

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Original Application No.290/00110/2014
With MA No.290/00034/2015**

Reserved on: 08.11.2016

Jodhpur, this the 18th day of November, 2016

CORAM

Hon'ble Ms. Praveen Mahajan, Administrative Member

Smt. Amita Bhatt, wife of Shri Punkaj Jani, aged about 51 years, resident of C-205, Ariosto Enclave, Bhuwana, Udaipur-313001, at present employed on the post of Postal Assistant in Udaipur Head Post Office.

.....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.
2. Senior Superintendent of Post Offices, Udaipur Division, Udaipur.
3. The Director Postal Services, Office of PMG, Rajasthan Southern Region, Ajmer-305001.

.....Respondents

By Advocate : Mr. B.L.Bishnoi

ORDER

The applicant has approached this Tribunal challenging the penalty of recovery imposed upon him. In relief, he has prayed :-

- (i) That impugned charge sheet dated 13.4.2011 (Ann.A/1), penalty order dated 30.3.2012 (Ann.A/2), imposing the penalty of recovery of Rs. 2,13,968/- passed by 2nd respondent and appellate order dated 25.2.2014, passed by 3rd respondent

rejecting the appeal, may be declared illegal, arbitrary, discriminatory 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, if any, 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 while working as PA, Udaipur HO, the applicant was asked to officiate on 1.9.2009 as APM (SBCO), Udaipur. She was issued a chargesheet dated 13.4.2011(Ann.A/1) under Rule 16 of CCS (CCA) Rules, 1965 alleging that she failed to ensure checking of LOT/vouchers before transferring to SBCO amongst other ancillary allegations and facilitated the misappropriation of Government money to the tune of Rs. 2,97,000/- by Shri Pankaj Kumar Nigam. A corrigendum of the same was issue and the date of Fetehpura, LOT dated 30.09.2009 was amended to read as dated 31.08.2009 and the total amount as Rs. 8,91,000/- instead of Rs. 2,97,000/-. The applicant represented on 16.8.2011 (Ann.A/4) and also requested for holding a detailed inquiry. The applicant avers that duty relating to MIS was not included in the duty list of said post and as per Chap.I Saving Accounts, it was incumbent upon the SBCO Branch to carry out 100% check of MIS. The respondent

No.2 did not find it expedient to conduct a detailed confronted/oral inquiry as per rules. She has not been communicated any recorded reasons for not holding the detailed inquiry. Thereafter, the applicant was imposed a penalty of recovery of Rs. 2,13,968/- 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, the charges have been held as proved. Her defence version has been thrown overboard. The Disciplinary Authority merely established certain lapses on part of applicant without explaining the facts leading to the loss. The manner in which the lapses on part of the applicant had link with the loss sustained by the Department has not been explained or established. She did not facilitate anyone to misappropriate the Government funds. No details of action taken against the principal offender or any co-offender are forthcoming. Hence, the whole exercise seems to be to recover the loss, which occurred due to fraud committed by sub-office staff. The aforesaid fact is fortified from the fact revealed in the vigilance inquiry report, that one Shri C.P.Doshi, Supervisor while working as In-charge SBCO, Udaipur was alleged to have failed to check MIS consolidation with reference to receipt of closed passbooks along with LOT of Fatehpura Sub Post Office in which fraudulent closure was made by the then SPM Pankaj Kumar Nigam, resultantly, the irregularities/fraud could not be detected.

The applicant further avers that the alleged loss suffered by the department due to the act of the applicant has not been ascertained or correctly assessed, in a realistic manner. The contributory negligence on part of the applicant has also not been ascertained as per mandate of the rules. The applicant has also referred to the instructions below Rule 11 of CCS (CCA) Rules under the heading "Director General P&T Orders" at Sl.No.12, regarding imposition of penalty of recovery (Ann.A/9).

Earlier the applicant filed OA No.153/2012 before this Tribunal and the same was disposed of on 6.5.2013 (Ann.A/10) with direction to the applicant to file appeal before the appellate authority. The applicant preferred appeal and the same was rejected vide order dated 25.2.2014 (Ann.A/3) without objectively considering the grounds taken by the applicant. 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 back to the Disciplinary Authority for framing fresh charges vide letter dated 4.12.2013 (Ann.A/12). Hence, aggrieved of the discriminatory and arbitrary action of the respondents, the applicant has filed the present OA.

3. In reply to the OA, the respondents submit that the applicant while working as APM, SBSO, Udaipur HO on 17.8.2009 and 1.9.2009 and while checking of MIS LOT received from SOs

failed to challenge the non-receipt of MIS Pass Book from Fatehpura Udaipur, single handed Post Office. While checking of the vouchers, she failed to challenge the payment made in cash though the payment exceeding Rs. 20,000/- by the SPM, Fatehpura, Udaipur as required under the rules. Due to the serious irregularities committed by the applicant, Shri Pankaj Kumar Nigam, the then SPM Udaipur, Fatehpura succeeded to commit misappropriation of Rs. 8,91,000/- by making fraudulent withdrawal. Besides the applicant, four other officials working in the Udaipur HO were also responsible for facilitating Shri Pankaj Kumar Nigam. Since no recovery could be made from the main offender, as such, during CLI, the applicant was also identified as a subsidiary offender in Udaipur Fatehpura misappropriation case. A chargesheet under Rule 16 of CCS (CCA) Rules, 1965 was issued on 13.4.2011 and penalty of recovery of Rs. 2,13,968/- being share of Government loss caused due to contributory negligence on part of the applicant was imposed vide Memo dated 30.3.2012. The claim in respect of these MIS accounts have been sanctioned by the competent authority on 19.01.2012, whereas no recovery in the case has been made, as such total loss suffered due to contributory negligence on part of the applicant comes to Rs. 2,13,968/- including penal interest. As per the order dated 6.5.2013 passed in OA No.153/2012, the applicant preferred an appeal and the Appellate Authority found

that the pleas put forth by the applicant are not acceptable and decided the appeal vide Memo dated 25.2.2014. The respondents have also placed on record documents at Ann.R/1 to R/5 in support of their stand. So far as the contention of detailed inquiry goes, the respondents submit that the applicant applied for detailed inquiry, but as per DoPT OM No.11012/18-85-Estt. (A) dated 28.10.1985, the Disciplinary Authority after due consideration on the request of the applicant came to a conclusion that detailed inquiry is not necessary in the case and the applicant was informed on 5.8.2011 (Ann.R/6). She was, however, allowed to inspect the relevant documents on 22.07.2011 which were related to the charges levelled against her. The respondents submit that Shri C.P.Doshi, Supervisor, SBCO was alleged for lapses noticed on his part in CLI which is a separate matter for second stage of checking at SBCO, Udaipur, but the applicant as APM (SBCO) has failed to perform the first stage checking at SBCO, Udaipur HO. As far as the appeal preferred by Shri Neeraj Tak is concerned, the respondents submit that as per CLI, lapses noticed on part of Shri Neeraj Tak were different from the applicant. The Appellate Authority observed that the charges levelled against Shri Tak require to be framed afresh on the basis of lapses noticed on his part, keeping in view of relevant rules on the subject and contributory negligence on part of Shri Neeraj Tak. Therefore, the Appellate

Authority ordered to remit the case back to the Disciplinary Authority with direction for De-novo proceedings from the stage of issue of fresh charge sheet. Hence, the respondents have prayed for dismissal of the OA.

4. The applicant has filed rejoinder to the reply filed by the respondents. While reiterating the averments made in the OA, the applicant has also annexed documents Ann.A/14 to A/15 and also a judgment of Hon'ble Rajasthan High Court in D.B.Civil Writ Petition No.1695/2014-UI and Ors. vs. Sunil Kumar Joshi (Ann.A/16).

5. The respondents have further filed reply to rejoinder annexing order dated 29.09.2014 passed by the CAT-Jaipur Bench in OA No.01/2013 at Ann.R/11.

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

7. Learned counsel for the applicant, Shri J.K.Mishra, stressed on the point that request of the applicant for 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 thereby violating the principles of natural justice, which cannot be sustained in the eyes of law. The Disciplinary Authority merely established certain lapses on part of applicant without explaining the facts leading to the loss. The

applicant did not facilitate anyone to misappropriate the Government funds.

8. Per contra, learned counsel for the respondents, Shri B.L.Bishnoi, 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 and a penalty of recovery of Rs. 2,13,968 being the share of Government loss caused due to contributory negligence on part of the applicant was imposed vide order dated 30.03.2012. The applicant was allowed full opportunity to defend her case. Therefore, there was no breach of principles of natural justice.

9. It would be pertinent to mention here that this Bench of the Tribunal in OA No.563/2013 decided on 24th October, 2016 has already 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 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.

11. In view of the foregoing discussions, I do not want to further go into the merit of the case at this stage ⁹ ^{Shahaf} and quash the order dated 30.03.2012 (Ann.A/2) and 25.2.2014 (Ann.A/3). The respondents are directed to initiate appropriate disciplinary action/enquiry against the applicant after giving her 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.290/00034/2015 for vacation of interim order.


(PRAVEEN MAHAJAN)
Administrative Member

R/

Received copy
~~MS~~ 20/11/16

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