

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No. 770/2005

Date of Order: 9th May 2011

C O R A M

HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER[J]
HON'BLE MR. AKHIL KUMAR JAIN, MEMBER[A]

Halkhori Sah Son of Late Ram Janam Sah Sub Postmaster Sanjhauli S.O. District-
Rohtas Resident of Village and P.O. Kirhindi P.S. Sheo Sagar District- Rohtas.

By Advocate: - Shri A.N. Jha

..... Applicant.

-Versus-

1. The Union of India through the Secretary, Government of India, Ministry of Communication, Department of Posts, New Delhi Cum The Director General, Department of Posts, India.
2. The Member (P), Postal Services Board, Department of Posts, New Delhi – 110001.
3. The Chief Postmaster General, Bihar Circle, Patna.
4. The Director of Postal Services (H.Q.) Bihar Circle, Patna – 800001.
5. The Superintendent of Post Offices, Rohtas Division at Sasaram, District-Rohtas.

..... Respondents.

By Advocate: -Shri R.K. Choubey

O R D E R

Akhil Kumar Jain , Member [Administrative] :- This OA has been filed by the applicant to quash and set aside the memo dated 31.08.1999 issued by respondent no. 5 as contained in Annexure A/1 whereby the punishment for recovery of Rs. 59,976/- from the pay of the applicant in 36 instalments and stoppage of next increment for one year without cumulative effect has been imposed upon the applicant. The applicant has further sought for quashing and setting aside the order of the appellate authority dated 27.11.2001 as contained in Annexure A/2 rejecting the applicant's appeal dated 11.10.1999 (Annexure A/5) and the order dated 07.02.2006 (Annexure A/8) passed by Chief Postmaster General, Bihar Circle, Patna (respondent no. 2). Furthermore, a direction has been sought upon the respondents to refund the amount recovered from the applicant on

the basis of punishment order issued vide memo dated 31.08.1999 (Annexure A/1).

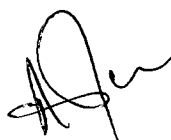
2. Written statement has been filed by the respondents.

3. Heard the learned counsel for both the parties.

4. The facts of the case in brief are that vide memo dated 03.03.1999 issued by Superintendent of Post Offices, Rohtas Division, Sasaram (Annexure A/3), the applicant was informed that it was proposed to take action against him under Rule 16 of CCS(CCA) Rules, 1965. A statement of imputation of misconduct and misbehaviour on which action was proposed was enclosed with the memo. The allegations against the applicant were :

(i) The applicant, while working as SPM, Dinara SO on 24.12.1997 opened Sasaram HO account bag dated 23.12.1997 and even though he saw a sum of Rs. 2,00,000/- advised in the S.O. slip as cash remittance through him and his staff, he did not note the irregularities in his office error book on 24.12.1997 regarding non receipt of remittance falsely shown in the S.O. slip as cash remittance through him and his staff, he did not note the irregularities in his office error book on 24.12.1997 regarding non receipt of remittance falsely shown in the S.O. Slip and also failed to report the matter to the Divisional Superintendent. On examination of the S.O. Slip dated 23.12.1997, it was seen that the amount so received by him through his P.A. Shri Bhagwan Singh was not acknowledged by him through any source.

(ii) An amount of Rs. 1,50,000.00 was shown to have been remitted to Sasaram H.O. Through his P.A. Shri Bhagwan Singh and staff but no particulars of the remittance of cash was shown in column provided for the purpose in the related S.O. daily account. Nor the receipt of P.A. Shri Bhagwan Singh was obtained in S.O. account book for making such remittances. The bonafide of receipt granted by Head Treasurer Shri Dinanath Ram regarding receipt of Rs. 1,50,000 was also suspected. Moreover applicant did not make any requisition for remittance of cash on his S.O. daily account dated 20.12.1997 as per his corresponding liabilities. He also did not requisition for remittance of cash to his cash office Bikramgunj S.O. vide his R List dt. 20.12.97, 22.12.97 and 23.12.97 and this shows that there was no requirement of cash at




his office for Rs. 1,50,000.00 to meet actual liabilities.

(iii) The applicant suppressed the fact in regard to non receipt of cash on 24.12.1997 as per S.O. Slip dated 23.12.1997 which put veil on deceptive practice resorted to by Shri Dinanath Ram regarding fake remittances towards covering up shortage of cash which eventually encouraged Shri Dinanath Ram to misappropriate Rs. 3,50,000.00 on 04.05.1998 by showing fake remittance to Dinara S.O. and Kotah S.O. through SPMs under their forged signature.

5. The applicant was asked to submit his representation within 10 days. He submitted his reply to the disciplinary authority vide his representation dated 29.05.1999 (Annexure A/4). Thereafter, the disciplinary authority, respondent no. 5 imposed penalty of recovery of Rs. 59,976/- and stoppage of next increment for one year without cumulative effect on the applicant vide order dated 31.08.1999 as contained in Annexure A/1. The appeal submitted by the applicant dated 11.10.2009 (Annexure A/5) was also rejected by the appellate authority vide memo dated 27.11.2001 (Annexure A/2). The applicant submitted a revision petition dated 19.02.2002 (Annexure A/6) to Member(P), Postal Service Board, New Delhi, respondent no. 2 which was disposed of by the CPMG, Bihar Circle, Patna vide order dated 07.02.2006 as contained in Annexure A/8.

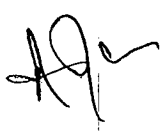
6. The case of the applicant is that the sum of Rs. 2,000,00/- as advised as remittance in SO Slip dated 23.12.1997 was due to be received at the S.O. on 24.12.1997 and the said amount was actually received on 24.12.1997 through the seniormost Postal Assistant of the office. Hence, there was no question of non receipt of the remittance of Rs. 2 lakhs which was actually received on 24.12.1997 on due date and acknowledged by the applicant (reference para 4.11 of the OA). Secondly, a sum of Rs. 1.50 lakhs was remitted to Sasaram H.O. by the applicant through the seniormost PA of the office on 26.12.1997. As per Rule 42(2) (3) of Postal Manual Volume – VI Part III, if any remittance is sent through a special carrier, the necessary entries should be made in the place provided on the back of SO Daily Account and carrier's receipt for the amount should be taken in the place



provided for the purpose. However, due to oversight the applicant could not obtain the carrier's signature of SO daily account on 26.12.1997 against the above mentioned entries. It is not the case of the respondents that the remittance of Rs. 1.50 lakhs was not acknowledged by Sasaram. Omission of not taking receipt of Rs. 1.50 lakhs by P.A Shri Bhagwan Singh of his office in SO Account Book or SO Daily Account does not warrant severe penalty as imposed. Further contention of the applicant is that the documents requisitioned by him for inspection were not produced which amounted to clear denial of reasonable opportunity to the applicant to submit his defence. Moreover, there was no loss to the Government on account of remittances made on 23.12.1997 and 26.12.1997.

7. It has further been submitted by the applicant that Dinara HO was inspected by the SPO, Rohtas Division from 23.12.1997 to 31.12.1997 and cash balance was found correct. Moreover, Treasurer's Cash Book and the Head office summary are maintained at all Head Offices. No remittance can be made without having valid orders from the Head Post Master or Assistant Post Master (Treasury). Similarly, all remittances received from Sub Post Office are entered in receipt side of the Treasurer's Cash Book and total remittances made on a day are entered on payment side of HO Summary. Hence, there is no question of fictitious remittance of Rs. 2 lakhs to Dinara SO on 23.12.1997 and receipt of Rs. 1,5 lakhs from Dinara SO on 26.12.1997.


8. In the light of submissions made in the OA, the learned counsel for the applicant submitted that all these points were made by the applicant in his defence submitted on 23.05.1999 refuting the charges, but the disciplinary authority did not consider the above mentioned defence and imposed the penalty which is too harsh and disproportionate in view of the fact that no loss was sustained by the Govt. on account of remittances made on 23.12.1997 and 26.12.1997 as alleged in the memo of charges dated 3.3.1999. The appellate authority also did not consider the case of the applicant in accordance with rules



and rejected his case without applying his mind vide order dated 27.11.2001. The further contention of the learned counsel for the applicant was that the only mistake on the part of the applicant was that he failed to take receipt of the special messenger in the SO Accounts Book and SO Daily Account on 26.12.1997, but it is not the case of the respondent authorities that remittance of Rs. 1.50 lakhs made by the applicant on 26.12.1997 was not received at Sasaram HO which is matter of record. Hence, only the omission of such entries in SO Daily Account does not deserve severe and disproportionate punishment as imposed upon the applicant despite the fact that the amount of remittance of Rs. 1.50 lakhs was charged in the SO Accounts Book and SO Daily Account on 26.12.1997 as remittance to Sasaram HO. The Rules 3(i) (ii) (iii) of CCS Conduct Rules, 1965 are general expectations from a Govt. servant. When there is no question of misuse/misappropriation of Govt. money, the question of violation of the above mentioned conduct rules did not arise. It is well settled law that no one can be punished on suspicion. Further recovery is ordered only when Government sustains loss on account of willful negligence or guilt on the part of the employee. In the instant case, there is no such loss to the Govt. on account of any negligence or guilt of the applicant. Moreover, imposition of two penalties is not permissible under the Rules.


9. The learned counsel for the applicant further stated that the applicant has been falsely implicated in the case and punished and the orders of the disciplinary authority, appellate authority and the revision authority are ab initio illegal, arbitrary and void in law which merit setting aside.

10. The learned counsel for the respondents submitted that the cash amounting to Rs. 3.50 lakhs was being kept short by Ex-Treasurer, Sasaram H.O. Shri Dina Nath Ram (now dismissed) during the month of December, 1997. Fake remittance were shown to Sub Post Offices under the control of Sasaram SO to suppress the shortage of cash. The Sub Post Master Kudra and Dinara SO connived and acknowledged the fake remittance and they further showed the same



remitted to Sasaram HPO. The case came to light on receipt of report of the Sub Post Master, Koath. The applicant was working as Sub Post Master Dinara SO during December, 1997. On 24.12.1997 he received the account bag closed by Sasaram HO on 23.12.1997. A sum of Rs. Two lakhs was advised in the SO slip as cash remitted through him and his staff. The amount was not actually remitted to the SO, but the applicant failed to note the irregularity in the error book and also report the matter to HO/Divisional office. The applicant admitted to have received the remittance through his PA Shri Bhagwan Singh and showed Rs. 1.50 lakhs remitted to Sasaram HO on 26.12.1997 through his PA and staff. The receipt of Shri Singh and staff was not obtained in token of having received/remitted the said amount. This transaction was shown as made with Sasaram HO without any liabilities or requisition to the cash office, Bikramganj S.O.

11. It was the further contention of the learned counsel for the respondents that the defence submitted by the applicant was duly considered by the disciplinary authority and he was awarded appropriate punishment which has been upheld by the appellate authority as well as the revisional authority. He added that CPMG, Bihar Circle, Patna being next superior to Director, Postal Services, Central Region, Patna was revision authority. The contention of the applicant that he received Rs. 2 lakhs through his PA Shri Bhagwan Singh on 24.12.1997 is not based on facts as no cash was conveyed by Head Treasurer Sasaram HO to Dinara SO on 24.12.1997 as stated by Head Treasurer during the course of enquiry on 06.05.1999 and 07.05.1999 and remittance of cash of Rs. 2 lakhs to Dinara SO on 23.12.1997 was found tailored one. The applicant and his PA Bhagwan Singh were involved in league with Head Treasurer Dina Nath Ram in this fake remittance. On receipt of report from SPM, Dinara, the verification of cash and stamp was taken by SPOs and the shortage came to light. It was submitted by the learned counsel for the respondents that this was clearly a case of connivance on the part of the applicant which facilitated suppression of shortage of



Rs. 3.5 lakh at Sasaram Hoby Shri Dinanath Ram by way of issuing such fake remittances. Considering the gravity of the charges, the penalty imposed was quite justified.

12. We have perused the records and considered the submissions made by the rival parties.

13. From the records and submissions made on behalf of the applicant, it emerges that the main grounds on which applicant has sought relief is that the remittances indicated in the memorandum dated 03.03.1999 were actually made and duly recorded as well as acknowledged by him and Sasaram H.O. The only mistake was that he did not obtain the signature of the PA/staff on records as a token of proof thereof in terms of provisions in the Postal Manual. The other pleas taken by the applicant are that

[a] relevant records were not produced;

[b] no loss was caused to the Government due to his actions or omissions and he can not be punished for loss not directly concerned to him;

[c] no one can be punished merely on suspicion or guilt of some other person;

[d] Two penalties are not admissible under rules;

[e] Punishment is not commensurate with the alleged charges and the punishment of recovery of Rs. 59,976 is illegal and bad in law;

[f] The orders passed by the disciplinary authority, appellate authority and revision authority are illegal, arbitrary and ab initio void. There is no application of mind in as much as the points raised by the applicant were not considered.

14. We note that the orders passed by the disciplinary authority, the appellate authority and the revision authority are quire detailed and speaking order. The disciplinary authority in its order has discussed the points raised by the applicant in his defence. Even the revision authority has also discussed almost all the points raised by the applicant.

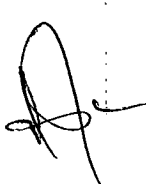
15. As to the question of non production of documents demanded by the

applicant, we note that in his representation dated 29.05.1999 (Annexure A/4) submitted to the disciplinary authority, he has mentioned about his applications dated 15.03.1999, 13.04.1999 and 10.05.1999 for inspection of documents. However, in the same representation while making a submission in his defence, he stated that all the documents except para 6 (i) (ii) and 8 (i) of Inspection remarks recorded by the learned Superintendent, S.O. Slip dated 23.12.1997, S.O. Daily account dated 24.12.1997 and statement of Shri Halkhari Sah, were not shown. The documents which are admitted to have shown cover most of the documents related to statements made in the memo dated 03.03.209. Moreover, it has not been classified by the applicant either in his representations or in the OA as to which document was not shown to him due to which his defence has been seriously prejudiced. On the contrary from his defence statement, it clearly transpires that he had knowledge of most of the facts related to his defence and he has made specific statements. When the authorities allowed him inspection of documents, there appears to be no reason for not allowing him to inspect all the relevant documents. We are, therefore, not convinced of the plea of the applicant that relevant documents were not produced or shown to him which amounts to denial of natural justice.

16. As to the question of imposition of more than one penalty, we note that as per DG, P&T's No. 105/26/81- Vig. III dated 30.03.1981 as contained in Swamy's Compilation of CCS Rules (33rd Edition – 2010) page- 27 below rule 11, there is no bar on imposition of penalty of recovery in addition to another penalty.

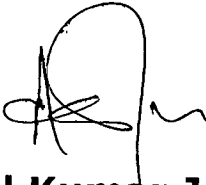
17. As regards other issues including the question of loss to the Government, we note that all these issues including the points raised by the applicant in his representation have been discussed in details in the order passed by the disciplinary authority as well as revision authority.

18. We are in agreement with the learned counsel for the respondents that there is no irregularity, illegality or arbitrariness in the orders passed by the



disciplinary, appellate and revision authority. We are also of the view that the quantum of punishment is not excessive. We, therefore, find no reason to interfere with the orders passed by the disciplinary, appellate and revision authority.

19. In the result, the OA is dismissed being devoid of merit . No order as to costs.



[Akhil Kumar Jain]
Member[A]



[Anwar Ahmad]
Member[J]

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