

11.09.2013

O A No. 498/2011

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.

Anil Kumar
[Anil Kumar]
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 498/2011
&
ORIGINAL APPLICATION NO. 537/2012

DATE OF ORDER: 11.09.2013

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

(1) ORIGINAL APPLICATION NO. 498/2011

K. L. Dithwania S/o Shri Pyare Lal Dithwania, aged about 61 years, R/o Village & Post Sewar, Near Sanskrit School, District Bharatpur and retired on 31/10/2010 from the post of Postal Assistant, Bharatpur Head Post Office, Bharatpur Postal Division, Bharatpur.

...Applicant

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

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communication and Information Technology, Dak Bhawan, New Delhi – 110001.
2. Chief Post Master General, Rajasthan Circle Jaipur – 302007.
3. Director Postal Services, Jaipur Region, Jaipur Office of the Chief Post Master General, Rajasthan Circle, Jaipur – 302007.
4. Superintendent of Post Offices, Bharatpur Division, Bharatpur – 321001.
5. Post Master, Bharatpur Head Post Office, Bharatpur Postal Division, Bharatpur.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

(2) ORIGINAL APPLICATION NO. 537/2012

K. L. Dithwania S/o Shri Pyare Lal Dithwania, aged about 61 years, R/o Village & Post Sewar, Near Sanskrit School, District Bharatpur and retired on 31/10/2010 from the post of Postal Assistant, Bharatpur Head Post Office, Bharatpur Postal Division, Bharatpur.

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...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

ORDER (ORAL)

Since the facts and the legal position are similar in both the Original Applications, therefore, they are being disposed of by this common order. For the sake of convenience, the facts of Original Application No. 498/2011 are being taken.

2. Brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was substantive employee of the respondent-department. The applicant in the year 2007 onwards, posted in Deeg Head Post Office and time to time worked as Assistant Post Master (Saving Bank) and also Officiating Post Master in absence of regular incumbent.
3. Learned counsel for the applicant further submitted that Kaman LSG Post Office and Bus Stand Kaman Post Office is at a distance of about 25 KM come under the accounts jurisdiction of Deeg Head Post Office. Kaman LSG Post Office authorized for

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cash drawl by the Bus Stand Kaman Post Office. The then Sub Post Master, Bus Stand Kaman Post Office drawn cash from Kaman LSG Post Office and by this action fraud took place.

4. Learned counsel for the applicant also submitted that the departmental authorities inquired the matter regarding fraud took place at Bus Stand Kaman Post Office. They also reported the matter to the CBI authorities. The CBI also, after due inquiry, registered the case and the same is subjudice.

5. Learned counsel for the applicant submitted that the applicant who was at the verge of retirement was issued a charge memo dated 07.07.2010 (Annexure A/3) under Rule 16 of CCS (CCA) Rules, 1965 on the allegations that the applicant while officiating as Post Master Deeg Head Post Office on different dates in the year 2007, 2008 and 2009 failed to keep proper watch on the drawl of cash by the SPM Bus Stand Kaman from its cash office i.e. Kaman LSG. It is also alleged that the applicant failed to challenge the difference of the signature of the depositor and also not challenged payment made Rs. 20,000/- and more in cash, in spite of the fact that the then SPM Bus Stand Kaman drawn cash from Kaman LSG and the applicant was officiating for short period in absence of regular incumbent.

6. Learned counsel for the applicant further submitted that the applicant made request on 22.07.2010 (Annexure A/4) to make available copies of certain documents for submitting effective representation, but respondent no. 4 not allowed the

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same. Thereafter, in absence of proper documents, the applicant submitted his representation (Annexure A/5) stating therein that the applicant is not at all at fault.

7. Learned counsel for the applicant submitted that the respondent no. 4 without considering of facts and circumstances and representation submitted by the applicant, imposed a penalty of recovery of Rs. 1,00,000/- from his pay and service gratuity vide order dated 30.09.2010 (Annexure A/2). In the penalty order, it was further stated that a recovery of Rs. 5,000/- may be made from the pay of the applicant for the month of October, 2010 and the balance amount of Rs. 95,000/- be recovered from the service gratuity.

8. Learned counsel for the applicant also submitted that being aggrieved from this penalty order dated 30.09.2010 (Annexure A/2), the applicant preferred an appeal before the respondent no. 3 on 30.10.2010 (Annexure A/6). The Appellate Authority rejected the appeal of the applicant vide order dated 25.01.2011 (Annexure A/1) without considering the points raised by the applicant in the appeal.

9. Learned counsel for the applicant submitted that during the pendency of the appeal, the respondent no. 4 further passed a memo dated 26.11.2010 (Annexure A/7) vide which order was passed for deduction of Rs. 1,90,000/- from the amount of leave encashment in spite of the fact that in the punishment order, recovery of Rs. 95,000/- was to be made from service gratuity.

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10. Learned counsel for the applicant further submitted that in the case of one Shri Bhogi Ram, was also imposed a punishment of recovery from service gratuity in which it was held by the Appellate Authority that there is no provision to order recovery from the retiral benefits of an employee in disciplinary case under Rule 16 of the CCS (CCA), Rules, 1965, vide memo dated 19.07.2005 (Annexure A/8) and the Appellate Authority set aside the penalty order.

11. Learned counsel for the applicant also submitted that no amount can be deducted from the leave encashment because as per the punishment order, amount is to be recovered from service gratuity and there is no provision for any recovery from retiral benefits.

12. Learned counsel for the applicant further submitted that the respondent no. 4 on the same date i.e. 07.07.2010 also issued another charge memo under Rule 16 of CCS (CCA), Rules, 1965 on the basis of the same incident and allegations. The applicant was imposed a similar punishment vide order dated 30.09.2010, which has also been challenged by the applicant in OA No. 537/2012.

13. Learned counsel for the applicant submitted that the respondent no. 4 was not competent to issue the charge memo or award the penalty to the applicant as he was not regularly

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selected Superintendent of Post Offices. He was only working in officiating capacity on ad hoc basis.

14. Learned counsel for the applicant also argued that the applicant was holding the post for the time being and the amount has already been deposited by the agents more than that of fraud took place as alleged in the charge memo. Moreover, the applicant was not involved at all in the fraud.

15. Learned counsel for the applicant submitted that the work relating to the Recurring Deposit was decentralized w.e.f. 01.01.2003 and, therefore, the applicant was not responsible for the fraud, which took place at Kaman LSG Post Office and Bus Stand Kaman Post Office.

16. Therefore, learned counsel for the applicant prayed that the charge memo dated 07.07.2010 (Annexure A/3), the penalty order dated 30.09.2010 (Annexure A/2), the order passed by the Appellate Authority dated 25.01.2011 (Annexure A/1) and the memo dated 26.11.2010 (Annexure A/7) be quashed and set aside with all consequential benefits.

17. On the other hand, learned counsel for the respondents submitted that during the period mentioned in the charge memo, the applicant failed to keep proper watch on the drawl of cash by SPM, Bus Stand Kaman from his cash office i.e. Kaman LSG. He also failed to challenge the difference in the signature of depositor by comparing the signature of depositor available on

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SB-3, which was received with SB-7 (A) from the Kaman Bus Stand TSO. He also did not challenge the payment made of Rs. 20,000/- and more in cash instead of through cheque. Due to the aforesaid negligence of the applicant, a loss of Rs. 33,69,774/- was sustained by the department.

18. Learned counsel for the respondents further submitted that for the aforesaid negligence, disciplinary proceedings were initiated against the applicant under Rule 16 of CCS (CCA), Rules, 1965. He also submitted that there is no illegality or infirmity in the charge memo. The applicant submitted an application for making available photocopy of the relevant documents for submissions of his representation against the charge memo. Therefore, available documents, which were found relevant to the charge, were shown to the applicant on 26.08.2010 by Inspector Posts Deeg. The applicant, thereafter, submitted his representation on 06.09.2010.

19. Learned counsel for the respondents also submitted that the competent authority after considering the representation submitted by the applicant and other relevant record and evidence, found charges as proved against the applicant and imposed a penalty of recovery of Rs. 1,00,000/- from his pay and gratuity. Rs. 5,000/- was to be recovered from the pay of the applicant for the month of October, 2010 and remaining amount of Rs. 95,000/- from retirement gratuity. The applicant submitted his appeal against the order of the disciplinary authority.

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20. Learned counsel for the respondents further submitted that from the perusal of the penalty order passed by the competent authority, it is clear that it is a speaking and reasoned order and there is no infirmity or irregularity in the order.

21. Learned counsel for the respondents also submitted that being aggrieved by this order; the applicant filed an appeal to the Director, Postal Services, Jaipur. The Appellate Authority after considering all the grounds raised by the applicant in his appeal and considering the entire material and evidence on record, rejected the appeal of the applicant vide his memo dated 25.01.2011 (Annexure A/1). The order of the Appellate Authority is a well reasoned and speaking order and there is no ground to interfere with the order passed by the Appellate Authority.

22. Learned counsel for the respondents submitted that the respondent no. 4 was competent authority to issue charge memo and to pass the penalty order as at the relevant time, he was holding the charge of Superintendent of Post Offices, Bharatpur and to support his averments he referred to memo dated 20.04.2010 (Annexure A/10) vide which respondent no. 4 was promoted on ad hoc basis and posted as SPOs Bharatpur and, therefore, the contention of the applicant that the respondent no. 4 was not competent authority is not correct.

23. Learned counsel for the respondents further denied that it is not correct to say that the disciplinary proceedings against the applicant were started to harass him. In fact, a detailed inquiry

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was carried out by the Inquiry Officer in the matter and it was noticed that the applicant has not performed his duties as mentioned in Rule 10 and 34 of the Postal Manual Volume-IV, Part-III and Rule 44 of Post Office S.B. Manual Volume-I (Annexure R/1).

24. Learned counsel for the respondents further submitted that the decentralization of the Recurring Deposit Account did not minimize the role of the applicant as supervising officer. He also submitted that the recovery of Rs. 1,90,000/- has not been made from the retirement gratuity of the applicant. This amount has been recovered from the leave encashment as per provision of Rule 39 (3) of CCS (Leave) Rule, 1972 (Annexure R/3). He submitted that due to departmental provision, recovery of Rs. 1,90,000/- cannot be made from the retirement gratuity, hence, recovery was made from the amount of leave encashment.

25. Therefore, learned counsel for the respondents submitted that the action of the respondents is in accordance with the provision of law and there is no merit in both the Original Applications and, hence, the same should be dismissed with costs.

26. The applicant has also filed rejoinder to the reply. In the rejoinder, he has stated that the respondent no. 4 was not promoted on the post of Superintendent of Post Offices, Bharatpur on regular basis and, therefore, he was not competent to impose punishment to the applicant.

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27. Heard learned counsel for the parties and perused the documents available on record.

28. I have carefully perused the promotion order dated 20.04.2010 (Annexure A/10), by which the respondent no. 4 was promoted on ad hoc basis and posted as SPOs Bharatpur. From the perusal of this order, it is clear that the respondent no. 4 was posted as SPOs Bharatpur and he was not looking the work of SPOs on day to day basis. Therefore, at the time of issuance of the charge-sheet and also at the time of passing the penalty order dated 30.09.2010 (Annexure A/2), the respondent no. 4 was holding the post of SPOs Bharatpur and in that capacity, he was competent to issue the charge memo and also the penalty order. I do not agree with the averments made by the learned counsel for the applicant that the respondent no. 4 was not competent to issue the charge memo or the penalty order, therefore, I do not find any infirmity or illegality in the issuance of the charge memo as well as penalty order.

29. From the perusal of the pleadings of respective parties, it is clear that the applicant was allowed to inspect the relevant documents. He represented against the charge memo. His representation was duly considered by the Disciplinary Authority and after taking into account the points raised by the applicant in his representation, the Disciplinary Authority has passed a detailed and reasoned order dated 30.09.2010 (Annexure A/2).

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30. Thereafter, the Appellate Authority has also considered the points raised by the applicant in his appeal and passed the detailed and reasoned order.

31. However, the perusal of the order dated 30.09.2010 (Annexure A/2) makes it clear that the Disciplinary Authority ordered that the recovery of Rs. 95,000/- be made from the service gratuity of the applicant. The applicant has challenged that no recovery can be made from the retirement benefits of the employee and in support his averments he has also relied on the order passed by the Appellate Authority dated 19.07.2005 (Annexure A/8) in the case of one Shri Bhogi Ram. In this order, the Appellate Authority has clearly mentioned that the penalty awarded is irregular as there is no provision to order recovery from the retiral benefits of an employee in disciplinary cases under Rule 16 of the CCS (CCA) Rules, 1965. The respondents also in their written reply in para 4.9 have categorically stated that the recovery of Rs. 1,90,000/- cannot be made from the retirement gratuity, therefore, the recovery was made from the leave encashment as per Rule 39 (3) of CCS (Leave) Rules, 1972. Thus, in my opinion, to this extent, the penalty order dated 30.09.2010 (Annexure A/2) is not in accordance with the provision of law.

32. Therefore, now the question is whether the order passed by the respondent no. 4 dated 26.11.2010 (Annexure A/7) whereby the deduction of Rs. 1,90,000/- as a penalty of

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recovery was to be made from the leave encashment of the applicant is in accordance with the provision of law.

33. The respondents have relied on the Rule 39 (3) of CCS (Leave) Rules, 1972 (Annexure R/3), which is quoted below:

"(3). The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

From the perusal of this Rule, it is clear that the precondition is that the Government servant who retires from service on attaining the age of retirement should be either under suspension on the date of his retirement or disciplinary or criminal proceedings should have been pending against him on the date of his superannuation.

34. In the instant case, it is admitted that the applicant was not under suspension on the date of his superannuation. The applicant retired on 31.10.2010 on superannuation while the departmental proceedings were concluded on 30.09.2010 as the penalty order was passed on that date by the Disciplinary Authority. Thus, the disciplinary proceedings were concluded one month before the date of retirement of the applicant. Hence, I am of the opinion that the provision of Rule 39 (3) of CCS (Leave) Rules, 1972 is not applicable in the present case.

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35. Learned counsel for the respondents submitted that the disciplinary proceedings were pending on 26.11.2010 against the applicant as the appeal of the applicant was pending before the Appellate Authority and, therefore, the order of recovery from the leave encashment under Rule 39 (3) of CCS (Leave) Rules, 1972 was as per rules. If the averment of learned counsel for the respondents is accepted then the Disciplinary Authority could not have modified his order during the pendency of the appeal and, therefore, also the order dated 26.11.2010 (Annexure A/7) is not according to the provision of these rules.

36. Moreover, once the penalty order was passed by the Disciplinary Authority then without modifying those orders, the order dated 26.11.2010 (Annexure A/7) could not have been passed. There is no mention in the order dated 26.11.2010 (Annexure A/7) that these orders are being passed by the competent authority after modifying the penalty order. Therefore, the order dated 26.11.2010 (Annexure A/7) is not in accordance with the provision of law and, hence, it is quashed and set aside. Similarly, the penalty order dated 30.09.2010 (Annexure A/2) and the order passed by the Appellate Authority dated 25.01.2011 (Annexure A/1) are modified to the extent that the recovery of Rs. 95,000/- from the service gratuity of the applicant cannot be made.

37. Therefore, the respondents are directed to refund an amount of Rs. 1,90,000/-, if recovered from the leave encashment of the applicant in compliance to the order dated

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26.11.2010 (Annexure A/7) within a period of three months from the date of receipt of a copy of this order.

38. With these observations and directions, both the Original Applications are disposed of with no order as to costs.

39. Certified copy of this order be kept with the paper book of Original Application No. 537/2012.


(ANIL KUMAR)

ADMINISTRATIVE MEMBER

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copy given vide

No. 829 To 832

16/9/13

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