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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

13.10.2011

OA No. 432/2010

Mr. C.B. Sharma, counsel for applicant.

Mr. Mukesh Agarwal, counsel for respondents.

Learned counsel for the applicant seeks three weeks' further time to file rejoinder. Time as prayed for is granted. Put up the matter on 24.11.2011.

K. S. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

G. Kumawat

24-11-11

OA 432/2010

Mr. C.B. Sharma, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents

Heard. O.A. is disposed of by
a separate order on the separate
sheets for the reasons recorded
therein.

K. S. Rathore

[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 24th day of November, 2011

Original Application No.432/2010

CORAM:

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

Murari Lal Sharma
s/o Shri Bihari Lal Sharma,
r/o C-305, Murlipura Scheme,
Jaipur-13 and presently working as
Postal Assistant, Jhotwara Post Office,
Jaipur.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

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

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER (ORAL)

At the relevant point of time, the applicant was working as Sub Post Master, Vidhyadhar Nagar Post Office as the regular Sub Post Master proceeded on leave on 25.1.2006 by handing over charge to the applicant and the applicant was working as Stop Gap arrangement. In the night of 31.1.2006/1.2.2006 theft took place in the Post Office and cash and stamps were stolen. The applicant lodged F.I.R on 1.2.2006 and the police after investigation submitted final report. After the incident, the applicant was transferred to the Jaipur City Post Office vide order dated 3.5.2006.

2. Thereafter the applicant was served with a charge memo under Rule 16 of the CCS (CCA) Rules, 1965 vide memo dated 3.8.2006 alleging therein that applicant while working as officiating Sub Post Master at Vidhyadhar Nagar Post Office on 31.1.2006 handed over keys to Shri Kishan Lal Sharma, Group-D instead of keeping the same with him and not paid pay and allowances to the staff on 31.1.2006 and also not remitted excess cash to the Head Post Office and due to above



negligence of the applicant, the theft took place. Thus, the applicant violated Rule 21(3) and 23 of Postal Manual-VI with further allegation of violation of provisions of Rule 3 of CCS (Conduct) Rules, 1964.

3. The applicant submitted representation in response to the charge memo. The Disciplinary Authority having considered the representation filed by the applicant imposed punishment of recovery of Rs. 73,051 and stoppage of one increment for one year without cumulative effect vide memo dated 31.10.2006.

4. Aggrieved and dissatisfied with the punishment order dated 31.10.2006 passed by the Disciplinary Authority, the applicant preferred appeal on 1.12.2006 before respondent No.3. The Appellate Authority dismissed the appeal affirming the punishment imposed by the Disciplinary Authority

5. The order impugned dated 31.10.2006 passed by the Disciplinary Authority and the order passed by the Appellate Authority dated 5.7.2010 has been challenged in the present OA on the ground that action of the respondents initiating proceedings under Rule 16 of CCS (CCA) Rules, 1965 and awarding punishment on recovery of Rs. 73,051 and stoppage of one increment for one year without cumulative effect is contrary to law and facts as the theft took place by way of cutting of iron window and not by way of opening locks.

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Further challenged on the ground that as per provisions of Rule 11 of CCS (CCA) Rules, 1965 under which punishment of recovery as well as stoppage of increment has been graded separately at Sl.No. III and IV and cannot be awarded at a time. Thus, the punishment order is not at all justified and is against the provisions of law. Further, the Disciplinary Authority has not acted according to procedure mentioned in Rule 106, 107 and 111 of P&T Manual Volume-VIII.

6. The learned counsel for the applicant placed reliance on the judgment rendered by the CAT-Jabalpur Bench in the case of Smt. Kalpana Shinde and Ors. vs. Union of India and ors. reported in 2005 (1) ATJ 45 and judgment of CAT-Madras Bench in the case of A.Vedi vs. Union of India and ors. reported in 2004 (3) ATJ 369 and submits that in view of the ratio decided by the CAT-Jabalpur and CAT-Madras Benches, the punishment awarded by the Disciplinary Authority as upheld by the Appellate Authority does not sustain and thus the aforesaid action of the respondents deserves to be quashed and set-aside.

7. Per contra, the learned counsel appearing for the respondents submitted that the applicant while working as officiating Sub Post Master, Vidhyadhar Nagar Post Office, Jaipur on 31.1.2006 handed over the keys of treasury room, main gate and boundary gate to Shri Kishan Lal Sharma,



Group-D official of Vidhyadhar Nagar Post Office instead of keeping the same in his own custody and also failed to pay salary to the staff of Vidhyadhar Nagar Post Office who were on duty on 31.1.2006. Further, the applicant retained excess cash balance beyond limit which resulted theft in the night of 31.1.2006/1.2.2006 and cash was stolen. The applicant also failed to report the competent authority i.e. respondent No.4 about non availability of stopper at the side window or to get it fitted and not put the stamp box in the iron safe having stamps advance of Rs. 4000/-. As such by doing the above negligent act, the applicant violated Rule 21(3) and 23 of Postal Manual Vol.VI Part.I.

8. With regard to violation of rules, it is submitted on behalf of the respondents that there is no bar for awarding penalty of recovery along with any other penalty as per Rule 108 of Postal Manual Vol. III and in accordance with G.O.I. instruction No.9 below Rule 11 of CCS (CCA) Rules 1965. The Appellate Authority has given due consideration to the facts and points raised by the applicant in his appeal and then rejected the appeal on its merits by passing a reasoned and speaking order dated 5.7.2010.

9. The respondents further submitted that the Disciplinary Authority initiated disciplinary proceedings under Rule 16 of CCS (CCA) Rules keeping in view the offence committed by

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the applicant and the penalty imposed is commensurate with the gravity of the charges. The plea taken by the applicant that he is no where responsible for theft as theft took place by way of cutting down the iron window is not tenable because if the said window was properly locked with stopper, it was not possible for the thieves to enter into the premises.

10. With regard to the submissions made on behalf of the applicant that he was not provided the documents asked for, the respondents have submitted that the applicant was allowed all the relevant and available documents for inspection and to take extracts of the required documents.

11. Having considered the rival submissions of the respective parties and upon careful perusal of the material available on record as well as the relevant provisions of law and the judgments referred by the learned counsel appearing for the parties, as both the learned counsel for the parties referred to Rule 108 of the Postal Manual Vol.III, which is in the following terms:-

“108. The maximum amount which may be recovered from a delinquent officer on account of the loss caused to the Department through his negligence should be 1/3rd of his pay should be taken into account. In addition to the penalty of recovery, technically there is no bar to impose any other statutory penalty, if the circumstances of the case justify it. The punishing

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authority should, however, bear in mind that when more than one penalty is imposed, one of which is recovery of pay of the whole or a part of the loss caused to Government, the net cumulative effect on the Government servant should not be of such severity so as to make impossible for him to bear the strain."

12. We have perused the aforesaid provision and have considered the question which has been raised by the applicant- whether two statutory penalties can be imposed for a single offence committed by the official ? Normally, there should be no necessity for imposing two penalties at a time, the penalty of recovery of pay of the whole or part of any loss caused by an official to the government by negligence or by breach of order can be imposed along with another penalty meaning thereby that there is no bar to impose two statutory penalties. It depends upon gravity of the negligence or breach of order in view of Rule 108.

13. Learned counsel for both the parties also referred to para 9(2) below Rule 11 of CCS (CCA) Rules, which thus reads:-

"(9) Imposition of two penalties for one lapse/offence: A question has been raised as to whether two statutory penalties can be imposed for a single offence committed by an official. Instructions in this behalf already exist, but it is advisable to reiterate them for ready recapitulation. It has been laid down that while normally there will be no need to impose two statutory

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penalties at a time, the penalty of recovery from pay of the whole or part of any loss caused by an official to the Government by negligence or by breach of order can be imposed along with another penalty. Para 108 of the P&T Manual Volume-III, also lays down that in addition to the penalty of recovery, technically there is no bar to impose any statutory penalty if the circumstances of the case justify it. The punishing authority should, however, bear in mind that when more than one penalty is imposed, one of which is recovery of pay of the whole or part of loss caused to the Government, the net cumulative effect on the Government servant should not be of such a severity so as to make it impossible for him to bear the strain.

(2) The aforesaid instructions would reveal that while normally there should be no necessity for imposing two penalties at a time, there is no bar to awarding the penalty of recovery along with any other penalty. But in such cases also the severity of the strain vis-a-vis the nature of offence committed by the official should be carefully assessed and borne in mind by the punishing authority. Further, the penalty indicated in Rule 11 of the CCS (CCA) Rules are graded only. Accordingly, when the penalty of recovery is awarded, there should be no necessity to award a lower penalty. The necessity to award penalty should arise only when it is considered absolutely necessary to award a higher penalty like reduction."

14. The learned counsel appearing for the applicant given much emphasis to sub-para (2) of Para (9) under Rule 11 of

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CCS (CCA) Rules wherein it is stated that normally there should be no necessity for imposing two penalties at a time, but there is no bar to awarding the penalty of recovery along with any other penalty.

15. We have also scanned the judgments relied and referred to by the applicant. In the judgment of A.Vedi (supra), the disciplinary proceedings were held on account of illegal withdrawal against the applicant who was a Ledger Assistant- Recovery order issued-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- A Ledger Assistant has a minor role to play and he has been held responsible for a major penalty of the loss- Order of recovery suffers from non-application of mind and violative of decision No.23 under Rule 11 of the CCS (CCA) Rules.

16. Applying the ratio to the facts and circumstances of the present case, undisputedly, the applicant was working as officiating Sub Post Master at Vidhyadhar Nagar Post Office and was found negligent for handing over keys of treasury room, main gate and boundary gate to Shri Kishan Lal Sharma, Group-D official. Further he was also found negligent for not paying salary to the staff of the Vidhyadhar Nagar Post Office and the amount which was supposed to be paid to the

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staff was kept in the drawer and not in the iron safe. Thus, the applicant was held responsible for the loss caused to the public exchequer on account of negligence. Therefore, the ratio decided by the CAT-Madras Bench is not applicable to the facts and circumstances of the present case.

17. Further the learned counsel appearing for the applicant placed reliance on the judgment rendered by the CAT-Jabalpur Bench wherein it is held that unless the person concerned is directly responsible for misappropriating any amount for causing any pecuniary loss to the Govt., no recovery can be made from him. Here in the instant case, the Enquiry Officer as well as the Disciplinary Authority has fully established the negligence of the applicant and due to his negligence pecuniary loss was caused to the Government, therefore, recovery order has been made; which cannot be said to be contrary to the provisions of law. Thus, the ratio of the judgment rendered by the CAT-Jabalpur in the case of Smt. Kalpana Shinde and ors. (supra) is not applicable to the facts and circumstances of the present case.

18. As already discussed hereinabove that as per Rule 108 of the Postal Manual Vol.III and para 9 below Rule 11 of the CCS (CCA) Rules, more particularly, sub para (2) under Rule 11, normally there should be no necessity for imposing two penalties at a time but simultaneously there is no bar to



awarding penalty of recovery alongwith any other penalty looking to the severity of the offence committed by the official and after careful assessment of the offence committed by the applicant, the Disciplinary Authority has rightly awarded penalty of recovery alongwith stoppage of one increment for one year without cumulative effect. Thus, we find no illegality in the impugned order passed by the Disciplinary Authority dated 31.10.2006 which has been affirmed by the Appellate Authority vide order dated 5.7.2010 and same require no interference by this Tribunal.

19. Consequently, the OA being bereft of merit fails and is hereby dismissed with no order as to costs.



(JUSTICE K.S.RATHORE)
Judl. Member

R/