof were received with consolidated documents in Saving Bank Control Organization in Head Post Office, Mawali on 07.03.2005 but the applicant failed to challenge the withdrawal of the said amount in cash which was more than Rs.20,000/- and failed to detect the fraudulent action of said Keshav Lal Meena and thus the applicant acted in violation of DGP letter dated 28-29.2001. It was therefore alleged that the applicant did not maintain integrity and devotion to duty as per Rule 3(1)(i)(ii) of CCS (Conduct) Rules, 1964. The applicant filed his detailed reply on 16.03.2013 and denied the allegation leveled against him. The respondent No.2 vide his order dated 26.04.2013 (Annexure-A/1) after holding that the action of the applicant is of a serious nature imposed penalty of recovery of Rs.93094/- in monthly installments of Rs.3900/-. It has been further averred that from a perusal of order Annexure-A/1 it shall be evident that neither amount of pecuniary loss suffered by the department due to action of the applicant has been disclosed nor has it been mentioned as to how amount of Rs.93094/- to be recovered from the applicant has been calculated and arrived at. Hence, the applicant by way of this OA has sought the aforesaid reliefs.



3. By way of reply, the respondent department averred that the applicant while working as PA (SBCO) at Mavli Junction HO during the period from 15.07.2004 to 31.03.2008 was identified as a subsidiary offender in Jhamar Kotra misappropriation case and accordingly the applicant was served a charge sheet under Rule 16 of CCS (CCA) Rules, 1965. It has been further averred that due to serious irregularities committed by the applicant and Shri Keshav Lal Meena, the then SPM, Jhamar Kotra succeeded to commit misappropriation of Rs.3,86,000/- by making fraudulent withdrawal and were found responsible for facilitating Shri Keshav Lal in making fraudulent withdrawal from Jhamar Kotra MIS account No.25297 and since no recovery could be made from Shri Keshav Lal Meena i.e. main offender, the subsidiary offender, applicant, was served a charge sheet for the above irregularities and penalty of recovery of Rs.93094/- being the share of Government has caused due to contributory negligence on the part of the applicant. It has been further averred that the applicant without availing the opportunity to prefer the appeal to the Appellate Authority for redressal the grievance, has directly approached to the Hon'ble CAT Jodhpur and filed the OA. Therefore, it is prayed that the OA deserves to be dismissed.

4. The applicant in rejoinder reiterated the same facts as averred in the OA.

5. The respondent department filed the additional affidavit and reiterated the same facts as averred in the reply.

6. Heard both the parties. Counsel for the respondents took the plea that the applicant without availing the opportunity to file the appeal against the impugned order dated 26.04.2013 (Annexure-A/1), directly approached this Tribunal for quashing of the same, which is against the statutory provisions of the Law.

7. Counsel for the applicant submits that the appeal has not been filed by the applicant but even without filing of the appeal such OA is maintainable before this Tribunal.

8. Looking to the entire facts and circumstances of the case, we are intending to dispose of this OA with certain directions. The applicant shall file an Appeal before the competent authority within three weeks from the date of receipt of a copy of this order and the competent authority shall decide the same within three months from the date of receipt of such appeal. Till then no recovery be made from the applicant in pursuance of Annexure-A/1. After decision of the appeal, if any grievance remains with the applicant, he can approach the appropriate forum.

9. The OA is thus disposed of. Accordingly, MA No.376/2014 is also disposed of. No order as to costs.



[Meenakshi Hooja]
Administrative Member



[Justice K.C. Joshi]
Judicial Member

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5/12/14
Cory Allen