

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00157/14 & MA No. 290/00455/14

Reserved on : 08.09.2016

Jodhpur; this the 4th day of October, 2016

CORAM

Hon'ble Ms Praveen Mahajan, Admn. Member

Smt Biraj Lodha D/o Shri Sajjan Singh Hingar, aged about 54 years, resident of C/o Aditya Enterprises, Panchayati Nohara Ke Samane, Udaipur – 313001, at present employed on the post of Postal Assistant in Udaipur Palace Road Post Office 313 004.

.....Applicant

By Advocate: Mr J.K. Mishra.

Versus

1. Union of India through the Secretary to the Govt. of India, Department of Posts, Ministry of Communications & IT, Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. Senior Superintendent of Post Offices, Udaipur Division, Udaipur.
3. Director of Postal Services, O/o Postmaster General, Rajasthan Southern Region, Ajmer – 305001.

.....Respondents

By Advocate : Mr B.L. Bishnoi.

ORDER

The present Original Application has been filed U/s 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:

- (i) That impugned charge sheet dated 25.04.2011 (Annex. A/1), penalty order dated 30.03.2012 (Annex. A/2), imposing the penalty of recovery of Rs 1,59,277/-, passed by 2nd respondent and appellate order dated 24/25.02.2014 (Annex. 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 deducted from her 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. The applicant is aggrieved by issuance of charge sheet dated 25.04.2011 (Annex. A/1) under Rule 16 of Central Civil Services (Classification, Control & Appeal) Rules, 1965, (hereinafter referred to as CCS (CCA) Rules. She has prayed for quashing of the order dated 30.03.2012 (Annex. A/2) passed by the disciplinary authority imposing minor penalty of recovery of Rs 1,59,277/- . This has been issued for her alleged misconduct of gross negligence in her work, which facilitated commission of fraud by Shri Pankaj Kumar Nigam, the then SPM, Fatehpura, NTDSO to the tune of Rs 5,94,000/- . She has also sought similar relief against order dated 24/25.02.2014 (Annex. A/3) passed by the appellate authority, rejecting her appeal.

3. In the charge memo, four separate charges were imputed against the applicant. In the first charge, it is alleged that the applicant while working as APM (SBSO), Udaipur HO on 19.10.2009 and 31.10.2009 failed to challenge the non-receipt of closed MIS passbooks alongwith LOT/vouchers received from Fatehpura NDTSO in MIS A/c No. 31350 & 31074 violating SB

Order No. 2/2008 File No. 116-09/2007 SB Govt. of India, Ministry of Communication, Department of Posts dated 04.02.2008. In the second charge, it is alleged that she failed to challenge payment in cash instead of cheque in respect of above, mentioned in Para-I MIS premature closure by Shri Pankaj Kumar Nigam, SPM, Fatehpura NDTSO as required under Rule 168(11) of PO SB Manual Volume-I. In the third charge, it is alleged that the applicant failed to check the LOT/Vouchers received from Fatehpura NDTSO in respect of above Para-I accounts and dates before transferring to SBCO violating rules 50 of PO SB Manual Volume-I. In the fourth charge, it is alleged that the applicant failed to perform duties and responsibilities assigned in respect of Fatehpura fraud case as required vide rule 2(2)(ii) of PO SB Manual Volume-I.

4. On receipt of the show cause notice, the applicant filed detailed representation vide letter dated 17.08.2011 (Annex. A/4). She submitted therein, that she did not work as APM (SBSO) on 19.10.2009. She also made a request for holding an inquiry under rule 16 (1) (B) of CCS (CCA) Rules under procedure to clause 3 to 23 under rule 14 of the CCS (CCS) Rules i.e. a detailed inquiry. The request for detailed inquiry was rejected vide letter dated 05.08.2011. However, the applicant was allowed to inspect some documents. The issues raised by the applicant in her representation are primarily the following :-

- (i) The applicant did not work as APM (SBSO) on 19.10.2009.
- (ii) The allegation of challenge of non-receipt of Passbooks in MIS a/c No. 31074 dated 31.10.2009 is contrary to the instructions issued by SSP Udaipur vide circular No. L2-39/SBCO/09 dated 04.12.2009.
- (iii) The cheque number were written on withdrawal form of MIS A/c No. 31074 dated 31.10.2009.
- (iv) As per para 3 of Manual of SB Control Procedure, the official receiving these documents is responsible for checking all the lists of vouchers, voucher numbers, bundle and journal.
- (v) SBSO Branch in HO has always worked with two PAs short. In exigency, the Postmaster ordered the applicant to act as APM in addition to her duty as PA. She has never worked as regular APM.

5. The respondent No. 2, rejecting the defence plea, found all the charges proved against the applicant and passed the impugned order dated 30.03.2012(Annex. A/2) and imposed the penalty of recovery of Rs 1,59,277/- from her salary. The applicant filed OA No. 160/2012 before this Tribunal, which was disposed of on 06.05.2013 (Annex. A/8) directing the applicant to file an appeal against the order dated 30.03.2012 before the appellate authority. Pursuant to said order, the applicant filed an appeal dated 05.06.2013 (Annex. A/9) before respondent No. 3. The issues raised by her in appeal were primarily the following :

- (i) In order to hide contributory negligence on part of the D.O. Udaipur, SSP Udaipur has said that the memo No. L2-39/SBCO/09 dated 04.12.2009 issued by D.O. Udaipur, was only reiteration of orders which are already in existence.
- (ii) When existing orders were not being followed by SPM all over the Division including Fatehpura, then why has no action been taken against the erring officials, including SPM, Fatehpura.

(iii) There was no mention in memo of charges regarding (1) total misappropriation done by Mr Pankaj Kumar Nigam (2) Total recovery from him (3) Pending claims of the account holders of MIS account numbers mentioned in memo of charges (4) Issue of duplicate passbook of the accounts and payment made by the department by way of sanction order.

6. In rejoinder, the applicant while annexing order dated 28.01.2014 (Annex. A/12) passed by respondent No. 2 against Shri C.P. Doshi (SBCO), has inter-alia stated that the duty of preparing consolidated journal rests with SBCO of the Organization, (After decentralization of the MIS and RD Scheme as per SB Order No. 8/2003) and not with the applicant. This fact is also evident from penalty order dated 28.01.2014 whereby Shri C.P. Doshi, the then SBCO, has been held responsible for violation of same SB Order i.e. checking of vouchers, non-receipt of closed pass books MIS accounts etc. Thus, the charge No. 2 relates to the charge levelled against Shri C.P. Doshi.

7. The respondents in their reply and also in reply to rejoinder, have submitted that while working as APM (SBSO), the applicant failed to perform her duty alongwith three other officials working in Udaipur HO i.e. PA (SBSO), In-charge SBCO and PA (SBCO), which led to facilitating Shri Pankaj Kumar Nigam in making fraudulent withdrawal from the MIS accounts. Shri Pankaj Kumar Nigam main offender died on 02.04.2012 and no action could be initiated for recovery from him. The applicant has been identified as subsidiary offender. The penalty of recovery of Rs 1,59,277/-

has been imposed upon the applicant being share of government loss caused due to contributory negligence on part of the applicant in MIS a/c No. 30931 and MIS a/c No. 31074. The respondents submitted that the MIS a/c No. 31350, transaction date 18.10.2009 and date of consolidation as 19.10.2009 has erroneously been shown in the charge sheet. Instead, the applicant is responsible for working on 12.10.2009 as APM (SBSO), for MIS a/c No. 30931, transaction date 09.10.2009 submitted to SBCO on 12.10.2009. The respondents have stated that Shri C.P. Doshi, SBCO Udaipur HO has been charged for the lapses committed on his part and it did not relate to the duties of the applicant.

8. Heard both the parties and perused the record.
9. During the course of arguments, Ld. counsel for applicant stated that the applicant has been discriminated against. He referred to order dated 28.01.2014 (Annex. A/12) filed with rejoinder by which Shri C.P. Doshi, who has also been accused of negligence in closing MIS A/c No. 31350 & 31075 has been imposed a penalty of recovery of Rs 90,000/- only whereas the applicant has been slapped with a recoverable amount of Rs 1,59,277/-.
- Thus, the order of Disciplinary Authority as well as Appellate Authority is made out to be discriminatory. The proportionate responsibility commensurate with the duties and

responsibilities of the individuals, has not been fixed in a judicious manner.

10. Rebutting the arguments, Ld. counsel for respondents submitted that the arguments advanced by the Ld. counsel for applicant are totally misleading. In their reply the respondents admitted that the applicant had worked as APM (SBSO) on 12.10.2009 (and not on 19.10.2009) & 31.10.2009. She failed to challenge non-receipt of closed MIS Pass Book of A/c No. 30931 alongwith LOT/Vouchers dated 09.10.2009 of Rs 2,97,000/- while submitting the return to SBSO. The date and account number was mentioned as 19.10.2009 and A/c No. 31350, erroneously.

11. I have carefully considered the rival contentions and gone through charge sheet, order of disciplinary authority as well as of appellate authority, and other material placed on record. I find that the entire disciplinary proceedings have been conducted without proper application of mind by the Disciplinary Authority and Appellate Authority. Both these orders, unfortunately, have been passed in a cursory manner right from the issue of charge sheet, wherein erroneous date and account number of transaction as alleged by the applicant (admitted by the respondents in the reply) do not seem to have been taken cognizance of. Even after this fact was pointed out by the applicant, in her representation that she has not worked as APM (SBSO) on 19.10.2009, the

Disciplinary Authority has not rectified this defect in his order nor mentioned that the order dated 30.03.2012, is being passed after taking into account the date of error of account, committed while issuing the charge sheet. Charge No. 1 of the charge sheet, in the order of Disciplinary Authority, mentions date of consolidation as 19.10.2009, and not 12.10.2009, to show that Disciplinary Authority actually went through the contents of the representation or verified it factually from records. It has been admitted by the respondents in their reply that the date of consolidation was 12.10.2009 and not 19.10.2009. It was submitted that "*while issuing charge sheet instead of MIS A/c No. 30931 transaction of SO dated 09.10.2009 and return submitted to SBCO dated 12.10.2009, erroneously shown as A/c No. 31350 transaction date of Fatehpura as 18.10.2009 and date of consolidation on 19.10.2009.*"

Surprisingly, the appellate authority also failed to take notice of these defects. I do not find force in the argument of the Ld. Counsel for respondents that the respondents have corrected the error by pointing out the same in the reply to the OA. Such rectification, after conclusion of the disciplinary proceedings and passing of appellate order, shows that the Disciplinary Authority and the Appellate Authority issued the orders mechanically and did not apply their mind during the inquiry, and while passing the impugned orders. Otherwise, these errors would have been rectified earlier and orders issued, as per law. I agree with the

contention of the Ld. counsel for respondents that Government money is public money and has to be recovered from errant officials who derelict their duty. But this has to be done after taking into account the correct facts with due application of mind, following due process of law. Therefore, in these circumstances, I deem it fit to direct the respondents to conduct de novo inquiry from the charge sheet stage itself. Accordingly, Annex. A/1, A/2 and A/3 are quashed. Vide interim order dated 06.05.2014, this Tribunal stayed the recovery in pursuance of Order Annex. A/2 and A/3. Since, orders at Annex. A/2 and A/3 have been quashed, MA No. 290/00455/14 filed by the respondents for vacation of interim order dated 06.05.2014 is dismissed.

12. In the OA and rejoinder to the reply of the respondents, the applicant has also raised other issues – viz., no rationale or reasoning give for fixing the quantum of recovery vis a vis that of Shri C.P. Doshi, another similarly placed co-accused who has been charged with similar lapses of contributory negligence etc. but meted out a softer treatment by way of imposition of penalty of less recovery. She has also averred that the respondents turned down her request for detailed enquiry by a non-speaking order dated 05.08.2011 (Annex. R/6). All these issues were vehemently argued and forcefully defended by the respective counsels on both sides.

13. I am, however, not inclined to discuss these issues, at this stage, in view of the fact that the charge sheet itself is defective, as already discussed in the aforesaid paras. Under these circumstances, I do not deem it appropriate to review the orders of Disciplinary Authority and Appellate Authority, when the conclusion/punishment drawn by them is based on erroneous set of facts, as admitted by the respondents themselves in their reply.

14. Therefore, I deem it fit to direct the respondents for de novo enquiry from the charge sheet stage itself. The respondents shall commence de novo proceedings within 03 months from the date of receipt of copy of the order and pass appropriate orders notwithstanding any observation or expression of opinion in discussions hereinabove made on merit of the case.

15. In terms of above direction, the OA is disposed of with no order as to costs.


[Praveen Mahajan]
Administrative Member

Ss/-

Received
By
10/10/68

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