

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 3rd day of ~~October~~^{Nov}, 2009

CORAM :

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

1. ORIGINAL APPLICATION No.405/2008

Santosh Kumar Chouhan,
Postal Assistant,
Bajaj Gram Sub Post Office,
Sikar (Rajasthan).

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through
Secretary to the Govt.,
Department of Posts,
Ministry of Communication &
Information Technology,
Dak Bhawan, Sansad Marg,
New Delhi.
2. Director Postal Services,
Rajasthan Western Region,
Jodhpur.
3. Supdt. of Post Offices,
Sikar Postal Division,
Sikar.
4. Secretary,
P&T Employees Central Cooperative Society Ltd.,
Shankar Nagar,
Nagpur.

... Respondents

(By Advocate : Ms.Dilshad Khan, proxy counsel for
Shri S.S.Hasan)

2. ORIGINAL APPLICATION No.45/2009

Prahlad Rai Sharma,
Sub Post Master,
Bajaj Road,

Sikar (Rajasthan).

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through
Secretary to the Govt.,
Department of Posts,
Ministry of Communication &
Information Technology,
Dak Bhawan, Sansad Marg,
New Delhi.
2. Chief Post Master General,
Rajasthan Circle,
Jaipur.
3. Director Postal Services,
Rajasthan Western Region,
Jodhpur.
4. Supdt. of Post Offices,
Sikar Postal Division,
Sikar.
5. Secretary,
P&T Employees Central Cooperative Society Ltd.,
Shankar Nagar,
Nagpur.

... Respondents

(By Advocate : Ms.Dilshad Khan, proxy counsel for
Shri S.S.Hasan)

ORDER

PER HON'BLE MR.B.L.KHATRI

Both the OAs involve common grounds of appeal. Therefore, these OAs are being disposed of by this common order.

2. In the case of applicant Santosh Kumar Chouhan [OA 405/2008] the OA has been filed against the memo dated 26.3.2008 (Ann.A/1), by which the appeal preferred by the applicant has been rejected by respondent No.2 against the penalty imposed by respondent No.3 vide memo dated

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30.7.2007 for recovery of Rs.121256/- against the amount stolen on account of theft in the post office in the midnight of 5/6.10.2006.

3. In this case, charge-sheet was served upon the applicant through memo/order dated 12.1.2007 (Ann.A/12). The statement of imputation of misconduct or misbehavior framed against the applicant, Santosh Kumar Chouhan, PA, Bajajgram (Sikar), reads as under :

"In the night of 5/6.10.2006 occurrence of theft of Rs.382700.45 took place in Sikar HO. While working as ATR-II Sikar-HO on 5/6.10.2006 Shri Santosh Kumar Chouhan failed to keep key of iron safe with him on 5/6.10.2006, which was kept by him in the Drawer of his table which facilitated opening of iron safe by thieves resulting in stealth of Rs.340256/- kept in iron safe. Due to negligency of Shri Santosh Kumar Chouhan department sustained loss to the tune of Rs.340256/-.

It is, therefore, imputed that Shri Santosh Kumar Chouhan, ATR-II, Sikar-HO, violated the provision of Rule-21 of Postal Manual Vol.-VI Part-I and Rule-30 of FHB Vol.II and thereby failed to maintain devotion to duty as required vide rule 3(1)(ii) of CCS (Conduct) Rules, 1964, which caused loss of Rs.340256/- to the department."

4. After considering the facts of the case, a penalty of recovery of Rs.121256/- from the salary of the applicant was imposed vide order dated 30.7.2007 (Ann.A/2). Against the said penalty, the applicant had filed an appeal before the Director Postal Services, Rajasthan Western Region, Jodhpur. The order of penalty was confirmed by the appellate authority vide order dated 26.3.2008 (Ann.A/1).

5. Learned counsel for the applicant had relied upon the submissions made through OA and specially para 4(11), wherein it was stated that the applicant while working as Assistant Treasurer-II performed his duties as per the norms of the department under the direction of Post Master, Sikar-HO, but without any basis allegations were made against him. The theft took place in the Post Office and the matter was reported to the

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Police for investigation. The applicant was punished on the simple ground that he put the key of the iron safe in the drawer of the table, whereas the thieves cut the iron cage, broken four locks and reached the iron safe. Besides, the Post Master concerned also did not lock the iron safe by the key provided to him, as the iron safe was provided with double locks. Thus, the allegations against the applicant in the charge-memo are not at all justified.

6. Learned counsel for the applicant also submitted that in the night of 5/6.10.2006 a theft of Rs.382700.45 took place in Sikar-HO. The applicant while working as ATR-II, Sikar-HO, failed to keep the key of iron safe with him on 5/6.10.2006 which was kept by him in the drawer of his table which facilitated opening of iron safe by thieves resulting into stealth of Rs.340256/- kept in the iron safe. It was submitted that due to negligence on the part of the applicant, the department suffered loss of Rs.340256/-. For such a negligence, office memo dated 12.1.2007 was served upon the applicant with a statement of imputation of misconduct or misbehavior under Rule 16 of the CCS (CCA) Rules, 1965.

7. It was submitted that while deciding the appeal dated 19.9.2007 (Ann.A/17) the appellate authority did not properly take into account the plea taken by the applicant at point No.3 of the submissions made before the appellate authority.

8. Learned counsel for the applicant had also referred to DG, P&T, Circular No.114/176/78-Disc.II dated 13.2.1981, wherein it has been clearly mentioned that in a similar case the disciplinary authority merely established certain lapses on the part of the government servant without explaining the facts leading to the loss and the manner in which the lapses on the part of the government servant had a link with the loss sustained by the department. The penalty of recovery can be awarded only if the lapses on his part have either led to the commission of the fraud or misappropriation. It is to be shown as to how but for the lapses on the part of the officials the fraud or misappropriation could have been avoided.

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9. It was pointed out that at the night when the incident took place, there were four locks at the treasury cage and four double locks were there in the safe inside the cage. Key of safe related to Treasurer-II were kept in the drawer of the table and the drawer was locked. Besides, a chowkidar was also there on duty. In spite of all above, the thieves got successful in stealing the money. Therefore, even if the applicant had not kept the key in the drawer of the table, the thieves could have stolen the money. Thus, the applicant was not directly responsible for causing any pecuniary loss to the department, for which he has been penalized. For this purpose, he relied upon the following case law :

- (1) J.M.Makwana v. Union of India & Ors. [2002 (1) ATJ 283], &
- (2) Smt. Kalpana Shinde v. Union of India [2005 (1) ATJ 45]

He had submitted that having regard to the facts of the case as also the ratio of these judgements, since the applicant is not directly responsible for the loss of money caused to the department, the charge-memo, penalty order as well as appellate order should be quashed and set aside.

10. The respondents have contested this OA by filing reply. In reply to para 4(11) of the OA, it was submitted that the applicant was fully responsible in not performing his duties as per rules since he failed to keep the key of iron safe with him, which was kept by him in the drawer of his table, which facilitated opening of iron safe by thieves who had stolen Rs.340256/- kept in the iron safe. This clearly proved the negligence on the part of the applicant.

11. Learned counsel for the respondents had also relied upon the instructions contained in the Government of India, Department of Personnel & Training, OM No.11012/1/2000-Estt.(D) dated 6.9.2000, referred to at sub para (12) of Rule-11 of the CCS (CCA) Rules, wherein it has been laid down that the

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entire loss should be recovered from the delinquent official but the recovery may be spread over till entire loss is recovered.

12. Learned counsel for the respondents also submitted that having regard to the facts and keeping in view the negligence and carelessness on the part of the applicant, the penalty of recovery had rightly been imposed and sustained by the appellate authority.

13. In the case of applicant Prahlad Rai Sharma [OA 45/2009] the OA has been filed against the appellate order dated 17.1.2008 (Ann.A/1) and against the penalty order dated 30.7.2007 (Ann.A/2). In this case, charge-memo was served upon the applicant vide order dated 12.1.2007 (Ann.A/6) alongwith the memo of imputation of misconduct or misbehavior, which reads as under :

"In the night of 5/6.10.2006 occurrence of theft of Rs.382700.45 took place in Sikar-HO. While working as TR/ATR-I, Sikar-HO, during 5/6.10.2006 Shri Prahlad Rai Sharma failed to put the amount worth Rs.41300/- in the iron safe provided to him and kept the amount in steel almirah which was stolen by thieves. The iron safe meant for T.R. remained safe and intact in this theft case. Due to negligence of Shri Sharma, department sustained loss to the tune of Rs.41300/-.

It is, therefore, imputed that Shri Prahlad Rai Sharma by his above act violated the provisions of Rule 23 of Postal Manual Vol.VI Part-I and Rule 30 of FHB Part-II. Therefore, failed to maintain devotion to duty as required vide Rule 3(1)(ii) of CCS (Conduct) Rules, 1964 which caused loss of Rs.41300/- to the department."

14. Learned counsel for the applicant had relied upon the submissions made through this OA and specifically relied upon the submissions made through para 4(vii) & 4(x). In para 4(vii), it was submitted that after taking extract of the documents as allowed by respondent No.4, the applicant submitted his effective representation against the charge-memo on 29.3.2007 stating therein that currency notes of Rs.41300/- were defective and were put in the almirah by the regular Treasurer as the

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applicant was working as Treasurer only for two days in leave arrangement and these notes were put in the almirah due to shortage of space in the iron safe for which respondent No.4 himself took note in the inspection report, at Ann.A/3. Besides, this steel almirah was also provided with double lock and the almirah in the iron cage of treasury was also provided with four locks. The applicant cannot be alleged for any irregularities.

15. It was also submitted in para 4(x) of the OA that the applicant while working as Assistant Treasurer-I performed his duties as well as the duties of Treasurer as the regular incumbent was on casual leave. The applicant worked only for two days as Treasurer and the defective notes stolen by the thieves were kept in the steel almirah by the regular incumbent due to shortage of space in the iron safe. Therefore, the applicant cannot be directly alleged for the said loss sustained by the department.

16. Learned counsel for the applicant had advanced the same arguments which have been advanced in the case of Santosh Kumar Chouhan, which have already been mentioned in this order.

17. Learned counsel for the applicants had also invited attention to the FIR (Ann.A/4), wherein it has specifically been stated that the main duty for security of the office was that of the Chowkidar and even the Chowkidar could not defend himself as the thieves had tied him with a rope and he was not in a position to act for security of the office. In such a situation, the applicant cannot be held responsible for the loss sustained by the department. Had the applicant put the amount of Rs.41300/- in the iron safe, even then the same could have been stolen by the thieves.

18. Learned counsel for the applicant had also invited attention of the Bench to Ann.A/3 i.e. Inspection/verification report of Sikar Head Office for the year 2006, wherein at para 3(iv) it was mentioned that one iron safe of small size is available which is not sufficient to stock whole currency.

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Although one more iron safe of biggest size is available but it has only one key. Office will ask RO to supply one safe of bigger size.

19. Learned counsel for the respondents had vehemently defended the penalty as well as appellate order and also relied upon the reply to para 4(7) and 4(10), wherein it was submitted that the applicant was fully responsible for the loss of Rs.41300/- sustained by the department due to his negligence. Had the applicant put the amount in the iron safe, which remained intact during the theft, the department could have saved the loss of Rs.41300/-, but due to negligence on the part of the applicant in putting the amount in the steel almirah, the same was stolen by the thieves. The contention of the applicant about shortage of space in the iron safe is wholly untenable. In fact, the safe was having sufficient space for keeping all the currency notes. Had the applicant acted with due diligence and carefully by keeping the whole amount in the available iron safe, such type of incident could have been avoided.

20. Learned counsel for the respondents had also submitted that it was discussed and decided by the appellate authority that the applicant should have kept the cash in the available iron safe having the space in which the currency under reference could have been kept easily. The plea regarding supply of big size iron safe is a separate matter. It was submitted that as per the facts of the case and the reasons given in the appellate order, the applicant had rightly been penalized for negligence of duty on his part.

21. I have heard the rival submissions of learned counsel for the parties, and perused the record. As per the charge-sheet issued to applicant Santosh Kumar Chouhan, it has been stated that he failed to keep key of iron safe with him on 5/6.10.2006, which was kept by him in the Drawer of his table which facilitated opening of iron safe by thieves which resulted in theft of Rs.340256/- kept in the iron safe due to negligency of Shri Santosh Kumar Chouhan.

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22. In the case of applicant Prahlad Rai Sharma, the charge-sheet was issued stating that In the night of 5/6.10.2006 theft of Rs.382700.45 was committed. While working as TR/ATR-I, Sikar-HO, the applicant failed to put the amount of Rs.41300/- in the iron safe provided to him and kept this amount in the steel almirah which was stolen by the thieves. The iron safe meant for T.R. remained safe and intact in the theft.

23. Learned counsel for the applicants had mainly contended that the theft was committed for the reason which was beyond the control of the applicants. He had mainly relied upon the FIR lodged by the respondents in the case of applicant Prahlad Rai Sharma, according to which Shri Sanwar Mal, Chowkidar, was on duty for security of the office but the thieves had tied his hands and legs with a rope and thrown him in a room situated at the back of the delivery room. Besides, the main gate of the treasury cage was having two inner locks and two paddle locks, which were broken open by the miscreants and hence the defective currency was kept under double locks with proper security.

24. Thus, from the facts of the case it is evident that though the applicants cannot be held to be wholly responsible for the loss of money caused to the department yet, as per the imputation of misconduct or misbehavior mentioned in their charge-sheets, they can be held partly responsible for this loss of money.

25. From perusal of the facts of the case, I have come to the conclusion that the penalty of recovery imposed upon the applicants is not commensurate with the dereliction of duty/negligence attributed to the applicants. In this connection, it is considered pertinent to quote para-26 of the Judgement in the case of **Chairman cum Managing Director, Coal India Limited & Anr. v. Mukul Kumar Choudhuri & Ors.** [JT 2009 (11) 472], which reads as under :

"26. The doctrine of proportionality is, thus, well recognized concept of judicial review in our

jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgement, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months."

26. After having gone through the aforesaid judgement, I am of the opinion that the respondents had not properly examined the degree of misconduct and all other relevant circumstances. They have also not taken into account the FIR lodged by them. After going through the FIR, it can be concluded that the applicants are not fully but partly responsible for the loss sustained by the department.

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27. I have considered the contention raised by learned counsel for the applicants in para-8 of this order as also the contention raised by learned counsel for the respondents in para-11 of this order. I do not agree with the contention raised by learned counsel for the respondents that the whole of the loss for which the delinquent officials are responsible should be recovered from them. As regards contention of learned counsel for the applicants in para-8 of this order, after perusal of the facts of the case I have come to the conclusion that the penalty of recovery awarded has to be reduced keeping in view the degree of misconduct which can be attributed to the applicants it is to be held in this order that the applicants cannot be fully exonerated of their negligence of duty.

28. In order to shorten litigation and having regard to the facts and circumstances of this case, it is considered necessary that the penalty of recovery of Rs.121256/- imposed upon applicant Santosh Kumar Chouhan is reduced to Rs.60000/- and the penalty of recovery of Rs.30000/- imposed upon the applicant Prahlad Rai Sharma is reduced to Rs.15000/-. The respondents are directed to recover the amount of penalty sustained by this order in easy installments by passing a fresh order for recovery of balance amount of penalty, if any.

29. In the result, both the OAs are allowed in part. No order as to costs.

(B.L.KHATRI)
MEMBER (A)

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