

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 277/2011

Order reserved on : 23.1.2015

Date of Order:

30.1.2015

CORAM

HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

C.P. Gupta S/o Late Shri Murli Dhar by caste Gupta, aged about 61 years, R/o B-7, Sanjay Nagar Colony, Bharatpur, presently retired as Post Master, Deeg Post Office.

.....Applicant

(By Advocate Mr. P.N.Jatti)

VERSUS

1. Union of India, through the Secretary to the Govt. of India, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur-7.
3. Senior Superintendent Post Offices, Bharatpur Dn., Bharatpur.

.....Respondents

(By Advocate Mr. Mukesh Agarwal)

ORDER

(Per Hon'ble Mr. Anil Kumar, Administrative Member)

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

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8.1 That by a suitable writ/order or direction the impugned order vide Annexure A/1 dated 19.7.2010, vide Annexure A/2 dated 1.12.2008 and vide Annexure A/3 dated 16.7.2008 be quashed be quashed and set aside.

8.2 That by a suitable writ or direction the respondents be directed to refund a sum of Rs.75000/- Seventy five thousand with a reasonable interest.

8.3 Any other relief which the Hon'ble Bench deems fit.

2. The brief facts of the case as stated by the learned counsel for the applicant are that while the applicant was working as Sub-Post Master, Deeg, a charge sheet under Rule 16 of CCS(CCA) Rules, 1965 was served to the applicant on 4.6.2008 (Ann.A/5). That in the charge sheet it has been mentioned that on receipt of list of transactions along with schedule of MPKBY agents for RD deposits taken into account in the subsequent months by Shri S.S.Sogarwal, SPM, Kanjoli Line, SO, Bharatpur. The applicant failed to challenge the corrections made in the amount of deposits and dates of deposits as per the details given in the charge sheet. It was alleged that the applicant failed to transfer RD returns of the aforesaid dates on the next working day to the SBCO Branch, Bharatpur HO. It was also alleged that Shri C.P.Gupta while working as APM (SB)Bharatpur HO failed to follow the prescribed procedure of RD deposits at SO in account with HO as prescribed in Rule 31(2)(iii) read with Rule 106 and rule 2(4), rule 48 and rule 50 of P.O. SB Manual Volume-I. That the aforesaid act on the part of said Shri C.P. Gupta facilitated the

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misappropriation of Govt. money by Shri S.S.Sogarwal, Ex-SPM Kanjoli Line, TSO, Bharatpur amounting to Rs.5,98,977.60. Shri C.P. Gupta by doing aforesaid act, failed to maintain devotion to his duties and thereby infringed the provisions of rule 3(1)(ii) and 3(2) of CCS (Conduct) Rules, 1964.

3. The Ld. Counsel for the applicant submitted that the applicant filed a reply to the charge memo but the respondent No.3 passed the order of penalty of recovery of Rs.75000/- in an arbitrary manner without following the rules.

4. The Ld. Counsel for the applicant submitted that with regard to the allegation of violation of Rule 31(2)(iii) the applicant informed the respondents that in view of new rules framed by the Director General on 1.1.2003 the work of Sub-Post offices has been decentralized and the work in sub-post offices and the work of deposit and withdrawal (posting) is not being done in the Head Post Office, therefore, according to the new rule this charge is not accepted by the applicant. Similarly, Rule 106 has no concern with the applicant. With regard to violation of Rule 2(4) the Ld. Counsel for the applicant submitted that in view of the new rule promulgated w.e.f. 1.1.2003 this job does not come in the knowledge of Post Master or Asstt. Post Master. Only Sub-Post Masters are responsible and as such

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the allegation is not proved against the applicant for violation of Rule 2(4).

5. Similarly, after 1.1.2003, Rule 48 also does not apply to the applicant as alleged. That the Rule 50 has not been violated and the work has been done according to this Rule. That the applicant has not infringed the provisions of Rule 3(1)(ii) and Rule 3(2) of CCS(Conduct) Rules, 1964. That the respondents did not consider the reply filed by the applicant in the correct perspective and awarded the punishment of recovery of Rs.75000/- vide order dated 16.7.2008 (Ann.A/3).

6. Being aggrieved the applicant filed an appeal against the order of penalty to the Director Postal Services, Jaipur but the same was rejected vide order dated 1.12.2008(Ann.A/2). Being aggrieved by the decision of the appellate authority the applicant filed revision petition on 25.11.2009 but the revision petition was also rejected by the Chief Post Master General vide order dated 19.7.2010 (Ann.A/1)without considering the points raised by the applicant in his revision petition.

7. The Ld. Counsel for the applicant submitted that the applicant has no direct involvement in the fraud of Rs.5,98,977.60 as alleged, therefore, the recovery orders dated 6.1.2008 are quite arbitrary and illegal. That the amount as alleged has been deposited with the respondent

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department and, therefore, no loss has occurred to the Government and hence no penalty can be imposed.

8. On the other hand, the respondents have submitted their written reply. In their written reply the respondents have stated that the applicant while working as APM(SB) Bharatpur HO on 1.12.2004, 29.1.2005, 2.2.2005, 21.4.2005 and 25.4.2005, on receipt of list of transaction along with schedules of MPKBY agents for RD deposits taken into account in subsequent months by Shri S.S.Sogarwal, Ex.SPM Kanjoli Line, SO, Bharatpur, failed to challenge the corrections made in the amount of deposits and dates of deposits printed/noted by respective MPKBY agents. The applicant failed to follow the prescribed procedure of RD deposits at SO in account with HO as prescribed in Rule 31(2)(iii) read with rule 106 and Rule 2(4), rule 48, 50 of Post Office Savings Bank Manual Vol.I and facilitated the misappropriation of Govt. money by Shri S.S.Sogarwal Ex-SPM Kanjoli Line TSO Bharatpur amounting to Rs.5,98,977.60. Applicant by doing aforesaid act, also failed to maintain devotion to his duties and violated the rule 3(1) (ii) and 3(2) CCS (Conduct) Rules, 1964. That due to aforesaid negligence of applicant, Shri S.S.Sogarwal Ex-SPM Kanjoli Line Bharatpur succeeded in misappropriation of RD Lots deposited by MPKBY agents of Rs.5,98,977.60. Thus, for the aforesaid negligence disciplinary action was taken

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against the applicant vide Office Memo No.F4-1/0506/C.P. Gupta dated 4.6.2008. That the applicant had submitted his representation through Post Master, Deeg HO on 27.6.2008, which was received in office of respondent No.3, SPOs Bharatpur on 30.6.2008. After receiving his representation the disciplinary authority vide his memo No.F4-1/0506/C.P.Gupta dated 16.7.2008 (Ann.A/3) , imposed punishment of recovery of Rs.75000/- from his pay in 15 monthly installments of Rs.5000 each w.e.f. July, 2008 upon the applicant. That the applicant being aggrieved with the decision of the respondent No.3, disciplinary authority, SPOs Bharatpur filed an appeal before the appellate authority (Director Postal Services), Jaipur on 29.8.2008 which was rejected by the appellate authority vide memo No.Staff/44-1/17/2008 dated 1.12.2008 (Ann.A/2).

9. That being aggrieved with the decision of the disciplinary authority and appellate authority, applicant filed petition before the Chief PMG, Raj. Circle Jaipur on 25.11.2009 under Rule 29 of the CCS(CCA) Rules, 1965, which was also rejected by the Chief PMG Raj.Circle Jaipur vide C.O.Memo No. Staff/44-3/12/2010 dated 19.7.2010 (Ann.A/1). That the orders passed by the disciplinary authority, appellate authority and Revision Authority are well reasoned and speaking orders, hence, the applicant has

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no reason and ground to file the OA, therefore, the same deserves to be dismissed.

10. The respondents have further stated that as per the material on record, evidence and relevant provisions of law the charges against the applicant are well proved, hence the orders passed by the disciplinary authority dated 16.7.2008(Ann.A/3) , appellate authority dated 1.12.2008(Ann.A/2) and the Revisionary Authority dated 19.7.2010 (Ann.A/1) are legal and justified. There has been no violation of principle natural justice. The applicant was served a charge memo. He submitted his reply. The reply was duly considered by the disciplinary authority. That the applicant failed to follow the prescribed procedure of R.D. deposits at SO in account with H.O. as prescribed in rule 31(2)(iii) read with rule 106, 48 and 50 of SB Manual Vol.I and he facilitated the misappropriation of Govt. money by Shri S.S.Sogarwal SPM Kanjoli Line amounting Rs.5,98,977.60. Disciplinary Authority passed the well reasoned and speaking order. The appellate authority and the revisionary authority also upheld the order of the disciplinary authority after considering the relevant material on record and the points raised by the applicant in his appeal and revision respectively. Thus there is no merit in the OA and it should be dismissed with costs.

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11. Heard the learned counsel for parties and perused the documents on record and the case law as referred to by the parties. The Ld. Counsel for the applicant reiterated the facts as stated in his OA. He submitted that the applicant has followed the provisions of rule. He further argued that even from the perusal of the charge sheet it is clear that he has not misappropriated the money. The allegation against him is that by not following the prescribed procedure the applicant facilitated the misappropriation of Govt. money by Shri S.S.Sogawal, Ex. SPM, Kajoli Line, TSO, Bharatpur amounting Rs.5,98,977.60 and since he is not directly involved in the misappropriation , therefore, no recovery can be made from him. In support of his averments he relied upon the order of C.A.T., Jabalpur Bench passed in OA No.344/2003 and other connected matters decided on 22.11.2004 in the case of Kalpana Shinde and ors. Vs. Union of India and ors. He also submitted that the amount said to be misappropriated has been deposited in the Govt. Account, therefore, no loss has been caused to the Govt. and hence no recovery can be issued against the applicant.

12. On the other hand, the Ld. Counsel for the respondents argued that since the applicant did not follow the laid down procedure and violated the provisions of rule 31(2)(iii) read with rule 106 and rule 2(4) and rule 48 and 50 of the Post office Saving Bank Manual Vol.I and thereby facilitated the

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misappropriation of Govt. money by Shri Sogarwal, Ex.SPM. That the applicant was served the charge memo as per rules. That after considering the reply submitted by the applicant, penalty order has been passed by the disciplinary authority which is the reasoned and speaking order. Thus the principle of natural justice has also been followed. There is no illegality in the order passed by the disciplinary authority. Similarly, the orders passed by the appellate authority and the revisionary authority are speaking and reasoned orders and the applicant has not able to prove any illegality or irregularity in these orders. With regard to the submissions of the Ld. Counsel for the applicant that the applicant is not directly involved in the misappropriation of funds, therefore, no recovery can be made from him, the Ld. Counsel for the respondents argued that recovery can be made from an employee if financial loss is caused due to the negligence and carelessness of the employee. In support of his arguments he relied upon the judgment of the Hon'ble Supreme Court in the case of U.P.State Sugar Corporation Ltd. Vs. Kamal Swaroop Tondon on 18.1.2008 arising out of SLP (C) No.11596 of 2006 AIR 2008 SC 1235-1243. He drew my attention to Para 37 of the judgment in which the Hon'ble Supreme Court has held that :-

"37.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

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impugned action, therefore, cannot be said to be illegal or without jurisdiction and the High Court was not right in quashing the proceedings as also the orders issued by the Corporation. The appeal, therefore, deserves to be allowed by setting aside the order of the High Court."

In the present OA also it was due to the negligence and breach of the orders by the applicant issued by the department from time to time as mentioned in the charge memo that the misappropriation took place. Therefore, the action of the respondent department of imposing the penalty on the applicant is according to rules.

13. The learned counsel for the respondents also relied upon the judgment of Allahabad High Court in the case of Union of India & Ors. Vs. Babu Ram Verma and another decided on 3.4.2014 in Writ No.34398 of 2012.

14. Having heard the rival submissions of the parties and after careful perusal of documents on record and the case law as referred to by the respective learned counsels, I am of the opinion that the applicant has failed to make out any case for interference by this Tribunal. The main argument of the learned counsel for the applicant is that after introduction of new rule by the Director General dated 1.1.2003, the work of the sub-Post office have been decentralized and, therefore, the applicant was not responsible for the checking of the documents as stated by the respondents. I have perused the order of the disciplinary authority dated 16.7.2008 (Ann.A/3). From the perusal of

this order it is clear that this point has been duly discussed at length by the disciplinary authority in his order dated 16.7.2008(Ann.A/3). The order passed by the disciplinary authority is reasoned and speaking order and I do not find any illegality or irregularity in the order passed by the disciplinary authority. Similarly, I have perused the order of the appellate authority dated 1.12.2008(Ann.A/2) and the order passed by the revisionary authority dated 19.7.2010 (Ann.A/1) and I find that these orders are reasoned and speaking orders and there is no illegality or irregularity in these orders. In the facts of the present OA the statutory procedure as prescribed under rules for imposing minor penalty have been followed by the respondents. The applicant was served with a charge sheet. He submitted his reply and after the consideration of his representation the order of minor penalty of recovery of Rs.75000- has been imposed by the disciplinary authority. Principle of natural justice has also been followed. There is no violation of rule 11 or rule 16 of CCS(CCA) Rules, 1965. Thus I do not find any merit in this OA.

15. Consequently, the OA being devoid of merits is dismissed with no order as to costs.

16. However, the Ld. Counsel for the applicant drew my attention to para 111 of Volume-III of Post and Telegraph Manual which is reproduced as below:-

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"111. The amount of recovery of loss ordered as 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 nill, the case has to be reviewed by the competent authority for imposing an appropriate penalty. That authority will not, however, be competent to impose a penalty higher than of recovery."

17. The learned counsel had argued that since the amount alleged to have been misappropriated has been deposited in the respective accounts and, therefore, there is no loss caused to the Government and hence the order of penalty of recovery can now be reviewed by the competent authority.

In view of this submission the applicant is at liberty to file a representation stating these facts before the competent authority and if such representation is filed by the applicant then it shall be considered by the competent authority according to the provisions of law by a reasoned and speaking order expeditiously but not later than 3 months from the date of receipt of such representation.

Anil Kumar
(ANIL KUMAR)

ADMINISTRATIVE MEMBER

Adm/