IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 2nd day of May, 2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

OA No.464/2007

R.L.Jangid
s/o Shri Kanhaiyalal Jangid,
r/o P.No.82, Kumawat Colony,
Near Water Tank, Shastri Nagar,
Jaipur, presently working as
Accountant O/o Superintendent Post Offices,
Jaipur (MFL) Division, Jaipur.

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

1. Union of India through
the Secretary to the Govt. of India,
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi.

2. Chief Post Master General,
Rajasthan Circle,
Jaipur.

3. Superintendent of Post Offices,
Jaipur (MFL) Dn.,
Jaipur

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

OA No.459/2007

Sabji Ram Meena,
s/o Shri Mool Chand Meena,
r/o H.No.197, Gayatri Nagar,
Dausa, presently working as
PA in the Head Post Offifce,
Dausa.

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

1. Union of India through
the Secretary to the Govt. of India,
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi.

2. Chief Post Master General,
Rajasthan Circle,
Jaipur.

3. Superintendent of Post Offices,
Jaipur (MFL) Dn.,
Jaipur

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

OA No.460/2007

J.P.Meena
s/o Laxmi Narain Meena,
r/o Village and Post Kalotra,
via Kundal, presently working as
S.P.M., Gudha, Katla,
Bandikui,
Distt. Dausa.

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

1. Union of India through
the Secretary to the Govt. of India,
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi.

2. Chief Post Master General,
Rajasthan Circle,
Jaipur.

3. Superintendent of Post Offices,
Jaipur (MFL) Dn.,
Jaipur

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER (ORAL)

All the OAs involving similar facts and question of law are being disposed of by this common order.

2. The facts of applicant, Shri R.L.Jangid in OA No.464/2007 are taken as leading case.

3. Brief facts of the case are that the applicant while working on the post of Accountant at Dausa HO during the period from September, 2003 to November, 2003, an information regarding non receipt of HDFC Bank Hazrat Ganj, Lucknow cheque No.937960 dated 29.8.2003 for Rs. 186000/- along with collection list in duplicate in response of Postmaster Dausa letter sent under R.N. No.2046 dated 31.10.2003 was received by the Postmaster Dausa

HO from Chief Postmaster Lucknow GPO vide his letter dated 5.1.2003 but the said information was not taken seriously by the applicant. A charge memo was issued to the applicant under Rule 16 of the CCS (CCA) Rules, 1965 on 23.2.2007 wherein it was alleged that the applicant not taken proper action about RL 2064 dated 31.10.2003 which was received by the Post Master, Dausa, HO from Chief Postmaster, Hazratganj Lucknow.

4. In response to memo of charge the applicant submitted his reply to the respondents and requested that the applicant has got no connection with this case as an Accountant, as there was no mistake on the part of the applicant and further submitted that as per order dated 14.7.2008 the whole responsibility has been given about the pecuniary loss to Shri Siya Ram Sharma who has opened the A/c No.745375 on the witness of Shri Suresh Sharma and with regard to the recovery is concerned, the learned counsel for the applicant submits that Shri Siya Ram Sharma is the only employee who is directly involved in the fraudulent withdrawal but he has been penalized only by recovering Rs. 10,000/- and, therefore, the respondents have violated Rule 11(3) of CCS (CCA) Rules, 1965 as held by the CAT-Jabalpur Bench vide its order dated 22.11.2004 in the case of Smt. Kalpana Shinde and ors. vs. Union of India and ors. wherein the Jabalpur Bench has observed with regard to recovery that unless the person concerned is directly responsible for misappropriation of any amount or for causing any pecuniary loss to the Government, no recovery can be made from him. Thus, as per Rule 11(3) of CCS (CCA) Rules, the recovery made is contrary to

the provisions. The learned counsel also placed reliance on the judgment of the CAT-Jaipur Bench in the case of Gokul Chand Meena vs. Union of India decided by this Bench in OA No.62/2004 on 30.5.2006 wherein the Bench observed as under:-

> "8. At this stage, it will be useful to quote decision of the Jabalpur Bench of this Tribunal in the case of Smt. Kalpana Shinde and Ors. vs. Union of India and ors., 2005 (1) ATJ 45 whereby the Tribunal has held that unless the person concerned is directly responsible for misappropriating of any amount or for causing pecuniary loss to the Government, no recovery can be made in terms of Rule 11 of CCS (CCA) Rules. The ratio as laid down by the Jabalpur Bench in the case of Smt. Kalpana (supra) is squarely applicable in the present case also as the applicant is not directly responsible for causing any pecuniary loss to the Government and, thus, he cannot be made liable for omission and commission committed by other person.

5. On the contrary, the learned counsel for the respondents submitted that the present OA is directed against the order dated 18..5.2007, 9.7.2007 and memo dated 23.2.2007 (Ann.A/1,A/2 and A/3 respectively) and the applicant after challenging the aforesaid orders prayed to direct the respondents not to recover any money from him. It is further submitted that a chargesheet under Rule 16 of CCS (CCA) Rules, 1965 was issued on the charge that the applicant while working on the post of Accountant at Dausa HO during the period from September, 2003 to November, 2003, an information regarding non receipt of HDFC Bank Hazratganj Lucknow Cheque No.93960 dated 29.8.2003 for Rs. 186000/- along with collection list in duplicate in response to Postmaster Dausa letter send under R.L. No.2046 dated 31.10.2003 was received by the Postmaster Dausa HO from Chief Postmaster Lucknow GPO vide his letter dated 5.11.2003, but the said information was not taken seriously by the

applicant. The Disciplinary Authority after taking into consideration the facts, evidence and representation of the applicant found that the applicant even on receipt of clear report about non receipt of cheque for clearance from Chief Postmaster Lucknow continued to remind the Chief Postmaster, Lucknow GPO for returning acknowledged copy of RA for Rs. 186000/- and the said report was not taken seriously. The Disciplinary Authority having found proved the charges against the applicant imposed penalty of recovery of Rs. 16000/- being his share of loss sustained by the department. Against the aforesaid order dated 18.5.2007, the applicant filed appeal before the Appellate Authority and the Appellate Authority after considering the facts and grounds of appeal rejected the same and confirmed the punishment order vide order dated 9.7.2007.

In so far as Shri Siya Ram Sharma is concerned, the respondents have stated that he was working as Postal Assistant, whereas the applicant was working as Accountant, therefore, recovery of Rs. 10,000/- has been made from him and Rs. 16,000/- has been recovered from the applicant.

So far as judgment of the Jabalpur Bench in the case of Smt.Kalpana Sindhey (supra), the respondents have stated that the same is not applicable in the present matter as is evident from para-9 of the judgment that the charges on the applicants in that matter were regarding their negligence in failing to detect the fraud perpetuated by the other staff and there was no charge that by any act of omission or commission or negligence or breach of

orders by them, they had caused any pecuniary loss to the Government.

In respect of the judgment in the case of Gokul Chand Meena (supra) the respondents have stated that the same is not applicable because in that case the official was holding the charge of Postmaster and was not responsible in any manner with the deposit of cash/dealing with cash.

The learned counsel appearing for the respondents referred to the case of UP State Sugar Corporation Limited and Ors. vs. Kamal Swaroop Tondon, reported in (2008) 2 SCC 41, where the allegation was that the corporation suffered loss of Rs. 1,00,000/- due to lack of precaution, irregularity gross negligence and carelessness by the respondent and referred to para 40 of the judgment, wherein it was held that:-

> "In our judgment, proceedings could have been taken for the recovery of financial loss suffered by the corporation due to negligence and carelessness attributable to the respondent employee. The impugned action, therefore, cannot be said to be illegal or without jurisdiction and the high court was not right in quashing the proceeding as also the orders issued by the Corporation."

6. We have carefully perused the rival submissions of the respective parties and also scanned the material available on record and the judgments referred before us. The OA is directed against the order Ann.A/1 dated 18.5.2007, the order dated 9.7.2007 (Ann.A/2) and chargememo dated 23.2.2007 (Ann.A/3). Upon perusal of the order impugned dated 18.5.2007 it reveals that the applicant the then Accountant, Dausa H.O. now Accountant

DO, Jaipur (Mfl),Dn., Jaipur was informed of the proposal to take action against him under Rule 16 of the CCS (CCA) Rules, 1965 vide memo dated 23.2.2007. The statement of imputation of misconduct/misbehaviour on which action is proposed to be taken was also sent to the applicant and it was also alleged that the applicant while working on the post of Accountant at Dausa HO during the period from September, 2003 to November, 2003 an information regarding non receipt of HDFC Bank Hazratganj Lucknow cheque No.937960 dated 29.8.03 for Rs. 186000/- along with collection list in duplicate in response to Postmaster Dausa letter sent under R.L. Number 2046 dated 31.10.03 was received by the Postmaster Dausa HO from Chief Postmaster Lucknow GPO vide his letter dated 4/5.11.2003. The said information was not taken seriously by the applicant and he continued to remind the Lucknow GPO for returning acknowledged copy of RS for Rs. 186000/- and failed to report the case to SPO, Jaipur (Mfl) Dn. Jaipur and thus the fraud was clearly committed by the applicant. Looking to the fraud committed by the applicant explanation was called upon. An explanation was submitted by the applicant wherein it was contended that the applicant is going to retire on attaining the age of superannuation on 31.7.2007, therefore, lenient view be taken against the applicant, but in the inquiry the charges leveled against the applicant are fully proved. Therefore, the respondents in exercise of powers conferred under Rule 12 of the CCS (CCA) Rules, 1965 imposed penalty of recovery of Rs. 16000/- being the share of loss sustained by the department and the said recovery of Rs.

16000/- was to be made in two installments commending from the pay of May,2007 to June,2007.

7. In OA No.460/2007 filed by Shri J.P.Meena, same charges were framed and served upon the applicant and after considering explanation submitted by the applicant, the same order of penalty of recovery of Rs. 16000/- being his share of loss sustained by the department was ordered to be recovered by way of four installments commencing from pay of May, 2007 to August, 2007 as also in OA No.No.459/2007 filed by Shri Sabji Ram Meena.

8. It is not disputed that the applicant filed appeal dated 14.6.2007 against the order dated 18.5.2007 and the Appellate Authority having considered each and every aspect observed that there is no jurisdiction of any compassion to the appellant and he has been rightly punished for his proven act of negligence which caused loss to the exchequer. Accordingly, in exercise of appellate powers conferred upon the Appellate Authority vide Rule 27 of the CCS (CCA) Rules, 1965, the appeal preferred by the applicant dated 14.6.2007 was dismissed and the order of punishment dated 18.5.2007 was upheld.

9. It is averred by the respondents in the reply that before the present OA, the applicant has earlier filed OA No.211/2007 before this Tribunal on the same issue which was disposed of as having been withdrawn on 26.9.2007 and the present OA has been filed on same facts and grounds, as such. the applicant is guilty of concealment of material fact.

10. Upon perusal of judgment of the CAT-Jabalpur Bench in the case of Smt. Kalpana Sindhe (supra) relied upon by the applicant, in the case before the Jabalpur Bench the charges leveled against the applicants were that due to their negligence in failing to detect the fraud perpetuated by other staff member of other post office in time, pecuniary loss was caused to the Govt. 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 Government. In the instant case, the applicants were held responsible for the negligence which caused loss to the exchequer and thus, the ratio decided by the Jabalpur Bench is not applicable to the present facts and circumstances of the case.

11. With regard to the judgment relied upon by the applicant in the case of Gokul Chand Meena (supra), in that case the Disciplinary Authority failed to prove that the applicant was directly responsible for misappropriation of any amount and held that unless the person concerned is directly responsible for misappropriating any amount of for causing pecuniary loss to the Government, no recovery be made in terms of CCS (CCA) Rules. Thus, the ratio decided by this Bench in the case of Gokul Chand Meena is also not applicable.

12. On the contrary, upon perusal of the judgment referred by the respondents in the case of UP State Sugar Corporation Ltd. (supra) wherein the Hon'ble Supreme Court has held that proceedings could have taken for the recovery of financial loss suffered by the Corporation due to negligence and carelessness

attributable to the respondent employee. Thus, the ratio decided by the Hon'ble Supreme Court in the case of UP State Sugar Corporation (supra) is fully applicable to the facts and circumstances of this case.

13. Having considered the submissions of respective parties, judgments relied as well as the relevant provisions of law and the impugned orders, since the Disciplinary Authority has proved the act of negligence of the applicants and it is also proved that due to negligence on the part of the applicants the loss to the tune of Rs. 186000/- is caused to the public exchequer and therefore for the loss caused, the recovery in equal shares was rightly imposed and as submitted by the respondents, the same has already been recovered from the applicants. Thus we find no force in these OAs and the same are accordingly dismissed having no merit.

14. All the OAs stand disposed of in terms of above observations with no order as to costs.

15. The Registry is directed to place a copy of the judgment in each case file.

Anil Kumar

(ANIL KUMAR)
Admv. Member

K.S. Rathore

(JUSTICE K.S.RATHORE)
Judl. Member

R/