

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(18)

ORDER SHEET

ORDERS OF THE TRIBUNAL

25.10.2011

OA No. 515/2009

Mr. P.N. Jatti, Counsel for applicant.

Mr. Mukesh Agarwal, Counsel for respondents.

On the request of the learned counsel for the parties,
list it for hearing on 03.11.2011.

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Anil Kumar

(Anil Kumar)
Member (A)

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3.11.2011

Mr. P.N. Jatti, Counsel for applicant

Mr. Mukesh Agarwal, Counsel for respondents

Heard. The OA is disposed of by
a separate order.

(Anil Kumar)

M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 03rd day of November, 2011

ORIGINAL APPLICATION No. 515/2009

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

Vinod Kumar Jain son of Shree Verendra Kumar Jain by caste Jain, aged about 54 yrs, resident of D-41, Ranjeet Nagar, Bharatpur, Presently working as PA in the Deg- Head Post Office, Deeg, Bharatpur.

... Applicant

(By Advocate: Mr. P.N. Jatti)

Versus

1. Union of India through the Secretary to the Government of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Superintendent of Post Offices, Bharatpur Dn. Bharatpur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

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

- "(i) That by a suitable writ/order or the direction the
 - (A) Order dated 11.8.2008 vide Annexure A/1
 - (B) Order dated 25.3.2009 vide Annexure A/2
 - (C) Charge memo dated 25.4.2008 vide Annexure A/3be quashed and set aside.
- (ii) It is prayed that by a suitable writ/order or the direction the respondents be directed not to recover any money of Rs.48,000/- as it has been ordered in the orders of dated 11.8.2008 and 25.3.2009.
- (iii) That it is further prayed that by a suitable writ/order or the direction the respondents be directed to refund the recovered money with a

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reasonable interest which has been recovered with effect from 11.8.2008.

(iv) Any other relief which the Hon'ble bench deems fit."

2. Brief facts of the case are that a charge memo dated 25.04.2008 (Annexure A/3) was served to the applicant for violating Rule 58 of the P&T Volume VI Part III. That the charge against the applicant was that he failed to challenge and issue error extract to the SPM Bhusawar Town S.O. as the SPM did not show the details of cash drawn from cash office Bhusawar DSO and the balance available out of the monthly cash limit of Rs.48,000/- per month on the back side of the S.O. daily account and also failed to draw the Head Postmaster's attention at once to the irregularity committed by the SPM Bhusawar Town. It is alleged in the charge sheet that due to negligency of Said Shri Vinod Kumar Jain, a loss of Rs.1,97,000/- was sustained by the Department and that the applicant failed to maintain devotion to duties as required vide Rule 3(1)(ii) of CCS (Conduct) Rules, 1964.

3. The applicant submitted his reply to the charge memo and prayed in the representation dated 18.06.2008 that the applicant has not violated Rule 58 of Vol. VI Part III and the conduct Rule 3(i)(ii) of CCS (Conduct) Rules, 1964. He also prayed that this fraud has been made from the R.D. Accounts and, therefore, the officials of the R.D. Accounts be charged. There is no concern of the Lekha Branch,

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therefore, the applicant is not responsible for any loss. That for the violation of Rule 58, charge sheet was also issued to Shri Laxman Singh, Shri Raghuvir Singh, Shri Jagveer Singh, Shri Narendra Arora and Shri Chakraveer Singh and they were given different punishment but no recovery was ordered from them. That the case regarding this fraud is under trial in the court, therefore, no question of recoveries arises. That the applicant has neither committed any negligence nor he is directly involved in the pecuniary loss. The order of the Disciplinary Authority imposing penalty of recovery of Rs.48,000/- is arbitrary and, therefore, the charge sheet as well order passed by the Disciplinary Authority imposing recovery of Rs.48,000/- and order of the Appellate Authority may be quashed and set aside.

4. The respondents have submitted their reply. In their reply, they have stated that the charge sheet was issued to the applicant for his negligence due to which Shri Sudhir Ram Meena, SPM Bhusawar Town, succeeded in taking forged withdrawal of Rs.1,97,000/- and the loss of this amount was sustained by the Department. The applicant submitted his representation on 17.06.2008 and the competent authority after considering his representation, material on record and relevant rules, had found charges as proved against the applicant and, therefore, imposed penalty of recovery of Rs.48,000/- from his pay in 16 monthly equal installments of Rs.3,000/-. The photocopy of order dated 11.08.2008 has been annexed as Annexure A/1.

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That the applicant filed appeal dated 11.08.2008 before the Appellate Authority. The Appellate Authority after considering all the grounds raised in the appeal and relevant legal provisions rejected the appeal of the applicant by a speaking order (Annexure A/2). That according to Rule 58 of the P & T Manual Vol. VI, Part III, the applicant failed to challenge and issue error extract to the SPM Bhusawar Town Sub Office, who did not show the details of cash drawn from cash office Bhusawar DSO and the balance available out of the monthly cash limit Rs.40,000/- per month on the back side of the Sub Office Daily Account and further failed to draw the attention of Head Postmaster at once to the irregularity committed by the SPM Bhusawar Town. Therefore, due to such gross negligence in discharging duty, disciplinary action was initiated against the applicant by issuing charge sheet dated 25.04.2008 under Rule 16 of the CCS (CCA) Rules, 1965. That the applicant was not only negligent in discharging his duty but also failed to maintain devotion to the duty as required vide Rule 3(1)(ii) of CCS (Conduct) Rules, 1964. It was the duty of the applicant to keep close watch on cash drawn by the concern SPM with reference to monthly cash limit and details given on the back side of daily account, but the applicant failed to discharge his duty, due to which Shri Sudhi Ram Meena, SPM Bhusawar Town, succeeded in taking forged withdrawals of Rs.1,97,000/- and the department ^{suffered} in loss of Rs.1,97,000/-.

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5. The respondents have further stated that the disciplinary authority had considered each and every point of the applicant raised by him in his representation, material on record and relevant rules at the time of passing order dated 11.08.2008. The order of the Disciplinary Authority is well reasoned and speaking order and has been passed as per law. The Appellate Authority has considered all the grounds and facts raised by the applicant in his appeal, material on record and relevant rules and thereafter rejected the appeal by a speaking order dated 25.03.2009 and upheld the order dated 11.08.2008 passed by the Disciplinary Authority.

6. The respondents have stated that bare perusal of **Rule 58** would make it clear that the applicant was duty bound to pay special attention to the balance held by Sub Post Office, Bhusawar Town but the applicant did not at all check such daily account. Apart from this, the applicant has failed to draw attention of Head Post Master regarding such irregularities, otherwise, such fraud was not possible. The respondents have admitted that the fraud has been committed from RD Account but they have stated that the same was committed due to gross negligence on the part of the applicant. They have further stated that the officials mentioned by the applicant in his OA were punished on merit on their negligence, hence it is not correct to compare the negligence of the applicant with other officials. The respondents have stated that departmental inquiry can be

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conducted even though criminal case is pending because standard of proof are different in both the proceedings. That this OA has no merit, therefore, it may be dismissed with cost.

7. The applicant has filed rejoinder.

8. Heard the rival submissions of the parties and perused the documents on record. Learned counsel for the applicant stated the facts which he has taken in his OA. He also draw my attention to an order passed by the Jabalpur Bench of the Central Administrative Tribunal in the case of **Smt. Kalpana Shinde & Others vs. Union of India & Others**, 2005 (1) ATJ 45, in which Tribunal has observed with regard to recovery that unless the person concerned is directly responsible for misappropriation of any amount or for causing pecuniary loss to the Government, no recovery can be made from him. Thus as per Rule 11 of CCS (CCA) Rules, the recovery made is contrary to the provisions. Learned counsel for the applicant also placed reliance on the judgment of CAT, Jaipur Bench in the case of **Gokul Chand Meena vs. Union of India & Others**, [OA No. 62/2004 decided on 30.05.2006] wherein the Bench in Para 5 has held that "we are of the firm view that the applicant has been made a scapegoat for omission and commission on the part of other employees and provisions of Rule 11(iii) of CCS (CCA) Rules are not attracted in the facts and

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circumstances of this case." In Para no. 8, this Tribunal has 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 term 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."

9. On the contrary, learned counsel for the respondents argued that in the facts & circumstances of the present case, the view taken by the Jabalpur Bench in the case of **Smt. Kalpana Shinde & Others vs. Union of India & Others** (supra) and by this Bench in the case of **Gokul Chand Meena vs. Union of India & Others** (supra) are not applicable. In this case the applicant has challenged the charge sheet 25.04.2008 (Annexure A/3), order passed by the Disciplinary Authority dated 25.03.2009 (Annexure A/2) and order passed by the Appellate Authority dated 11.08.2008 (Annexure A/1) and in this connection, he drew my attention to a judgment rendered by the Apex Court in the case of **UP State Sugar Corporation Limited and others 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 to precaution, irregularity, gross negligence and carelessness by the

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respondent. In para 40 of the judgment, the Court held that-

"40.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."

10. Learned counsel for the respondents also referred to the order passed by this Tribunal in OA No. 464/2007 (R.L. Jangid vs. Union of India & Others), OA No. 459/2007 (Sabji Ram Meena vs. Union of India & Others) and OA No. 460/2007 (J.P. Meena vs. Union of India & Others) dated 02.05.2011. Since all the three OAs involving similar facts and question of law and, therefore, they were disposed of by the common order. He submitted that facts and circumstances of these OAs are quite similar to the facts of the present OA. The cases referred by the learned counsel for the applicant in the case of **Smt. Kalpana Shinde & Others vs. Union of India & Others** (supra) of the Jabalpur Bench and the case of **Gokul Chand Meena vs. Union of India & Others** (supra) of this Bench have also been discussed at length. This order also discussed the judgment of the Hon'ble Supreme Court in the case of **UP State Sugar Corporation Limited and others vs. Kamal Swaroop Tondon** (supra) and in Para 13 of the order, this Tribunal has held as under:-

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"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.

11 Learned counsel for the respondents argued that a proper departmental inquiry was conducted according to the provisions of rules against the applicant. He was issued the charge sheet. After considering his representation, the Disciplinary Authority passed the order of penalty (Annexure A/2). The applicant filed an appeal against the penalty order and the Appellate Authority after considering all the points raised by the applicant in his appeal rejected the appeal and upheld the order of the disciplinary authority. Appeal has been rejected vide Annexure A/1. Therefore, the entire action of the respondents is according to the rules and hence this OA being devoid of merit may be dismissed. With regard to the punishment order awarded to the employees mentioned in the OA from A to E, he stated that they were punished of their negligence. Hence it is not correct to compare negligence of the applicant from other officials.

12. Having heard the rival submissions of the respective parties and after perusal of relevant material and documents on record, we find that there is no ground of interference of

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this Tribunal in this case. The perusal of Rule 58 indicates that applicant was duty bound to pay special attention to the balance held by Sub Post Office, Bhusawar Town who drew cash from the cash office Bhusawar beyond the cash limit and further not shown the details of cash on the back side of the sub office daily account but the applicant has not at all checked such daily account. The applicant ~~as~~ also failed to draw attention of the Head Post Master regarding such irregularity, otherwise such fraud could have been prevented. The facts and circumstances of this case are different than the facts of the case of **Smt. Kalpana Shinde & Others vs. Union of India & Others** (supra) of the Jabalpur Bench and the case of **Gokul Chand Meena vs. Union of India & Others** (supra) of this Bench, as referred to by the learned counsel for the applicant during arguments.

13. On the contrary, the ratio decided by the Hon'ble Supreme Court in the case of **UP State Sugar Corporation Limited and others vs. Kamal Swaroop Tondon** (supra) are squarely applicable in this case and similarly the view taken by this Tribunal in the cases of OA No. 464/2007 (R.L. Jangid vs. Union of India & Others), OA No. 459/2007 (Sabji Ram Meena vs. Union of India & Others) and OA No. 460/2007 (J.P. Meena vs. Union of India & Others) dated 02.05.2011 is applicable in this case. The Disciplinary Authority has ~~approved~~ the act of negligence on the part of the applicant and it is also proved that due to the negligence on the part of the applicant, the loss to the tune of

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Rs.1,97,000/- is caused to the department. Therefore, the order of recovery of his share of loss has been rightly imposed by the respondents. The Appellate Authority after considering all the points raised by the applicant in his appeal has rejected the appeal and upheld the order of the Disciplinary Authority. I find no infirmity in the order passed by the Appellate Authority (Annexure A/1). Therefore, I find no merit in the OA and the same is dismissed with no order as to costs.

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(Anil Kumar)
Member (A)

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