

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Original Application No.290/00445/2014
With MA No.290/0097/2015**

Reserved on 08.11.2016

Jodhpur, this the 9th day of December, 2016

CORAM

Hon'ble Ms. Praveen Mahajan, Administrative Member

Surendra Lal Meena s/o Shri Nathu Ram Meena, aged about 58 years, resident of Village and Post-Dhelana Gumanpura via Semari, Distt. Udaipur, at present employed on the post of Postmaster Gde-II, Baran Mukhya Dak Ghar, Distt. Baran.

.....Applicant

By Advocate: Mr.J.K.Mishra

Versus

1. The 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, Kota Division, Kota- 324001.
3. The Postmaster General, Rajasthan Southern Region, Ajmer-305001.

.....Respondents

By Advocate : Mr. K.S.Yadav

ORDER

In the present OA, the applicant has challenged the penalty of recovery imposed upon him. In relief, he has prayed for the following reliefs:-

- (i) That impugned charge sheet dt. 18.7.2011 (Annexure A-1), penalty order dated 31.3.2012 (Annexure A/2), imposing the penalty of recovery of Rs. 5,85,356/-, passed by 2nd respondent and appellate order dated 21.11.2014 (Annexure A/3) passed by 3rd respondent, rejecting the appeal 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 of recovery 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 are that during the period from 27.2.2009 to 5.10.2009, the applicant was posted as Assistant Post Master HSG-II at Udaipur HO. There was acute shortage of subordinate staff and the applicant was finding it difficult to cope up with the work. The applicant was ordered to do additional work of the post of APM, SBSO, Udaipur by the Postmaster on 25.3.2009 which was withdrawn by the competent authority on protest by the applicant. The Postmaster again issued the order and the applicant was given additional work of the post of APM, SBSO, Udaipur on 4.8.2009. The applicant again protested and the Postmaster assured for providing adequate staff. The applicant went on performing his duties as APM Accounts and did not do any work relating to the lower status post of SPM SO.

A chargesheet dated 18.7.2011(Ann.A/1) under Rule 16 of the CCS (CCA) Rules, 1965 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 chargesheet and facilitated misappropriation of Government money by Shri Pankaj Kumar Nigam. The applicant submitted application dated 26.7.2011 and requested to supply copy of the relevant documents. He was informed vide letter dated 19.8.2011 that he could inspect the desired documents in Divisional Office Udaipur. The applicant submitted a detailed representation in his defence vide letter dated 29.9.2011. He totally denied having worked on the lower post of APM SO Udaipur. Subsequently, the applicant came to know that one Miss Sangeeta Kukreja PA Udaipur has also been chargesheeted for alleged misconduct in respect of MIS A/c No.31227 of consolidation dated 6.8.2009 for amount of Rs. 5,94,000/- vide memo dated 25.4.2011. Similarly, MIS A/c No.31015, for an amount of Rs. 2,97,000/- consolidation dated 31.8.2009, one Smt. Amita Bhat has been chargesheeted vide memo dated 13.4.2011. Both these transactions have also been included in the chargesheet issued to the applicant. Thereafter, a penalty of recovery of Rs. 5,85,356/- was imposed on the applicant vide order dated 31.3.2012 (Ann.A/2). The applicant avers that his defence version has abruptly been thrown overboard. The

charges have been held as proved beyond doubt. The Disciplinary Authority has merely established certain lapses on part of the applicant without explaining the facts leading to the loss and the manner in which the lapses on part of the applicant had a link with the loss sustained by the department. In the instant case, the loss suffered by the department due to the act of the applicant has neither been ascertained correctly nor assessed in a realistic manner. In this regard, the applicant has also referred to instructions of the Postal Department placed below Rule 11 of the CCS (CCA) Rules under heading "Director General P&T Orders" at Sl.No.12, regarding imposition of penalty of recovery (Ann.A/6). The applicant avers that allegation relating to MIS account does not relate to his duties. He has officiated as APM (SBSO) on some of the dates, and the work relating to MIS does not fall within ambit of his duties.

The applicant filed OA No.152/2012 before this Tribunal, which was disposed of vide order dated 6.5.2013 (Ann.A/8) by this Tribunal with a direction to file appeal before the Appellate Authority. The applicant filed the appeal, which has been rejected vide letter dated 21.11.2014 (Ann.A/3). The applicant states that none of the grounds taken in the appeal have been objectively considered and the same has been rejected in a stereotyped manner by a non-speaking order. A similar issue

came up for adjudication before this Tribunal in OA no.252/2012 – Sunil Kumar Joshi vs. UOI and Ors and the same was allowed vide order dated 29.08.2013, holding that 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 the CCS (CCA) Rules. The aforesaid order dated 29.8.2013 has been upheld by the Hon'ble Rajasthan High Court vide order dated 20.3.2014 (Ann.A/10). Hence, aggrieved by the action of the respondents, the applicant has approached this Tribunal.

3. The respondents in their reply submit that the applicant was holding dual charge of APM Accounts and APM SBSO of Udaipur HO. Due to lack of supervision, Shri Pankaj Kumar Nigam, the then SPM of Fatehpura, Udaipur succeeded in committing misappropriation in MIS/SB Accounts. The applicant was ordered by the Postmaster Udaipur HO to work as APM SBSO which was accepted by the applicant in his statement dated 8.10.2010 (Ann.R/5). Name of the applicant appeared in the Attendance Register against the APM Accounts (HSG-II) but the Post Master ordered and assigned the additional duty of APM SBSO in addition to his own duty to the applicant. Nominal Roll is an authentic record about the duty discharged by the officials. Name of the applicant appeared against the post of APM Account, and, the

APM SBSO cannot be questioned because the applicant himself accepted the order passed by the Postmaster in order book on 4.8.2009 and 24.8.2009. He was ordered to perform the additional work of APM SBSO. The version of the applicant that he objected and Postmaster told him that Ms. Sangeeta Kukreja will do that job is not correct. The respondents further submit that Ms. Sangeeta Kukreja and Smt. Amita Bhatt were charge sheeted for the irregularities committed on their part in respect of MIS A/c No.31227 and 31015. No allegation has been imposed upon the applicant in respect of A/c No.31227. As regard MIS A/c No.31015, the applicant was charged for non-checking of voucher and failing to ensure receipt of Pass Book of closed MIS Account with LOT while checking the same on 31.8.2009, whereas, Smt. Amita Bhatt was charged with failing to have checked the above irregularities, while submitting the returns to SBCO on 1.9.2009.

→ The Disciplinary Authority has discussed each point raised by the applicant in his defence representation, and subsequently awarded a penalty on finding the charges as having been proved.

 The Disciplinary Authority has clearly mentioned in the chargesheet that the applicant repeatedly failed to challenge the irregularities committed by SPM, Fatehpura, NDTSO, in the capacity of supervisor as APM, Udaipur HO. This automatically established his link with the loss sustained to the Department. In the instant case, the department had to suffer loss due to

supervisory negligence of the applicant. Had he challenged the irregularities committed by the SPM, Fatehpura, NDTSO and disallowed the transaction of Fatehpura Post Office, the SPM Fatehpura could not have succeeded in committing these irregularities. As regards, instructions below Rule 11 of the CCS (CCA) Rules, 1965, recovery of pecuniary loss caused to the Government by negligence and breach of order by the Government servant, is clearly established regarding loss of Government dues due to his negligence and non-adherence to Government orders. The applicant was identified as subsidiary offender during the course of Circle Level Investigation. While deciding the appeal, the Appellate Authority has thoroughly discussed the points raised by the applicant before deciding the appeal. The appellant remained silent in appeal on (i) charges of non-ensuring receipt of prematurely closed MIS Pass books along with LOT from Fatehpura Udaipur NDTSO, and (ii) in not challenging payment in cash instead of cheque in respect of prematurely closed MIS Account exceeding Rs. 20,000 as well as (iii) non-preparing of half margin verification memo of Fatehpura Udaipur SB S/c No.152765. So far as case in OA No.252/2012-Sunil Kumar Joshi vs. UOI, is concerned, the respondents have stated that it is distinguishable. In the case of the applicant, while issuing recovery penalty under Rule 16 chargesheet, the details of acts of negligence, and breach of orders, and, overlooking the

rules, which caused the loss, have been duly mentioned. The case of Miss Sangeeta Kukreja is not similar to the present case. The applicant was holding the supervisory post of APM SBSO and he was fully responsible for the fraud – which got facilitated due to his failure of not challenging the non-receipt of Pass Book of MIS closure Accounts, and failing to challenge the cash payment of premature closure of MIS accounts exceeding Rs. 20,000/-. Therefore, the respondents pray that the OA may be dismissed.

5. The applicant has filed rejoinder to the reply filed by the respondents reiterating the submissions made in the OA.

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

7. Learned counsel for the applicant, Shri J.K.Mishra, reiterated all the submissions made in the OA and stressed on the point that the disciplinary authority merely established certain lapses on part of the applicant without explaining the facts leading to the loss and the manner in which the lapses on part of the applicant had a link with the loss sustained by the department. The loss sustained by the department due to act of the applicant has not been ascertained or assessed in a realistic manner. The impugned penalty order has been passed in a stereotyped manner without application of mind. The defence of the applicant has been thrown overboard thereby violating the principles of

natural justice, which cannot be sustained in the eyes of law. Further, the penalty imposed is ex-facie excessive and disproportionate to the alleged misconduct, inasmuch as there was no malice or wrongful gain to the applicant. The Appellate Authority has also abruptly rejected the appeal of the applicant by way of a non-speaking order. Therefore, the penalty order and appellate order are liable to be quashed and set-aside.

8. Per contra, learned counsel for the respondents, Shri K.S.Yadav, forcefully contended that due to serious irregularities committed by the applicant, Shri Pankaj Kumar Nigam, the then SPM Udaipur Fatehpura, succeeded in committing misappropriation by making fraudulent withdrawal. The applicant was identified as subsidiary offender in the above misappropriation case. He was issued a chargesheet under Rule 16 of CCS (CCA) Rules, 1965. Thereafter, a penalty of recovery of Rs. 5,85,356/- being the share of Government loss caused due to contributory negligence on part of the applicant was imposed vide order dated 31.03.2012. The department had to suffer loss due to supervisory negligence of the applicant. The applicant was allowed full opportunity to defend his case. Therefore, there has been no breach of principles of natural justice.

9. This Bench of the Tribunal in OA No.563/2013 in order dated 24th October, 2016 and OA No.290/00110/2014 decided on 18th

November, 2016 has dealt with a similar controversy. In that matter, this Tribunal has referred to the earlier order dated 29th August, 2013 passed in OA No.252/2012 – Sunil Kumar Joshi vs. UOI and Ors. which was challenged by the respondents before the Hon'ble High Court by filing D.B.Civil Writ Petition No.1695/2014. The Hon'ble High Court dismissed the said Writ Petition vide order dated 20.03.2014. The respondents further approached the Hon'ble Supreme Court by filing SLP (C)... 2015 (CC No.673/2015 (Arising out of impugned final judgment and order dated 20.03.2014 in CWP No.1695/2014). The SLP was also dismissed by the Hon'ble Apex Court upholding the order of the Hon'ble High Court observing that:-

“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 noted that the instructions of Postal Department under Rules 11 of CCS (CCA) under the heading - Imposition of the

penalty of recovery – (a) General conditions (Ann.A/6), provide that:-

“.....In the case of loss caused to the Government, the competent disciplinary authority should correctly assess in a realistic manner the contributory 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 extenuating circumstances in which the duties were performed by the officer, shall be given due weight.....”

11. 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, other officials have also 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 of 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.

It appears that different parameters have been adopted by the respondent department for imposing penalty of recovery and defence of the applicant has not been properly considered by the respondent authorities before assessing the loss caused to the department due to alleged contributory negligence of the applicant.

12. In view of the foregoing discussions, I do not want to further go into the merit of the case at this stage. I quash the order dated 31.03.2012 (Ann.A/2) and 21.11.2014 (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.

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

14. In view of the order passed in the OA, no order is required to be passed in MA No.290/00097/2015 for vacation of interim order.


(PRAVEEN MAHAJAN)
Administrative Member

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