

**CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR, CIRCUIT BENCH AT GWALIOR**

ORIGINAL APPLICATIONS No.344/2003, 353/03,354/03,
355/03 & 357/03

Bilaspur, this the 22nd day of November, 2004.

Hon'ble Mr.M.P.Singh , Vice Chairman
Hon'ble Mr.A.S.Sanghvi, Member (J)

OA.344/2003

Smt.Kalpana Shinde,
W/o. Shri Vijay Shinde,
R/o.Madhoganij, Kamathipura,
Narayanrao Shinde's House,
Gwalior-474 001.
Working as Postal Assistant
Lashkar H.O., Gwalior-474 001.

OA.353/2003

Sarnam Singh Sikarwar,
S/o.Shri Kok Singh Sikarwar,
Postal Assistant,
Lashkar City P.O.,
R/o.Shivaji Nagar, Amkho,
Lashkar, Gwalior-474009.

OA.354/003

Smt.Nisha Purandare,
W/o.Shri Dinkar Purandare,
Postal Assistant,
Lashkar H.O.,
R/o. Dholi Bua Ka Math,

Khasgi Bazar, Lashkar,
Gwalior.

OA.355/03

R.K.S.Chauhan,
Shri S.S.Chauhan,
Postal Assistant,
R.B.Colony, Sub-Post Office,
Lashkar, Gwalior.

OA.357/2003

Bhupendra Singh Kushwah,
S/o.Shri G.C.Kushwah,
Postal Assistant,
Birla Nagar Sub-Post Office,
Gwalior, R/o D-1/58 Sector 4,
Vinay Nagar, Gwalior-12.

: Applicants

Advocate: Mr. M.Rao

Versus

1. Union of India through:
Secretary,
Ministry of Communication,
New Delhi.
2. Post Master General,
Indore Region,
Indore.
3. Director,
Postal Services,
O/o.P.M.G., Indore Region,

Indore.

4. Superintendent of Post Offices,
Gwalior Division, Usha Colony,
Gwalior -474 009. : Respondents.

Advocate: Mr.P.N.Kelkar

ORDER

Hon'ble Mr.A.S.Sanghvi : Member (J)

This bunch of five OAs. raise common question of fact and law and concern with the disciplinary proceedings taken out against the applicants in a series of transaction. They are therefore, heard together and are being disposed of by this common judgment.

2. The applicants were working as Sub Office Recurring Deposit Ledger Assistant shortly known as RDSOLC in Lashkar Head Office between different periods. The applicant Smt. Kalpana Shinde of OA.344/03 was on duty between 10.6.99 to 28.7.99 as RDSOLC, the applicant Sarnam Singh Sikarwar of OA.353/03 was on duty from 13.5.98 to 13.7.99, the applicant Smt.Nisha Purandare of OA.354/03 was on duty from 4.6.99 to 7.6.99 , the applicant R.K.S.Chauhan of OA.355/03 was on duty for the period from 12.4.99 to 30.4.99 and the applicant Shri Bhupendra Singh Kushwah of OA.357/03 was on duty between the period from 23.4.98 to

19.5.98, 25.5.98 to 31.5.98 and 1.10.98 30.11.98. It was alleged that during the period between 13.5.98 to 13.7.99 the staff of Sub-Office Shabd Pratap Ashram, Gwalior had misappropriated amount of Rs.3,43,596 and the applicants had failed to detect this misappropriation and had failed to prevent any further misappropriation during their service tenure. All the five applicants were served with charge sheet under Rule 16 of CCS (CCA) Rules, 1965 on different dates levelling the imputations inter alia that they had failed to detect the on going fraud by the staff of Shabd Pratap Ashram, Gwalior Sub-Post Office while carrying out the prescribed check of L.Ts., Pay-in- slips, vouchers and posting the ledger entries. It was alleged that the applicants failed to discharge their duties which caused pecuniary loss to the department and that if the applicants had performed their duties vigilantly the fraud committed by the staff of the Shabd Pratap Ashram Sub-Post Office would have been detected earlier and the Govt. would have been saved from pecuniary loss. They had therefore, not acted as per the provisions of Rule 9 (I), 31(2), (iii), 48 (ii), 92(2) and 120 (6) of Post Office, Savings Bank Manual Volume-I and also Post Master General's letter No.SBCO/Comp./97-98 dated 1.4.97 and thereby violated rules 3 (i) (ii) and (iii) of CCS (Conduct) Rules, 1964. The applicant Smt. Kalpana Shinde of OA.344/03 was

served with a charge sheet on dated 15.2.2002 and after her submitting defence to the charges levelled against her, the Disciplinary Authority vide order dated 1.4.2002 imposed the penalty of recovery of Rs.4498 + Rs.1309 by way of 9% interest total in all Rs.5807. The appeal preferred against the Disciplinary Authority's order has come to be rejected .

3. The applicant Shri Sarnam Singh Sikarwar of OA.353/2003 was served with a charge sheet on dated 24.9.2001 and after his submission of his defence, the Disciplinary Authority vide his order dated 26.11.2001 imposed with the punishment of recovery of Rs.19198 + Rs.5587 by way of penal interest total in all Rs.24785. The appeal preferred against the order of the Disciplinary Authority has come to be rejected. Similarly the applicant Nisha Purandare of OA.354/2003 was served with a charge sheet on dated 24.9.2001 and after obtaining her defence on the charge sheet levelled against her, the Disciplinary Authority vide order dated 26.11.2001 imposed the recovery of Rs.5297 + interest of Rs.1542 total in all Rs.6839. The appeal preferred against the order of the Disciplinary Authority has come to be rejected . Similarly, the applicant Shri R.K.S.Chauhan of OA.355/2003 was served with a charge sheet on dated 13.12.2001 and has been imposed with the

punishment of recovery of Rs.8948 + penal interest of Rs.2604 total in all Rs.11552 vide order dated 19.3.2002. The appeal preferred against this order has also come to be rejected. The applicant Shri Bhupendra Singh Kushwah of OA.357/2003 was served with a charge sheet on dated 13.12.2001 and after his submission of defence, the Disciplinary Authority vide his order dated 19.3.2002 imposed the penalty of recovery of Rs.24048 + penal interest of Rs.6997 total in all Rs.31045. The appeal preferred against this order has also come to be rejected. All the five applicants have thereupon approached this Tribunal with separate OAs. challenging the orders of Disciplinary Authority as well as the Appellate Authority imposing the penalty of recovery on them. The main ground on which the orders are challenged are that they could not have been made liable for the fraud perpetuated by somebody else and that if the recovery was to be made for the loss sustained by the Govt. the same ought to have been made from the real culprit and not from them. They have also contended that they had been doing the job of posting of pending LTs. and pay-in-slip and not the current posting and consolidation of current vouchers of Sub-office. Hence, they could not have been held to be negligent in not detecting the fraud in time. The evidence on record clearly reveal that the posting from LTs. which was done by them pertained to the

dates on which no fraud was alleged to have been committed. This was categorically pointed out in their defence but the Disciplinary Authority only with a view to recover the amount from somebody had without application of mind held that the charges against them were proved and imposed the penalty of recovery on them. According to them, the finding of the Disciplinary Authority is arbitrary, illegal and deserves to be quashed and set aside.

4. The respondents have resisted all the OAs and in their identical replies contended inter alia that on the basis of the material on record the Disciplinary Authority as well as the Appellate Authority have concurrently found and held that the charges levelled against the applicants were proved. According to them the punishment imposed by the Disciplinary Authority was also proportionate to the guilty of the applicants which has facilitated defalcation of nearly of Rs.3 lakhs of the Govt. money. They have also contended that the applicants have not made out any case for interference in the findings of the Disciplinary Authority and therefore, the Tribunal cannot interfere with the finding and quash and set aside the orders passed. They have not disputed that the defalcation of Govt. money was committed by the staff of Sub Office of the Shabda Pratap Ashram, Gwalior and have stated that the actions were

taken against one Shri Ratnakar Deshmukh, SPM of the Sub-Post Office. He has been dismissed from service on his being found guilty of the charges levelled against him. No action however could be taken against one Shri R.L.Nagar, Postal Assistant as he had been reported dead. They have also contended that the facts itself go to show that the applicants had not done their job as per the rules and guidelines and had failed to detect fraud in time. If the fraud had been detected right in the beginning, then the defalcation could have been arrested and stopped there and then and fraud would not have been permitted to continue thereafter. They have maintained that the penalty imposed on the applicants is quite proportionate to the charges levelled against them and there is no reason to interfere with the same. They have prayed for the dismissal of all the OAs.

5. We have heard the learned counsel of both the parties at length and duly considered the rival contentions.

6. It is quite obvious from the pleadings and arguments of both the parties that none of the applicants was charged with misappropriating any amount nor it was alleged that his integrity was doubtful. It is also an undisputed fact that all of them were served with a minor penalty charge-sheet under

Rule 16 of the CCS (CCA) Rules, implying thereby that no question of serious nature requiring a detailed inquiry was involved. It is also to be noted that there is absolutely no allegations against any of the applicants that he was a co-conspirator in the misappropriation of the amount of Rs.3,43,596 perpetrated by the staff of the Shabda Pratap Ashram, Gwalior. The only ground on which the recovery is sought to be made against the applicants is that they had not observed certain procedure prescribed by the rules and being negligent in not observing this procedure had facilitated the Sub-Postmaster and Others in misappropriating the said amount. It is also alleged that their timely action in detecting the fraud would have perhaps prevented further fraud.

7. The learned counsel for the respondents has submitted that had the applicants been vigilant in their duties and responsibilities, the staff of the Shabda Pratap Ashram, Gwalior Sub-Office would not have been able to misappropriate the amount and therefore, under the Rule 3 (i), (ii) and (iii) of CCS (Conduct) Rules and as per 84 (b) of the Postal Manual, they being negligent in performing their duties have been awarded the punishment of recovery from their salary.

9. Before advertng to the rival contentions, we may point out that the charges levelled against the applicants in their respective charge-sheets pertain only to the violation of the rules 9 (1) , 31 (2) (iii), 48 (ii), 92 (2) and 120 (6) of Post Office Savings Bank Manual Volume I and Post Master General's letter dated 1.4.97 and thereby violating Rule 3 (i), (ii) and (iii) of CCS (Conduct) Rules, 1964. The question therefore is whether violating a non-statutory rule by an employee can invite penalty of recovery under Rule 11 of the CCS (CCA) Rules, 1965. The relevant rule i.e. 11 (iii) of CCS (CCA) Rule lays down as under:-

“ The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely;

- (i) Censure;
- (ii) Withholding of his promotion;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders.”

9. In the instant case, the charges levelled against the applicants are that of their negligence in failing to detect the fraud perpetuated by other staff members of other post office in time. They are not charged that by any act of omission or commission or negligence or breach of orders by them, they had caused any pecuniary loss to the Govt. Another significant aspect is that they are not charged with having any intention to fraud the Govt. of the amount misappropriated by some

third parties. The provisions of Rule 11 (iii) of the CCS (CCA) Rules are attracted only when any pecuniary loss caused to the Government by negligence or breach of orders is attributed directly to the employee concerned. In the instant case the applicants obviously were not directly responsible for the misappropriation of the amount and therefore, the recovery if any was to be made for the loss of the amount, ought to have been made from the person directly responsible for the misappropriation. It is also pertinent to note that no detailed inquiry has been made by the Disciplinary Authority in the whole case and merely on the surmise that the fraud could have been prevented, if the applicants were not negligent in carrying out their duties he has held them guilty of charges levelled against them. He has not elaborated how the fraud could have been detected earlier and has not even cared to hold the detailed inquiry into the circumstances of the fraud perpetrated by the staff of Shabda Pratap Ashram, Gwalior Sub-Office. The applicants could have been held guilty of the charges levelled against them if due to any omission or commission on their part, the perpetuation of fraud by some body else would have been possible or they themselves had associated in perpetuating the fraud. The contention of the applicants suggests that they had been employed or given

work in different periods to post the entries, etc, of the back dates. If they were required to post the entries of the back dates which were pending, it would mean that they could not have prevented the fraud as the fraud was already perpetuated when they started their work of posting the entries. No detailed inquiry has been held by the Disciplinary Authority in this question of posting of the entries by the relevant clerk.

10. In somewhat similar case of failing to detect the fraud by the employee of a Bank the High Court of Gujarat has observed that this cannot be considered to be a negligence inviting punishment or the recovery of the amount. In the case of **J.M. Trivedi vs. Reserve Bank of India reported in 2004 (2) GLH 514** referring to the Reserve Bank of India's circular and the intention of the applicant in not perpetuating the fraud, the High Court has observed as under:-

“ When the intention of the appellant was considered by the Board and was not doubted by the Board, then the question of negligence does not arise. No specific period has been specified for reporting to the controlling authority in any circular. Circular dated August 24, 1981 is not applicable to the case of the appellant. It was relating to some fraud/suspected fraud which is required to be reported to the Reserve Bank of India. Therefore, non-reporting by the appellant has been considered as a negligence on the part of the appellant. If there is any procedural irregularity, same cannot be termed as a 'negligence' if such

negligence is not having any connection with intention. In this case, considering his intention, the Board gave benefit of doubt. Therefore, negligence is not connected with intention."

11. We find that in the case of **S.K.Chaudhary vs. Union of India and Ors. in OA.504/1996** decided on dated 26.3.2001, the Ahmedabad Bench of CAT while dealing with similar case of fraud having been perpetuated by somebody else and the applicant therein being held responsible for negligence in not detecting the same has observed as under:-

"The reasoning of the disciplinary authority proceeds on the ground that if the applicant had carried out these duties, no fraud would have been committed but this is a mere surmise, as even after carrying out these duties the Sub-Post Master being in possession of the cash was in a position to misappropriate the amount. Further more such negligence even if there is one, cannot be a cause for punishing the applicant with the recovery of loss sustained by the department. The applicant obviously was not directly responsible for the misappropriation of this amount and therefore, the recovery if any was to be made for the loss of the amount ought to have been made from the person directly responsible for the misappropriation. Merely because the department found that it was not possible to recover the amount from the main culprit some other scape goat cannot be found out and cannot be levied with the punishment of recovery of the loss. "

12. Again in the case of **C.N.Harihar Nandanan vs. Presidency Post Master, Madras SPO reported in 1988 (8) ATC 673** the Madras Bench of this Tribunal in a similar situation observed that the employee was sought to be made responsible for the pecuniary loss caused to the Govt. on the ground that he was negligent in performing his duty. He was

also tried to be made technically responsible due to the non-compliance of the instructions by not getting every sixth transaction entry properly verified. Quashing the recovery order, the Madras Bench has observed that the applicant was not directly responsible for causing any pecuniary loss to the Govt.

13. Again in the case of **J.M.Makwana vs. Union of India & Ors. in OA.750/98** decided on 4.9.2001 by the Ahmedabad Bench of this Tribunal same question of holding somebody else liable for the fraud perpetuated by somebody else was involved. Quashing and setting aside the order of the recovery passed by the Disciplinary Authority therein, the Tribunal has observed as under:-

"We have no hesitation in concluding that the whole order of the disciplinary authority as well as of the appellate authority is based on misconception of the term negligence and in utter disregard to the provisions of Rule 11 (3) of the CCS (CCA) Rules. It appears that the disciplinary authority and the appellate authority believe that whenever some fraud has taken place in the department and there is loss of revenue, somebody should be held guilty for the loss caused to the department. It is not kept in mind by the disciplinary authority as well as the appellate authority that the rule providing for imposing penalty i.e. Rule 11 (3) of CCS (CCA) Rules clearly lays down that the recovery can be imposed from the pay of the Govt. servant if the pecuniary loss is caused by him to the Govt. by the negligence or the breach of the orders. We fail to understand how the penalty of recovery of Rs.9000/- could have been imposed by the disciplinary authority on the applicant and confirmed by the appellate authority, when the charges levelled against the applicant is not that, he by his act of negligence caused

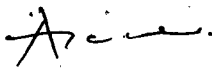
any pecuniary loss to the Govt. The charge levelled against the applicant was that by his negligence in not posting the entries of passbooks in the error book, the fraud was not detected earlier."

The Tribunal had further gone to observe that even if for a moment, we believe that applicant was negligent in not posting the entries of the passbooks in the error book, then also this negligence was not such that it would be a cause for punishing the applicant with recovery of loss sustained by the department as well as withholding of one increment. The applicant obviously is not directly responsible for the misappropriation of this amount and therefore, the recovery if any was to be made for the loss of the amount ought to have been made from the person directly responsible for the misappropriation.

14. We are in complete agreement with the ratio laid down by the above judgments. The order passed by the Disciplinary Authority and upheld by the Appellate Authority imposing punishment of recovery of the applicants is not in accordance with the provisions of Rule 11 (3) of CCS (CCA) and therefore cannot be sustained. The order can easily be said to be illegal and as such, deserves to be quashed and set aside in all the cases.

15. For the forgoing reasons and in the facts and situation of the case, we allow all the five OAs and quash and set aside the impugned orders of recovery issued by the Disciplinary Authority in each OA and confirmed by the Appellate Authority in each OA and direct the respondents to refund the amount to the respective applicants, if any amount is recovered from the salary by way of the recovery in implementing the punishment imposed on them within three months from the date of receipt of a copy of this order failing which the same will have to be refunded with interest at the rate of 9 % per annum. No order as to costs.

16. Copy of this judgment be placed in each OA.


(A.S. Sanghvi)
Member (J)


(M.P. Singh)
Vice Chairman

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