

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 16th day November, 2010

ORIGINAL APPLICATION No.307/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

S.S.Goyal
s/o Shri R.C.Goyal,
r/o Goyal Building,
Kumher Gate,
Bharatpur, presently working as
Incharge, SBC Head Post Office,
Dholpur.

.. Applicant

(By Advocate: Shri PN.Jatti)

Versus

1. Union of India
through the Secretary to the Govt. of India,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi.
2. The Chief Postmaster General,
Rajasthan Circle,
Jaipur.
3. The Superintendent of Post Offices,
Bharatpur Dn.
Bharatpur.
4. The Superintendent Post Offices,
Dholpur Division,
Dholpur.

.. Respondents

(By Advocate: Shri Gaurav Jain)

ORDER (ORAL)

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

"8.1 That by a suitable writ/order or the direction the impugned order dated 18.7.2006 vide Annexure A/1, order dated 25.1.2006 vide Annexure A/2 be quashed and set aside and further the respondents be directed to refund the money which has been deducted from the pay of the applicant with effect from 1.2.2006 with a justified interest on the amount which has been deducted arbitrarily.

8.2 Any other relief which the Hon'ble bench deems fit."

2. Briefly stated, facts of the case are that the applicant while working as Incharge of Saving Bank Control Organisation (SBCO), Bharatpur HO for the period 20.1.1999 to 30.5.2003 was issued a minor penalty chargesheet whereby allegation against the applicant was regarding lack of supervision/checking which resulted into withdrawal of a total sum of Rs. 50,000 by two subordinates. As can be seen from the chargesheet, the allegation against the applicant was that he failed to compare the balance as shown on application for withdrawal with that in the ledger card of the Bhusawar Town SB account as required vide rule II(e)(i) of Postal Manual of SB control pairing and ICO.

Initially, the applicant asked for copy of certain documents in order to file reply to the charges leveled against him. The respondents made available photocopies of certain documents

and thereafter the applicant preferred his representation dated 16.11.2005. The Disciplinary Authority after taking into consideration representation of the applicant, awarded punishment of recovery of a sum of Rs. 16500/- in 17 easy instalments and also reduction to one stage for a period of 6 months without cumulative effect. The applicant filed appeal against the order passed the Disciplinary Authority. The Appellate Authority vide impugned order dated 18.7.2006 (Ann.A/1) however, maintained the penalty of recovery of Rs. 16500/- but set aside that part of penalty whereby pay of the applicant was reduced by one stage for a period of six months without cumulative effect. It is based on these facts, the applicant has filed this OA.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that the applicant in his supervisory capacity was responsible to maintain- (a) register of vouchers test checked as required vide rule 15(e) of Postal Manual of SB Control Pairing and ICO, (b) keep the selection register 5 upto date for noting the checks in connection with PA's as required vide Rule 15(d) of Postal Manual of SB Control Pairing and ICO and (c) review register as required vide Rule 15(f) of SB Control Pairing and ICO. It is further stated that the applicant has also failed to maintain verification check sheets in respect of SB accounts up to date vide Rule 14(iv) of Postal Manual of SB Control Pairing and ICO. The respondents have also annexed copies of relevant rules as Ann.R/2 and R/5. The respondents have further stated that in case the applicant has performed his duty

effectively and maintain the aforesaid register as prescribed under the rules, the fraudulent official could not succeed to defraud the amount from the saving accounts. It is further stated that in fact there was a loss to the Govt. to the tune of Rs. 50,000/- and the applicant is responsible for 1/3rd loss viz. Rs. 16,500/- for which he was charge sheeted vide memo dated 2.8.2005. It is stated that full opportunity to the applicant was given to defend his case as required under the Rules. Thus, according to the respondents, the impugned order is not required to be interfered with.

4. We have heard the learned counsel for the parties and gone through the reasoning given by the Disciplinary as well as Appellate authority while imposing the aforesaid punishment. We have also perused the extracts of the relevant rules which have been annexed with the reply as Ann.R/2 to R/5. We are of the view that the charges against the applicant stand fully proved and it cannot be said that the applicant being Incharge of SBCO, Bharatpur HO for the relevant period has exercised the supervisory control effectively. The applicant was duty bound to compare the balances shown on the applications of alleged withdrawals with those available in ledger cards and he miserably failed to comply with this mandatory part of his duty. Simply, because he has reported the matter to the SPOs, Bharatpur and Sr. Accounts Officer SBCO, Jaipur after a lapse of time, cannot absolve the applicant from the charges levelled against him.

5. When the matter was listed on 18.10.2010, this Tribunal passed the following order:-

"Learned counsel for the applicant submits that the loss which was sustained by the Department has been recovered from a person, Sudhi Ram Meena, the principal offender of the fraud. As such, it was not necessary for the respondents to make recovery of the aforesaid amount from the applicant as no pecuniary loss was caused to the Department. It is not the case set up by the applicant in the OA.

Learned counsel for the applicant prays for some more time to file an affidavit qua this aspect."

Pursuant to the direction given by this Tribunal, the applicant has filed affidavit which is taken on record. In para-5 of the affidavit, the applicant has made the following observations:-

"5. That the humble applicant prays that the fraudulent withdrawal has been admitted by mr. Sudhi Ram Meena and Mr. Sudhi Ram Meena has despotied the money which was withdrawn by him. The money of fraudulent withdrawal which was deposited by mr. Sudhi Ram in the post office, some receipt are produced before the Hon'ble bench. It is also prayed that the money of loss has also been recovered by the department by the other ways. The money which has been desposited in post office that is

- A. rs. 20,000/- on 2/6/203 by receipt no.5
- B. Rs. 30,000 on by receipt no.90
- C. Rs. 79,974 by receipt no 3 on 28/5/2003.

Photostate copy of the receipt is annexed as annexure A/6."

6. It may be stated here that the charge against the applicant was to the effect that while working as Incharge, SBCO Bharatpur, he failed to compare the balance of the SB accounts shown on the application form of withdrawal with the balance of ledger card in which Shri Sudhi Ram Meena, the then Sub Post Master Bhusawar Town PO under Bharatpur HO in Bharatpur Postal Division has defraud a sum of Rs. 50,000/-. As already noticed above, the applicant in the affidavit has stated that a sum of Rs. 20,000/- and Rs. 30,000/- has been deposited under receipt no. 5 and 90. From the stand taken by the respondents in the reply as well as from the

impugned order, it is evident that the applicant was held contributory liable for the withdrawal of the fraudulent amount of Rs. 50,000/- and penalty of recovery of Rs. 16500/- was imposed as being 1/3 share of the applicant. Thus, the penalty was imposed on the applicant as there was a loss to the Govt. exchequer and the applicant was held contributory liable to the extent of 1/3 share of the aforesaid amount which came to Rs. 16500. Thus, in view of the findings recorded by the Appellate Authority vide impugned order Ann.A/1, we are not inclined to interfere in the matter. However, keeping in view the new plea taken by the applicant at the time of arguments, which appears to have neither been raised before the Disciplinary Authority nor before the Appellate Authority, to the effect that the pecuniary loss caused to the department has already been recovered from Shri Sudhi Ram Meena and no pecuniary loss has been caused to the department, we are of the view that it is a matter which is required to be looked into by the appropriate authority.

7. Accordingly, the matter is remitted back to the Appellate Authority to consider this aspect of the matter and pass appropriate order, in case loss caused to the department on account of fraudulent withdrawal of sum of Rs. 50,000/- has been made good to the state exchequer and the Govt. has not suffered any pecuniary loss on account of such withdrawal and if so consider waiving recovery of Rs. 16500/- from the applicant as we are of the view that the Govt. being a welfare State should not recover the amount in excess than the loss caused to the State exchequer as

principle of undue enrichment is not applicable in respect of the Govt. Even otherwise also, as per provisions contained in Rule 11(iii) of the CCS (CCA) Rules, 1965, penalty of recovery from pay can be effected where pecuniary loss is cause to the Govt. by negligence or breach of order and not otherwise. Such an exercise shall be undertaken by the Appellate Authority within a period of 3 months from the date of receipt of a copy of this order and the decision so taken by the appellate authority shall be conveyed to the applicant.

8. Therefore, the Chief Post Master General, Rajasthan Circle, Jaipur is directed to pass appropriate order in the light of the observations made above. The OA shall stand disposed of accordingly with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

M.L.Chauhan
(M.L.CHAUHAN)
Judl. Member

R/