

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 6th day of April, 2010

ORIGINAL APPLICATION No.137/2008

CORAM:

HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER

Veer Singh,
Postal Assistant (BCR);
Bharatpur Head Post Office,
Bharatpur.

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus:

1. Union of India through
The Secretary to the Govt.,
Department of Posts,
Ministry of Communication &
Information Technology,
Dak Bhawan,
New Delhi.
2. Chief Post Master General ,
Rajasthan Circle,
Jaipur.
3. Director Postal Services,
Jaipur Region,
Jaipur.
4. Superintendent of Post Offices,
Bharatpur Postal Division,
Bharatpur.

... Respondents

(By Advocate : Shri T.P.Sharma)

ORDER

PER HON'BLE MR.B.L.KHATRI

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The applicant has filed this OA against the order dated 7.12.2007 (Ann.A/1), whereby his appeal, against the order of penalty of recovery of Rs.40,000/- and reduction of pay by one stage from Rs.7100/- to Rs.6950/- w.e.f. 1.8.2007 for a period of two years without cumulative effect, had been decided by respondent No.3 by quashing the penalty of reduction of pay and upholding the penalty of recovery. Through this OA, the applicant has prayed for the following relief :

- "i) That the entire record from the respondents may kindly be called for and after perusing the same the appellate order dated 7.12.2007 with the punishment order dated 20.7.2007 (Ann.A/1 and Ann.A/2) be quashed and set aside with the further directions to the respondents to refund the amount recovered from the applicant alongwith interest at market rate till payment.
- ii) That the charge-memo dated 1.5.2007 (Ann.A/6) be quashed and set aside, the same is not justified as per facts and circumstances with all consequential benefits.
- 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 costs of this application may be awarded."

2. Brief facts of the case are that the applicant had worked as officiating APM (SB) Bharatpur HO on 23.1.2003, 24.1.2003 & 5.5.2003. One Shri Sudhi Ram Meena, SPM, Bhasawar Town, withdrawn a sum of Rs.18,000/- from SB A/c No.2700405 on 22.1.2003, Rs.17,000/- from SB A/c No.2700454 on 23.1.2003 and Rs.19,000/- from SB A/c No.2700592 on 3.5.2003 by making forged signatures of the depositors of the said accounts and took these withdrawals in government account and sent to Bharatpur HO

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with SB transactions list on the same day, which were received at Bharatpur HO on 23.1.2003, 24.1.2003 & 5.5.2003 respectively. On the said dates, the applicant was working as officiating APM (SB) Bharatpur, who did not compare and check the entries of withdrawals with reference to warrant of payment, list of transactions and the ledger cards. He also did not make his initials on the ledger cards. Due to the said negligence in supervision on the part of the applicant, said Shri Sudhi Ram Meena, SPM, Bhusawar Town, succeeded in taking the forged withdrawal of Rs.54,000/-.

3. For the aforesaid negligence on the part of the applicant, a charge-sheet dated 1.5.2007 (Ann.A/6) was issued to him. The statement of imputation of misconduct & misbehavior against the applicant reads as under :

"Shri Veer Singh while working as APM (SB) Bharatpur HO on 23.1.2003, 24.1.2003 and 5.5.2003 failed to compare and check the entries of withdrawals with reference to warrant of payment, list of transaction and ledger card made by SPM Bhusawar Town S.O. on 22.1.2003 in SB A/c No.2700405 for Rs.18000/-, on 23.1.2003 in SB A/c No.2700454 for Rs.17000/- and on 3.5.2003 in SB A/c No.2700592 for Rs.19000/- which received at Bharatpur HO on 23.1.2003, 24.1.2003 and 5.5.2003 respectively.

Due to the aforesaid negligence in supervision, Shri Sudhi Ram Meena, SPM Bhusawar Town succeeded in taking forged withdrawals of Rs.54000/- on 22.1.2003, 23.1.2003 & 3.5.2003. Thus, Shri Veer Singh violated the provisions of Rule-38 and 39 of Saving Bank Manual Vol.I.

It is, therefore, alleged that by the aforesaid act Shri Veer Singh has failed to discharge his supervisory duties and violated Rule 3(2) of the CCS (Conduct) Rules, 1964."

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4. A penalty of recovery of Rs.40000/- in 13 installments of Rs.3000/- each and the last installment of Rs.1000/- with reduction of pay by one stage from Rs.7100/- to Rs.6950/- w.e.f. 1.8.2007 for two years without cumulative effect was imposed upon the applicant.

5. Learned counsel for the applicant vehemently contended that the respondents had grossly erred in imposing the penalty upon the applicant and, inter-alia, submitted that in the year 2003 the applicant was working as Postal Assistant Bharatpur Head Post Office and in the month of January, 2003 he was directed to work as Assistant Post master as a stop-gap arrangement from 20.1.2003 to 25.1.2003. Charge-sheet was served upon him on the basis of short coming found in the fraud case.

In this case, the disciplinary authority, without waiting for representation of the applicant, had passed the penalty order (Ann.A/2) against the provisions contained in Rule-11 of the CCS (CCA) Rules, 1965, in which the penalty of recovery as well as reduction of pay have been graded separately at S.No.III & III(a) and the same cannot be awarded simultaneously. Thus, the penalty order is not at all justified and the same deserves to be quashed and set aside.

That on Receipt of the charge-sheet, the applicant made request to respondent No.4 to make available copy of certain documents for submitting an effective representation. Respondent No.3 made available photo-copy of the documents

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at S.No.1 & 2 vide letter dated 16.5.2007, against which the applicant further made request on 21.5.2007 to make available copy of the complete documents but the same were not made available to him.

The appellate authority admitted the fact that the post of Ledger Clerk was vacant and the applicant was working as Assistant Post master on officiating basis as stop-gap arrangement.

6. Learned counsel for the applicant had relied upon instruction No.12 below Rule-11 of the CCS (CCA) Rules, which reads as under :

"(12) Imposition of the penalty of recovery –

(a) General conditions – In the case of proceedings relating to recovery of pecuniary losses caused to the Government by negligence or breach of orders by a Government servant, the penalty of recovery can be imposed only when it is established that the Government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach caused the loss.

In the case of loss caused to the Government, the competent disciplinary authority should correctly assess in a realistic manner the contributory negligence on the part of an officer, and while determining any omission or lapses on the part of an officer, the bearing of such lapses on the loss considered and the extenuating circumstances in which the duties were performed by the officer, shall be given due weight.

The amount of recovery of loss ordered as a measure of penalty can be reduced by the punishing authority at any later stage if it is found that the amount of loss sustained by the Government is less than that originally calculated. If, however, the loss is subsequently found to be nil, the case has to be reviewed by the competent authority for imposing an

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appropriate penalty. That authority will not, however, be competent to impose a penalty higher than that of recovery. [Rules 106, 107 and 111 of P. & T. Manual, Vol.III].

(b) **Manner in which charge-sheet to be framed –**

..... It is, therefore, obligatory that the charge-sheet should be quite elaborate and should not only indicate clearly the nature of lapses on the part of the particular official but also indicate the modus operandi of the frauds and their particulars and how it can be alleged that but for the lapses on the part of the officials, the fraud or misappropriation could be avoided or that successful enquiries could be made to locate the stage at which the particular fraud had been committed by a particular person." [D.G., P. & T., No.114/176/78-Disc.II, dated the 13th February, 1981]

7. Learned counsel for the applicant had also relied upon the case of **Baradakanta Mishra v. High Court of Orissa and Another** [1976 SCC (L&S) 429] and contended that the order of the disciplinary authority has not been merged with the order of the appellate authority.

8. Learned counsel for the applicant had also relied upon the case of **A.Vedi v. Union of India and Others** [2004 (3) ATJ 369] and submitted that the respondents had not specifically decided the extent of fault of the applicant as the post of Postal Assistant was vacant and the office was 50 Kms. away from Bhusawar.

9. Notice of this OA was given to the respondents, who have filed their reply opposing the claim of the applicant. Learned counsel for the respondents had relied upon the submissions made through reply and contended that the penalty had correctly been imposed upon the applicant because of negligence of duty.

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10. In this case, charge-sheet dated 2.12.2004 was issued as per Ann.A/3. The statement of imputation of misconduct/misbehavior is at page-21 and the penalty order was issued as per Ann.A/4. But the said penalty has been cancelled vide order dated 20.7.2005 (Ann.A/5). The respondents, vide order-sheet dated 24.9.2009, were directed to file copy of the article of charges and to state specifically whether the charges levelled through charge-memo dated 1.5.2007 (Ann.A/6) and the charges levelled through charge-memo dated 2.12.2004 (Ann.A/3) are same or different.

11. The respondents in their reply had submitted that the applicant was served with another charge-memo dated 1.5.2007 under Rule-16 of the CCS (CCA) Rules, 1965, alleging different charges as the applicant while working as APM (SB) Bharatpur HO on 23.1.2003, 24.1.2003 and 5.5.2003 failed to compare and check the entries of withdrawals with reference to warrant of payment, list of transactions and ledger card made by SPM Bhusawar Town. Hence, version of the applicant that the allegations are the same, is not correct.

12. I have heard the rival submissions and perused the record. Brief facts of the case have already been narrated in this order. As regards supply of the relevant documents, the respondents have submitted in their reply that the documents which were found relevant to the charge-memo i.e. the documents shown at S.No.1 & 2 were supplied to the applicant vide office memo dated 16.5.2007. The applicant was also permitted to see the

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required documents shown at S.No.1 & 2 with reference to his application dated 21.5.2007. The applicant had attended the office on 8.6.2007 and seen the documents shown at S.No.1 & 2. The applicant was directed to submit his representation vide office letters dated 16.5.2007, 15.6.2007 & 27.6.2007 and was allowed sufficient time, but the applicant failed to submit his representation even after issuing repeated reminders to him.

13. Learned counsel for the applicant had also relied upon the case of Baradakanta Misha (supra). He had invited attention of the Bench to para-25 of the judgement, which reads as under :

"25. The two orders of dismissal dated December 3, 1973 are based on the order of December 8, 1972. The substratum of the orders of dismissal being unconstitutional the orders of dismissal cannot have any legal force. Further, the contention of the High Court that the orders of dismissal passed by the High Court merged in the orders passed by the Governor cannot be accepted. If the order of the initial authority is void, an order of the appellate authority cannot make it valid. The order of the Governor used the word "confirm". The appellant filed appeals to the Government. The appeals were dismissed. The confirmation by the Governor cannot have any legal effect because that which is valid can be confirmed and not that which is void."

He had pleaded that the order of the disciplinary authority was void ab-initio. Therefore, it cannot be said that the order of the disciplinary authority has merged with the order of the appellate authority. He submitted that order of the disciplinary authority is liable to be quashed only on the ground that the penalty of recovery as well as reduction of pay has been imposed, whereas these are two separate penalties as per Rule-11(iii) & (iii)(a) of the CCS (CCA) Rules. Thus, after hearing the arguments of learned

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counsel for the applicant, I am of the opinion that this is not a case of double jeopardy and on this ground the order passed by the disciplinary authority cannot be held to be void ab-initio. At the most, the disciplinary authority could have been asked to rectify this mistake and impose only one penalty. However, I find that this mistake had been rectified by the appellate authority in his order by quashing the penalty of reduction of pay and confirming only the penalty of recovery to the extent of Rs.40000/-.

14. From the facts of the case it is evident that order of the disciplinary authority has been merged with the order of the appellate authority and the ratio-decidendi of the case of Baradakanta Mishra is not applicable in this case. It is evident from perusal of para-25 in that case that order of the disciplinary authority was void ab-initio and the substratum of the order of dismissal was unconstitutional and did not have any legal force, whereas in the case in hand the irregularity committed by the disciplinary authority had already been rectified by the appellate authority. Therefore, the order of the disciplinary authority cannot be said to be void ab-initio.

15. Learned counsel for the applicant also invited attention to instruction No.12 below Rule-11 of the CCS (CCA) Rules, and it was argued that the penalty of recovery can be imposed only when it is established that the government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach caused the loss. From perusal of the orders of the disciplinary authority as well as

appellate authority it is evident that the applicant failed to comply with Rule-38 & 39 of the Post Office Savings Bank Manual. It was only because of negligence of the applicant that Shri Sudhiram Meena had been able to make withdrawal from the government account under forged signatures as the applicant did not compare and check the entries of withdrawals with reference to warrant of payment, list of transactions and the ledger cards on dates of receiving i.e. 23.1.2003, 24.1.2003 & 5.5.2003. He also did not make his initials on the ledger cards. Because of this negligence on the part of the applicant, Shri Sudhiram Meena succeeded in taking forged withdrawals of Rs.54000/- under the forged signatures.

16. Learned counsel for the applicant has also relied upon the case of A.Vedi (supra). In that case, disciplinary proceedings were held on account of illegal withdrawal against the applicant who was a Ledger Assistant. The authorities failed to consider the role played by each functionary in the process of withdrawal from the deposit account and to what extent the applicant can be faulted or has violated the procedure. Therefore, it was held that the order of recovery was not in accordance with the detailed guidelines issued by the Government of India under instruction No.(12) = (23) below Rule 11 of the CCS (CCA) Rules. Accordingly, the orders of disciplinary authority as well as appellate authority were quashed and the disciplinary authority was directed to impose any minor penalty commensurate to the proved lapse.

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17. It is also evident from the appellate order that the applicant failed to compare and check the entries of withdrawals with reference to warrant of payment, list of transactions and the ledger cadres. He also could not get the account tallied during the tenure he was holding the post of APM. However, I find that it is admitted fact that the withdrawal under forged signatures had taken place due to forged signatures having been done by Shri Sudhiram Meena and the post of Ledger Assistant was vacant and the applicant was holding temporary charge only for a few days. There was loss of Rs.54000/- to the government account, for which the applicant alone cannot be held to be fully responsible. Therefore, having regard to the ratio laid down in the case of A.Vedi v. Union of India & Ors., the order of the disciplinary authority as well as appellate authority are hereby quashed with direction to the disciplinary authority to impose minor penalty of recovery commensurate to the extent of lapse which can be attributed to the applicant as he alone is not responsible for the loss caused to the Government.

18. With these directions, the OA is partly allowed with no order as to costs.


(B.L.KHATRI)
MEMBER (A)

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