

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

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**ORDER SHEET**

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**ORDERS OF THE TRIBUNAL**

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14.05.2013

OA No. 05/2012

Mr. C.B. Sharma, Counsel for applicant.  
Mr. Mukesh Agarwal, Counsel for respondents.

Heard learned counsel for the parties.

The OA is disposed of by a separate order.

*Anil Kumar*

(Anil Kumar)  
Member (A).

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR.

**ORIGINAL APPLICATION NO. 05/2012**

Jaipur, the 14<sup>th</sup> day of May, 2013

**CORAM :**

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

P.P. Swami son of Shri Suraj Mal Swami aged about 63 years, resident of Village & Post Kayamsar, Ramgarh, Shekhawati, District Sikar and retired on 31.12.2007 from the post of Post Master, Sikar Head Post Office, Sikar.

... Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through Secretary to the Government of India, Department of Posts, Ministry of Communications and Information Technology, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Postal Circle, Jaipur.
3. Director Postal Services, Rajasthan Western Region, Jodhpur.
4. Superintendent of Post Offices, Sikar Postal Division, Sikar.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

**ORDER (ORAL)**

The applicant has filed this OA thereby praying for the following reliefs:-

- "(i) That the entire record relating to the case may kindly be called for from the respondents and after perusing the same revising authority order dated 08.06.2011 (Annexure A/1), Appellate order dated 17.01.2008 (Annexure A/2) and punishment order dated 30.07.2007 (Annexure A/3) with the charge memo dated 12.01.2007. (Annexure A/4) be quashed and set aside with all consequential benefits.
- (ii) That the respondents may be further directed to refund the amount of Rs.1,11,444.45/- so recovered Rs.10,000/- from pay & allowances and

*Anil Kumar*

- Rs.1,01,444.45 from gratuity with interest @ 12% per annum from the date of recovery to till payment.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
  - (iv) That the cost of this application may be awarded."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was holding the post of Postmaster, Sikar Head Post Office in the year 2006. That in the night of 05-06.10.2006, thieves entered the post office and took away the cash amounting to Rs.3,40,256/-. The matter was reported to the local police. The iron safe related to ATR-II was found locked and when it was opened on 07.10.2006, cash of Rs.3,40,256/- was not found in the safe and it was established that the thieves have taken away the cash. Taken into consideration of this incident, the applicant was served a charge memo vide Memo dated 12.01.2007 under Rule 16 of the CCS (CCA) Rules, 1965 (Annexure A/4).

3. It was alleged in the charge memo that the applicant while working as Postmaster from 05.10.2006 to 06.10.2006 failed to apply double lock in iron safe of ATR-II on 05.10.2006 containing Rs.3,40,256/-. It was further alleged that an amount of Rs.41,300/- was not put in the safe and kept in steel almirah and these both amounts was stolen by the thieves. It was further alleged that the applicant permitted Chowkidar to

*Anil Kumar*

sleep in the post office main hall while on duty during night. That due to these negligences of the applicant, the department sustained loss to the tune of Rs.3,82,700.45 due to theft.

4. The applicant submitted his effective representation against the charge memo dated 15.05.2007 but the respondent no. 3 while considering the facts and circumstances and reply to the charge memo and without allowing oral inquiry imposed penalty of Rs.1,11,444.45 to be recovered in 5 installments of Rs.2000/- and remaining amount of Rs.1,01,444.45 from the gratuity of the applicant vide Memo dated 30.07.2007 inspite of the fact that no amount can be recovered from the gratuity (Annexure A/3).

5. The applicant preferred an appeal against the punishment of recovery before respondent no. 3. The respondent no. 3 rejected the appeal vide order dated 17.01.2008 (Annexure A/2) and upheld the punishment awarded by respondent no. 4.

6. The applicant preferred Revision Petition on 26.06.2008 before respondent no. 2. The respondent no. 2 after a gap of two years rejected the Revision Petition vide order dated 08.06.20011 (Annexure A/1).

7. The learned counsel for the applicant submitted that the applicant while working as Postmaster performed his duties as per the norms of the department. He further submitted that

*Anil Kumar*

the recovery by way of punishment cannot be made from the gratuity amount. CCS (Pension) 1972 no-where prescribes any recovery by way of punishment on account of pecuniary loss and prescribes recovery of outstanding govt. dues.

8 . He further submitted that Shri Prahalad Rai (ATR-I), Santosh Kumar Chauhan (ATR-II) and Shri Sanwar Mal Danodia (Chowkidar) were also imposed punishment of recovery of Rs.30,000/-, Rs.1,21,256/- and Rs.1,20,000/- and these officials approached this Tribunal in OA No. 45/2009, 405/2008 and 406/2008 and this Tribunal after considering the matter reduced penalty by 50% vide orders dated 03.11.2009 and 26.11.2009 and thereafter the respondents approached Hon'ble High Court Bench, Jaipur and after dismissal of Writ Petition, order passed by this Hon'ble Tribunal have been implemented whereas the applicant being Incharge is no-where responsible and thus the punishment of recovery no-where was justified.

9. The learned counsel for the applicant argued that since the applicant is not at all responsible for the theft, therefore, the charge memo dated 12.01.2007 (Annexure A/4), punishment order dated 30.07.2007 (Annexure A/3), Appellate order dated 17.01.2008 (Annexure A/2) and the Revising Authority order dated 08.06.2011 (Annexure A/1) be quashed and set aside and the respondents be directed to refund the

*Anil Kumar*

amount of Rs.1,11,444.45 alongwith interest from the date of recovery till the date of payment.

10. On the other hand, the learned counsel for the respondents submitted that at the relevant time that is during the night of 05-06.10.2006, when the applicant was working as Postmaster, Sikar, a occurrence of theft of Rs.3,82,700.45 was happened. The Treasury Branch was in direct supervision of Postmaster himself. He was also the joint custodian of cash and valuables. The iron cage is installed in main hall of the building. Two iron safes have been provided that is one for the treasurer and the other one for the ATR-II.

11. Shri Santosh Kumar, ATR-II has stated in his statement dated 06.10.2006 that the cash were kept in iron safe and he kept his keys in his drawer of the table which was locked by him. The postmaster failed to make double lock by his key on this safe. The applicant, Shri P.P. Swami, Postmaster, has stated in his statement dated 06.10.2006 that he was not having knowledge about double locking of ATR-II safe. This statement of the postmaster proves that the postmaster had not applied double key otherwise the safe could not have been opened or closed with single key of ATR-II. Thus, negligence on the part of the applicant being Postmaster for not applying of double lock to the ATR-II and not proper checking up of Treasury, facilitated the thieves to take away cash to the tune of Rs.3,82,700.45 for which he was fully responsible.

*Anil Kumar*

12. He further submitted that the disciplinary proceedings were initiated against the applicant under Rule 16 of CCS (CCA) Rules, 1965. The Disciplinary Authority imposed the penalty of Rs.1,11,444.45 from the applicant vide order dated 30.07.2007 (Annexure A/3). He followed the due procedure before awarding the punishment. The Appellate Authority after considering all the facts & circumstances of the case have rejected the appeal of the applicant vide order dated 17.01.2008 (Annexure A/2). The Revising Authority after considering the revision of the applicant rejected it vide order dated 07/08.06.2011 (Annexure A/1).

13. He further submitted that the following four officials were held responsible for this loss and amount shown against their names was ordered to be recovered from them as a measure of penalty-

1. Shri P.P. Swami (applicant), the then PM Sikar HO Rs. 1,11,444.45
2. Shri Santosh Kumar Chouhan, the then ATR-II, Sikar HO Rs.1,21,256/-
3. Shri Prahalad Rai Sharma, the then ATR-I, Sikar HO Rs.30,000/-
4. Shri Sanwar Mal Danodia, the then Chowkidar, Sikar HO Rs.1,20,000/-.

14. The officials listed at sr. no. 2 to 4 above after rejection of their appeals preferred against the orders of recovery approached this Hon'ble CAT by way of filing OA nos.

*Anil Kumar*

405/2008, 45/2009 and 406/2008 respectively. Hon'ble Tribunal, while allowing the OAs, partly reduced the amount of recovery to half of the ordered amount in all the cases mainly on the ground that these officials were not fully but partly responsible for the loss sustained to the department. In view of order of Hon'ble CAT for reducing the penalty of recovery to half of the ordered amount in the above cases, the entire responsibility for that part of loss i.e. 1,35,000/- that rendered unrecovered on account of reduction of the penalty by Hon'ble CAT was obviously going to be diverted to the applicant of present OA because none else except him, of those four officials who were held responsible in the case, was left behind who could be held responsible for the amount of penalty reduced by Hon'ble CAT. Thus even the reduced amount of recovery in the above case i.e. Rs.1,35,000/- was actually required to be recovered from the applicant besides the amount already recovered from him but as he had already retired by the time the decision in the above cases were received, this could not be done. There can, therefore, be no justification for interference in the impugned order of penalty of recovery when the applicant is coming out to be responsible even for a further amount of loss that is as stated above been rendered unrecovered due to earlier orders of Hon'ble CAT passed in the cases of other accused of the theft case in question besides the amount already recovered from him. Thus the OA has no merit and it should be dismissed with costs.

*Anil Kumar*



15. Heard the learned counsel for the parties, perused the documents on record and the case law, referred to by the learned counsel for the applicant. It is not disputed that an incident took place in the post office in the night of 05-06.10.2006 while the applicant was working as Postmaster in that post office and due to theft, the government suffered a loss to the tune of Rs.3,82,745/-. Therefore, the respondents issued a charge memo to the applicant as well to three other officials who were held responsible for this theft. The applicant preferred his representation against the charge memo. The Disciplinary Authority after considering the representation of the applicant and other facts & circumstances of the case, imposed the penalty of recovery of Rs.1,11,444.45 from the applicant vide order dated 30.07.2007 (Annexure A/3). I have carefully gone through this order of the Disciplinary Authority. I find that it is a reasoned & speaking order. According to Rule 16 of CCS (CCA) Rules, which provides for the procedure for minor penalty, it is not necessary to hold an oral inquiry. Therefore, if no oral inquiry was held in the present case, there is no violation of Rule 16 of CCS (CCA) Rule, 1965 for conducting the inquiry.

16. Being aggrieved by the penalty order, the applicant filed an appeal before the Appellate Authority. The Appellate Authority after considering the appeal of the applicant passed a reasoned and speaking order dated 17.01.2008 and rejected the appeal of the applicant.

*Anil Kumar*

17. The applicant being aggrieved by the order of the Appellate Authority filed a Revision Petition before the competent authority. The Revising Authority vide its order dated 07/08.06.2011 considered the revision in detailed and passed a reasoned and speaking order (Annexure A/1). From the perusal of these orders, I do not find any infirmity/illegality/irregularity in the orders passed by the Disciplinary Authority/Appellate Authority/Revising Authority. I have also carefully gone through the charge memo issued to the applicant vide order dated 12.01.2007 (Annexure A/4) and I do not find any infirmity/illegality/irregularity in the charge memo.

18. The learned counsel for the applicant argued that recovery cannot be made from gratuity from the applicant. Rule 72 & 73 of CCS (Pension) Rules, 1972 do not provide for the recovery from the gratuity on account of punishment. The learned counsel for the respondents on the other hand argued that there is no bar either in Rule 72 or Rule 73 for the recovery of this penalty amount from the gratuity. I have carefully gone through Rule 72 & Rule 73 of CCS (Pension) Rules, 1972. I am inclined to agree with the averments made by the learned counsel for the respondents. There is no bar for recovering the amount of penalty from the gratuity particularly when the penalty has been imposed prior to the retirement of the applicant. Thus I do not find any infirmity in the order of

*Anil Kumar*

the penalty order stating that the remaining amount of Rs.1,01,444.45 be recovered from the DCRG payable at the time of retirement.


19. It is not disputed that theft took place in the post office in the night of 05-06.10.2006 when the applicant was holding the post of Postmaster of that post office. Therefore, it cannot be said that he was not responsible for the theft in the post office. In fact it is admitted that three other officials namely; S/Shri Sanwar Mal Danodia (Chowkidar), Prahalad Rai Sharma (ATR-I) and Santosh Kumar Chauhan (ATR-II) were also issued charge memos and a penalty of Rs.1,20,000/-, Rs.30,000/- and Rs.1,21,256/- was imposed on them. However, their penalty was reduced by 50% of the penalty by this Tribunal in OA No. 406/2008, OA No. 45/2009 and OA No. 405/2008. The respondents in their written reply have admitted that these orders of this Tribunal have been implemented by the respondent department.

20. The learned counsel for the respondents submitted that the amount so reduced by this Tribunal should have been recovered from the applicant but since he has retired, therefore, it is not possible to recover this amount. Being the Incharge of the post-office, he was fully responsible for the protection of cash deposited with the post office. Therefore, his penalty should not be reduced. However, I am not inclined to agree with the averment by the learned counsel for the

*Arul Kumar*

respondents. Four officials were issued the charge memo for the same theft because they were collectively responsible for the negligence. In the case of three officials namely; S/Shri Sanwar Mal Danodia (Chowkidar), Prahalad Rai Sharma (ATR-I) and Santosh Kumar Chauhan (ATR-II), the penalty has been reduced by this Tribunal to 50%. These orders have been implemented by the respondents. The applicant being similarly situated person cannot be treated differently. Therefore, the penalty of recovery on the applicant of the amount of Rs.1,11,444.45 is reduced to 50% i.e. Rs.55,722.22. If the total amount has been recovered from the applicant then the balance amount be refunded to the applicant within a period of three months from the date of receipt of a copy of this order.

21. Thus the OA is partly allowed and is disposed of with no order as to costs.

  
(Anil Kumar)  
Member (A)

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