

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

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**ORDERS OF THE BENCH**

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**Date of Order: 30.10.2014**

**OA No.301/2012**

Mr. S.K.Jain, Counsel for the applicant.

Mr. Mukesh Agarwal, Counsel for the Respondents.

Heard the learned counsel for the parties.

Order reserved.

*Anil Kumar*

(ANIL KUMAR)  
ADMINISTRATIVE MEMBER

19/11/14  
order pronounced  
today in the  
open court  
by the aforesaid,

Adm/

*Bench*

*S*  
19/11/14

C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

**ORIGINAL APPLICATION No. 301/2012**

**ORDER RESERVED ON 30.10.2014**

**DATE OF ORDER : 19.11.2014**

CORAM :

**HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER**

K.L. Agarwal son of Shri S.L. Agarwal by caste Agarwal aged about 63 years resident of Purana Bazar, Fateh Nagar, District Udaipur, Retired SPM, Kota.

... Applicant

(By Advocate: Mr. S.K. Jain)

Versus.

1. Union of India through Secretary Ministry of Communiuation & IT, Dak Bhawan, Sansad Marg, New Delhi.
2. Sr. Superintendent Post Offices, Kota Division, Kota.
3. Director Postal Services, Rajasthan South Region, Ajmer.
4. Chief Postmaster General, Rajasthan Circle, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

**ORDER**

**PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

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

- "(i) That by any order or direction the impugned order of punishment Annexure A 1 be quashed and set aside.
- (ii) That by any order or direction the impugned appellate order Annexure A 2 and the Review Order Annexure A 3 be quashed and set aside.
- (iii) That the amount of alleged loss recovered from the salary of the applicant be ordered to be refunded with interest at the rate of 24% p.a. till the date of repayment.
- (iv) Any other relief this Hon'ble Tribunal deems fit may also be granted to him.

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2. The brief facts of the case, as stated by the learned counsel for the applicant, are that a charge sheet was issued to the applicant under Rule 16 of the CCS (CCA) Rules, 1965 on 20.10.2008 (Annexure A/4) on the ground that the applicant signed on the consolidation statement without verifying that certain payments are being made in cash instead of cheque and because of this inaction on the part of the applicant, the Sub Postmaster Sanwar was able to misappropriate an amount of Rs.1,23,000/-. Had the applicant objected to the payment by cash at the appropriate time then the Sub Post Master Sanwar would not have been able to misappropriate the amount. According to the applicant, the charge sheet itself could not have been issued to him because it was not his duty to point out that payment be made only by cheque. There is no provision in the rules to check consolidation statement. Secondly that part withdrawal from the RD Account is treated as a withdrawal as from the Saving Banks Account. There is no rule to make payment by cheque if the withdrawal is from the Saving Banks Account of Rs.20,000/- or above. Therefore, the charge sheet itself has no legal basis and therefore, it should be quashed.

3. That the applicant on receipt of the charge memo requested the Disciplinary Authority to provide him a copy of 18 documents as per letter dated 30.10.2008 (Annexure A/5). In response of this letter, the Disciplinary Authority replied that his statements were recorded during the inquiry at Mavli Head Office and at the time these documents were shown to the applicant. According to the applicant, the charge sheet was issued to the

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applicant on 20.10.2008 and according to the constitutional provision as well as according to the principles of natural justice, he had a right to get the copy of the documents which he requested to file his effective representation against the charge sheet. Therefore, denial of either to supply of a copy of the documents or even perusal of these documents to the applicant is violation of the instructions on the subject as well as violation of the principles of natural justice. Even if these documents were shown to the applicant during preliminary inquiry, at that time the applicant was not aware that he would be issued a charge sheet. Therefore, he could not take the relevant notes from these documents at that point of time. It is the duty of the Disciplinary Authority to provide the copies of the relevant documents which are relied upon by him to the charged officer. Therefore, the penalty order passed by the Disciplinary Authority dated 19.12.2008 (Annexure A/1) of recovery of Rs.61,500/- is illegal and, hence, it need to be quashed and set aside.

4. The applicant has also stated that according to Rule 11(3) of the CCS (CCA) Rules which deals with minor penalty of recovery, it can be ordered when any pecuniary loss has been caused to the Government by the negligence of the employee or breach of orders by him. In the present case, there is neither any negligence nor any breach of order by the applicant. Therefore, no recovery can be made from his pay.

5. That from the charge sheet it shall reveal that it does not mention at all that any loss is caused to the government by the

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negligence of the applicant. It only mentions that SPM Sanwar has misappropriated the amount of Rs.1,23,000/- The charge sheet has been issued to the applicant in violation of the instructions as given by the Director General of the P&T Department vide letter dated 13.02.1981. The charge sheet itself is illegal as not been specific and also being not able to explain alleged lapse on his part.

6. The applicant has also submitted that as per Rule 2 of Postal Manual Vol. III, charge sheet should be issued only after preliminary inquiry is held. The competent authority has first to apply his mind as to whether preliminary inquiry has to be held against the employee or not. In the present case, no preliminary inquiry has been held nor any show cause notice issued to the applicant to explain any alleged omission or commission by the applicant prior to the issuance of the charge sheet.

7. The applicant has also submitted that he did not violate the provisions of Rule 113 (iii) of the SB Manual I and 122( i) (ii) (iii) of the Post Office SB. According to the applicant, Rule 113 deals with part withdrawal from the RD Account. According to this rule, part withdrawal from RD Account is to be treated at par as withdrawal from the Savings Accounts and in the case of withdrawal of the Saving Account, there is no limit of Rs.20,000/- or more to be withdrawn only by cheque. He also referred to the letter dated 28.02.2008 from the Senior Superintendent of Post Office, which states that it is further clarified that repayment of Rs. 20000/- or above in any of the

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Small Saving Scheme except Saving Account cannot be made by cash. The violation of these instructions will be treated as corrupt practice, and the Disciplinary Authority will take disciplinary action against concerned official. The same circular states that in repayment of the deposit together with interest in any of the small saving except saving accounts if become Rs.20000/- or above should only be made either by Account Payee Cheque or by crediting into Saving Bank Account of the person standing at the same post office. This also shows that while dealing with Saving Account, there is no limit of Rs.20000/- for payment by cheque and since part withdrawal from the recurring deposit has been treated at par with the withdrawal of the Saving Account, the applicant is not guilty of any negligence. That the Disciplinary Authority has not dealt with the objection of the applicant that the said circular of the department does not apply to the part payment which have to be dealt with as in case of Saving Account. Thus the penalty order passed by the Disciplinary Authority dated 19.12.2008 (Annexure A/1) is illegal and be quashed and set aside.

8. That the applicant being aggrieved by the penalty order filed an appeal, which was rejected by the Appellate Authority without applying his mind to the facts as mentioned in the appeal.

9. That being aggrieved by the decision of the Appellate Authority, the applicant filed a Review Application, which was dismissed in a cursory manner. Both the Appellate Authority and

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the Reviewing Authority committed grave error of law in not looking to the facts that the applicant was not duty bound to challenge that whether the disbursement of the amount was made by cheque or cash. The case of the applicant was that it was not his duty to check whether the amount of more than Rs.20000/- has been paid by cheque or cash. The provision of payment by cheque only was not applicable in this case as it was part withdrawal from RD Account. This point has not been considered at all by the respondents hence the order passed by the Appellate Authority dated 16.04.2009 (Annexure A/2) and Reviewing Authority order dated 28.06.2011 (Annexure A/3) be quashed and set aside.

10. The applicant has also stated that the respondents have not gone into the fact that the applicant had not directly contributed to the misappropriation of the amount and hence no action could be taken against him. As such the punishment is liable to be quashed and set aside. In support of his averments, he referred to an order passed by the Hon'ble CAT Jabalpur Bench in the case of **Smt. Kalpana Shinde & Others vs. Union of India & Others**, 2005 (1) ATJ 45.

11. On the other hand, the respondents have filed their reply. In their reply, they have stated that the applicant while working as APM Mavli HO (Udaipur Dn.) during the period 25.03.2006 to 05.05.2006, signed the RD consolidation without prescribed check and did not object the cash payment allowed by the SPM Sanwar as half withdrawal in RD Accounts nos. 44517, 46035

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and 45256 on dated 23.03.2006, 28.03.2006 and 03.05.2006 for Rs.50,000/-, 23,000/- and 50,000/- respectively as the same was not permissible as per relevant rules/instructions of the department on this subject.

12. The payment vouchers of above said withdrawals were received in HO on dated 25.03.2006, 30.03.2006 and 05.05.2006 respectively but due to supervision failure of applicant, the payment was not disallowed by Head Post Office and SPM Sanwar, succeeded to misappropriate the above said amount by making cash payment, whereas all the maturity/prematurity payment of Rs.20,000/- or more are only to be made through cheque as per relevant rules/instructions of the department on this subject.

13. That accordingly disciplinary proceedings under Rule 16 of CCS (CCA) Rules 1965 vide SSPOs Kota Memo No. F2/Misc./Kota dated 20.10.2008 was initiated against the applicant for the above mentioned allegation and also for the failure to comply the directions contained in D.G. Posts New Delhi order No. 5-20/UP/06/2000-INV dated 29.08.2001, 113-11/2003 SB order No. 1/2006 dated 10.01.2006 and violated Rule 3 (1) (ii) 3(2)(i) of CCS (Conduct) Rules, 1964.

14. That the applicant submitted his representation dated 05.12.2008 before the disciplinary authority, which was given due consideration by Disciplinary Authority and since the misappropriation of Government money to the tune of

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Rs.1,23,000/- was facilitated by him and he was responsible for half of this loss. Further, he was also identified as subsidiary offender as Circle Level Inquiry conducted by the respondent no. 3, i.e. DPS. Hence he was awarded penalty of recovery of Rs.61,500/- from his pay in six installments of Rs.10,250/- each vide SSPOs Kota Memo No. F2/Misc/Kota dated 29.12.008 (Annexure A/1).

15. That the applicant preferred an appeal dated 28.11.2009 against the penalty of recovery imposed upon him vide SSPOs Kota i.e. Disciplinary Authority. The Appellate Authority after considering relevant record, appeal of applicant and parawise comments carefully and dispassionately rejected his appeal vide Memo No. STA/SR/44-33 (21)/09 dated 16.04.2009 (Annexure A/2).

16. That the applicant preferred Revision Petition dated 25.05.2009 to Chief PMG, Jaipur on the ground that the DPS rejected his appeal ignoring all logic and passed orders on the basis of personal thoughts and presumptive knowledge which is subversive to the law of natural justice. The Chief PMG Jaipur too after consideration and giving thorough discussion on the points raised by the applicant rejected his petition vide order dated 28.06.2011 (Annexure A/3).

17. Thus, there is concurrent finding of the Disciplinary Authority, Appellate Authority and Revision Authority, whereby charges against the applicant are well proved and the penalty

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imposed upon him is commensurate to the charges and role of applicant. Hence the OA of the applicant deserve to be dismissed.

18. The learned counsel for the respondents further submitted that the charge sheet has been issued according to the rules and it has been clearly mentioned that due to the lapses of the applicant, SPM Sanwar succeeded in committing misappropriation to the tune of Rs.1,23,000/- from RD Account. Accordingly, he was identified as subsidiary offender while carrying out CLI by the Director, Postal Services (Annexure R/1).

19. He submitted that recovery can be made from a Government servant if any pecuniary loss is caused by him to the Government by negligence. In this case, the charge is that the Government has suffered a loss of Rs.1,23,000/- due to negligence of the applicant. Hence, a recovery can be made from him under Rule 11 (3) of the CCS (CCA) Rules. He also submitted that it is not necessary to hold a preliminary inquiry before issuing a charge sheet. Therefore, there is no illegality in issuing the charge sheet dated 20.10.2008 (Annexure A/4) to the applicant.

20. That the applicant was given a chance to represent his case. He asked a copy of certain documents, which were already showed to him as is evident from the letter dated 01.12.008 (Annexure A/6). Thus, it was not necessary to supply the copies of the same documents again. Moreover, he submitted that it is

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not necessary in disciplinary proceedings involving minor penalty under Rule 16 of CCS (CCA) Rules, 1965 to provide copy of any document to the charged officer. Therefore, on this count also, there is no illegality on the part of the respondents and principles of natural justice have also not been violated.

21. Therefore, the OA has no merit and it should be dismissed with costs.

22. Heard the learned counsel for the parties and perused the documents on record and the case law as referred to by the learned counsel for the applicant. The learned counsel for the applicant reiterated the facts as stated in the OA and argued that the charge sheet, penalty order passed by the Disciplinary Authority, Appellate order passed by the Appellate Authority and the Reviewing Authority's order may be quashed and set aside being illegal and against the principles of natural justice. He drew my attention to Rule 77 of P&T Manual III where it has been provided that inspection of document may be permitted if an accused officer in such a case makes a request for permitting him to inspect the relevant record to enable him to submit his defense to the Disciplinary Authority though it is not incumbent on the part of the Disciplinary Authority that he should give Charged Officer an opportunity to inspect the relevant record. In this case, since the Charged Officer i.e. the applicant has made a request for giving a copy of the documents, therefore, the Disciplinary Authority at least ought to have allowed inspection

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of those documents. The learned counsel for the applicant referred to the following case laws in support of his averments.

1. **Satnam Singh vs. Union of India & Others (OA No. 34/2003 decided on 03.09.2003 by CAT Principal Bench), ATJ 2004 (1) 411,**
2. **Smt. Kalpana Shinde & Others vs. Union of India & Others (OA Nos. 344/2003, 353/2003, 354/2003, 355/2013 and 357/2003 decided on 22.11.2004 by CAT Jabalpur Bench), ATJ 2005 (1) 45.**
3. **Shrishail Bhajantri vs. the Principal, Kendriya Vidyalaya No. 2, Hubli & Others, (OA No. 33/2002 decided on 13.09.2002 by CAT Bangalore Bench), ATJ 2003 (2) 3888**
4. **Inspector Prem Chand vs. Government of NCT of Delhi & Others, 2007 (2) SCT 650**
5. **Union of India & Others vs. Dayanand Pandora & Another, 2011 (4) SCT 211,**

23. On the other hand, the learned counsel for the respondents reiterated the facts as mentioned in their reply. He emphasized that loss to government has been caused due to the negligence of the applicant. Therefore, the order of recovery from the applicant of 50% loss caused to government is just & legal. He also drew my attention to the instructions issued by DG Posts vide letter No. 5-20/UP-06/2000-INV dated 28/29.08.2001 (Annexure R/2) vide which it has been directed that the maturity value of RD account or the amount of withdrawal if it is Rs.20000/- or more should be paid by cheque only by the post offices as provided in Section 269-T of the Income Tax Acts. Therefore, the applicant should have challenged the payment of over Rs.20000/- made in cash by Sub Post Master, Sanwar.

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24. From the perusal of the charge sheet, it appears that due to the negligence of the applicant, the Sub Postmaster Sanwar was able to misappropriate Rs.1,23,000/- That the applicant did not challenge the payment of more than Rs.20,000/- by cash and thus violated the instructions on the subject. The learned counsel for the applicant drew my attention to Rule 113 (iii) of Post Office Saving Bank Manual, Vol. I, which deals with half withdrawals. Rule 113 (iii) is quoted below:-

**"113 (iii) Procedure in Sub Offices:-** Computerized SOs should follow the same procedure as prescribed for HOs. In non-computerized offices, the Counter Assistant after verifying the eligibility of the depositor, etc. as laid down in sub para (ii) (a) above should make entries of the withdrawal in the RD ledger and the pass book and transfer the pass book, application for withdrawal and the ledger to the Sub Postmaster. After satisfying himself that the withdrawal can be allowed, SPM will check and attest the entries in the pass book and the ledger and sign the warrant of payment. Where the amount of withdrawal is more than Rs.5000, he will also compare the signature of the depositor with the specimen on record and sign the signature of the depositor on the application for withdrawal. All documents should be returned to Counter PA who on receipt back of the documents pay the amount to the depositor in the same manner as withdrawals from Saving accounts."

There is a note at the end of this provision, which is also quoted:-

**"Note:-** The limit upto which ED sub postmaster can authorize withdrawal from Saving Accounts without reference to the Head Office will apply to withdrawal from RD account also. Where the amount sought to be withdrawn exceeds the limit, the procedure prescribed for similar transaction in Saving Accounts will be followed mutatis mutandis."

25. He submitted that a bare reading of this provision would reveal that where a part withdrawal is involved, the rules with regard to withdrawal from Saving Bank Account would be

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applicable. Since there is no limit of payment by cheque in the withdrawal from Saving Bank Account, therefore, in the present case also there is no limit for payment by cheque only as it was part withdrawal and not payment on maturity. Thus no charge is made out against the applicant.

26. I have carefully perused the provisions of Rule 113 (iii) along with the Note given at the end of Rule 113 (iii). From the bare perusal of this rule, it appears that in the case of half withdrawal, the payment is to be made to the depositor in the same manner as withdrawal from the Saving Account. The learned counsel for the respondents did not deny that there was no limit of payment in cash in case of withdrawal from the Saving Account. Since the withdrawal in the present OA were part withdrawal, therefore, they cannot be governed by the terms for payment made on maturity. This aspect has not been denied by the Disciplinary Authority in the order of punishment dated 29.12.2008 while analyzing the decision. The Disciplinary Authority has just referred that the charged officer in his representation has referred to the provisions of Rule 113 (iii) of the POSB Manual Vol. I but has stated that the applicant did not follow the departmental instructions and allowed the payment of more than 20000/- by cash and, therefore, due to the negligence of the applicant, the Post Master Sanwar was successful in misappropriating the amount of Rs.1,23,000/-. The Disciplinary Authority has relied upon the circular of the Department No. 5-20/UP-06/2000-INV dated 29.08.2001 and Circular No. 113-11/2003-SB dated 10.01.2006.

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27. The respondents have placed a copy of the Circular dated 28/29.08.2001 at Annexure R/2. Para No. 3 of which deals with payment on maturity value by cheque. This Para is quoted below:-

**"(3) Payment of maturity value by cheque:** The maturity value of RD account for the amount of withdrawal if it is Rs.20000/- or more should be paid by cheque only by the post office as provided in Section 269-T of the Income Tax Act."

This provision deals with the procedure to be followed for payment of maturity value by cheque. It does not mention about the procedure to be followed in case of part withdrawal. Moreover, a bare perusal of this provision clearly shows that this provision is based on the provision of Section 269-T of the Income Tax Act, 1961. Section 269-T of the Income Tax Act 1961 deals with mode of repayment of certain deposits. Even there is a proviso in Section 269-T (B) (ii) vide which the payment from the Post Office Saving Bank have been exempted for payment by cheque. The Appellate Authority in his order has stated that the applicant has referred to this provision unnecessarily but the Appellate Authority has also not dealt with as to why this proviso which provides exemption to the general rule is not applicable in the present case. The whole issue revolves around the procedure to be followed for part withdrawal. As stated earlier, the provision with regard to the part withdrawal has been dealt with in Rule 113(iii) of the POSB Manual Vol. I which clearly provides that part withdrawal are to be dealt with in a manner as payment under Saving Banks Account. Even in the Income Tax Act, as stated above, there is

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exception for payment by cheque for the withdrawal from the Post Office Saving Banks Account. Therefore, on the basis of above discussion, it cannot be said that the applicant was negligent while allowing the payment of part withdrawal from the RD Account according to the rules on payment from the Saving Banks Account. Therefore, it cannot be held that the Sub Post Office Sanwar succeeded in misappropriating the money due the negligence of the applicant. The respondents have not placed a copy of circular No. 113-11/2003-SB dated 10.01.2006 on record.

28. Since the loss caused to the Government is neither due to the negligence of the applicant nor he is directly responsible for misappropriating any loss or causing pecuniary loss to the Government, I am of the opinion that no recovery can be made from him. In this connection, the case law referred to by the learned counsel for the applicant in the case of **Smt. Kalpana Shindi & Others vs. Union of India & Others** decided by the **Central Administrative Tribunal, Jabalpur Bench** (supra) is squarely applicable. Therefore, I am of the opinion that no recovery can be made from the applicant.

29. The learned counsel for the applicant also submitted that on receiving the charge sheet, the applicant demanded the copies of certain documents as listed in his letter dated 30.10.2008 (Annexure A/5). The respondents instead of supplying him the copies of the documents or allow him to inspect those documents, informed the applicant that these

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records were shown to the applicant at the time of inquiry by Mayli HO as per information given by Sub Postmaster vide letter dated 26.08.2008. That it is not mandatory under the provisions of CCS (CCA) Rules 1965 to provide the copies of the documents if the proceedings are under Rule 16 of the CCS (CCA) Rules 1965 but at the same time as per Rule 77 of the P&T Manual Vol. III, which is quoted in Syamy's Compilation of CCS (CCA) Rules, 1965, it has been stated that if an Accused Officer makes a request for permitting him to inspect the relevant record to enable him to submit his defence, the defense may grant necessary permission. Therefore, I am of the opinion that the applicant should have been allowed the inspection of the record by the Disciplinary Authority to make his effective representation especially when the applicant had made a written request to provide a copy of those documents. It is one thing to peruse the document at the stage of a preliminary inquiry and it is absolutely another thing to peruse the document after issuance of the charge sheet. I have carefully perused the order of the Central Administrative Tribunal, Principal Bench, New Delhi passed in the case of **Satnam Singh vs. Union of India & Others (OA No. 34/2003 decided on 03.09.2003)**, ATJ 2004 (1) 411, as referred to by the learned counsel for the applicant on this point and I am of the view that the ratio decided by the Central Administrative Tribunal in this OA is squarely applicable under the facts & circumstances of the present case. I am also of the opinion that the necessary documents, as requested by the applicant, should have been shown to him for making an effective representation. The denial of perusal of the documents

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violated the principles of natural justice. Therefore, the impugned orders imposing the penalty of recovery of Rs.61,500/- cannot be sustained in the eyes of law.

30. Thus on the basis of the above discussion, I am of the opinion that the punishment order passed by the Disciplinary Authority dated 29.12.2008 (Annexure A/1), Appellate Authority's order dated 16.04.2009 (Annexure A/2) and Reviewing Authority's order dated 28.06.2011 (Annexure A/3) for recovering of penalty of Rs.61,500/- are not sustainable in the eyes of law and are hereby quashed and set aside. The respondents are directed to refund the amount recovered from the applicant within a period of three months from the date of receipt of a copy of this order. Under the facts of the present OA, no orders/directions are being issued for payment of interest to the applicant.

31. With these directions, the OA is disposed of with no order as to costs.

  
(Anil Kumar)  
Member (A)

Abdul