

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 16.9.2014

OA No.53/2013

Mr. C.B.Sharma, Counsel for Applicant

Mr. Mukesh Agrawal, Counsel for Respondents

Heard the learned counsel for the parties. OA is disposed of by a separate order on separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)

ADMINISTRATIVE MEMBER

Adm/

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

**ORIGINAL APPLICATION NO. 53/2013
AND
ORIGINAL APPLICATION NO. 430/2013**

Date of Order: 16.9.2014

CORAM

HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

(1) Original Application No.53/2013

B.B.Jain Son of Late Shri Nemi Chand Jain, aged about 61 years, resident of Hakim ji Ka Katra, Goverdhan Gate, Purani Deeg, District Bharatpur and retired on 30.6.2011 from the post of Sub-Post Master, Rarah, Bharatpur.

.....Applicant

(By Advocate Mr.C.B.Sharma)

VERSUS

1. Union of India through Secretary to the Government of India, Department of Posts, Ministry of Communication & Information Technology, Dak Bhawan, New Delhi-110001.
2. The Chief Post Master General, Rajasthan Circle, Jaipur-302007.

3. Director, Postal Services(HQ), Rajasthan Circle, Jaipur-302007.

4. Superintendent of Post Offices, Bharatpur Division, Bharatpur-321001.

.....Respondents

(By Advocate Mr. Mukesh Agrawal)

(2) Original Application No.430/2013

B.B.Jain Son of Late Shri Nemi Chand Jain, aged about 61 years, resident of Hakim ji Ka Katra, Goverdhan Gate, Purani Deeg, District Bharatpur and retired on 30.6.2011 from the post of Sub-Post Master, Rarah, Bharatpur.

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.....Respondents

(By Advocate Mr. Mukesh Agrawal)

ORDER(ORAL)

The applicant has filed these OAs praying for the following reliefs:-

8. (i) That the respondents be directed to refund Rs.86020.00 along with interest at the market rate by quashing appellate order dated 5.10.2012(Annexure A/1) with the punishment order dated 27.6.2011 (Annexure A/2) with all consequential benefits.

(ii) The charge memo dated 1.3.2011 (Annexure A/5) be quashed and set aside, as the same is not justified as per facts and circumstances.

(iii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.

(iv) That the costs of this application may be awarded.

2. Since the facts and law points involved in both OA No.53/ 2013 and O.A. No. 430/2013 are similar, therefore, with the consent of parties they are being disposed of by a common order. For the sake of convenience the facts of the OA No.53/2013 are being taken as lead case.

3. The brief facts of the case as stated by the learned counsel for the applicant are that the applicant was served with the Charge Memo under Rule 16 of the CCS (CCA) Rules, 1965 on the allegations that applicant while working

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as officiating Post Master, Deeg HO failed to keep proper watch on the drawal of cash by the SPM Bus Stand Kaman and further while working as APM Deeg HO failed to challenge the difference in signatures of depositors and further not challenge payment of Rs.20000/-or more in cash instead of cheque.

4. The respondent No.4 imposed a punishment of recovery of Rs.86020/- by way of adjustment from leave encashment amount to be paid after retirement vide order dated 27.6.2011 (Annexure A/2). The applicant retired on superannuation on 30.6.2011. The applicant preferred an appeal against the penalty order which was rejected vide order dated 5.10.2012 (Annexure A/1).

5. The learned counsel for the applicant submitted that the disciplinary authority no way applied his mind and also acted against the procedure and as per the directions of higher authorities. The action of the respondents in issuing the penalty of recovery of Rs.86020/- is arbitrary, illegal and unjustified and also against the rules and instructions on the subject. The respondents in similar circumstances have not imposed the punishment to other officials. The disciplinary authority did not consider the representation of the applicant against the charge memo. The charge memo issued to the applicant is not in consonance with the instructions as

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incorporated in CCS(CCA) Rules, 1965 which have been given under below Rule 11.

6. The Appellate Authority also did not consider the points raised by the applicant in his appeal. He also submitted that the recovery cannot be made from the amount of leave encashment as per provisions of Rule 39(3) of Leave Rules, 1972. Therefore, the punishment order dated 27.6.2011(Annexure A/2), Appellate Order dated 5.10.2012 (Annexure A/1) and Charge Memo dated 1.3.2011(Annexure A/5) be quashed and set aside.

7. On the other hand the respondents have filed the reply. In their reply the respondents have said that due to negligence of the applicant Shri B.B.Jain, a loss of Rs.128262/- was sustained by the department. That for the aforesaid negligence, disciplinary proceedings were initiated against the applicant Shri B.B.Jain vide respondent No.4 office memo No.F4-2/09-10/BBJ dated 24.2./1.3.2011. That the competent authority after considering the representation of the applicant and relevant facts and circumstances of the case found proved the charges against the applicant and vide memo F4-2/09-10/BBJ dated 27.6.2011 imposed punishment of recovery of Rs.86020/- from the amount of leave encashment due on retirement (Annexure A/2). That the applicant submitted appeal against the aforesaid punishment order to the Director Postal Services

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(HQ),Jaipur. The appellate authority rejected the appeal of the applicant vide his memo No.Staff/44-1/26/2011 dated 5.10.2012.

8. Thus, as the punishment has been awarded after following due process provided under the relevant rules and on the proving the charges. The applicant has no ground to challenge the aforesaid orders. Hence OA deserves to be dismissed.

9. The respondents in reply have also stated that action against the applicant was taken while he was in service, hence the rule 9 of CCS (Pension) Rules, 1972 is not applicable against the applicant.

10. The recovery has been made from the amount of leave encashment due on retirement according to the rule 39(3) of CCS(Leave) Rules, 1972.

11. The respondents have stated that the contention of the applicant that the other officials have not been punished is not correct. The disciplinary action against each official/officer who was identified principal/subsidiary offender is being taken as per rules and punishment of recovery is also being awarded according to their share of loss, therefore, there is no discrimination against the applicant. Therefore, OA has no merit and it should be dismissed with costs.

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12. Heard the learned counsel for the parties and perused the documents on record. The learned counsel for the applicant reiterated that the facts which have been mentioned in the OA. He further submitted that the controversy involved in both the present OAs is squarely covered by the order dated 11.9.2013 of this Tribunal passed in OA No.498/2011 in the case of K.L.Dithwania Vs. Union of India and Ors. and OA No.537/2012 in the case of K.L.Dithwania Vs. Union of India and Ors. Therefore, he submitted that present OA can be decided in terms of the order dated 11.9.2013 of this Tribunal.

13. The learned counsel for the respondents submitted that though the law points and the facts of the present OA are similar to the law points and facts involved in K.L.Dithwania Vs. Union of India and Ors in OA No.498/2011, (supra) but he submitted that this order of the Tribunal has been challenged by the respondents by way of Writ Petition in the Hon'ble High Court of Rajasthan, Jaipur Bench, Jaipur which is pending adjudication. He also referred to an order in Daya Shankar Prasad Vs. Union of India (UOI) Vs.Ors. decided on 3.2.2001 by CAT Patna Bench in which the Hon'ble Tribunal in Para 13 has held that

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"13. While it is the responsibility of the respondents to ensure that Government outstanding dues are recovered from the concerned Government employee,

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but the same has to be done in accordance with the prescribed rules and well settled principle relating to adjustment and recovery. There is a distinct difference between DCRG and other pensionary dues like salary, leave encashment, transfer grant, dearness relief on pension etc. I have not come across any provisions to indicate that no recovery can be made from salary, leave encashment, dearness relief on pension, transfer grant, etc. for adjusting Government dues, meaning thereby that such recovery/adjustment can be done from aforesaid items in order to realize Government dues. The respondents have stated that coaching/commercial debits to the tune of Rs.24229/- have been raised against the applicant. The same can be realized from these items if not already recovered. After necessary adjustment, the respondents are directed to release the balance outstanding retiral dues of the applicant within a period of three months from the date of receipt of a copy of this order along with admissible interest."

Therefore, he submitted that penalty amount can be recovered from the leave encashment.

14. I have carefully gone through the order of CAT, Patna Bench, Patna in Daya Shankar Prasad Vs. Union of India & Ors. (supra) as referred by the respondents. I am of the opinion that the ratio decided by the CAT, Patna Bench in that OA is not applicable under the facts and circumstances of the present OA. In Para 13 of the order, the Hon'ble Tribunal has held that it has not come across any provision to indicate that no recovery can be made from salary, leave encashment, Dearness Relief on pension, transfer grant etc. for adjusting Government dues meaning thereby that such recovery for adjustment can be done from the aforesaid items in order to realize the Government dues. The case of Daya Shankar Prasad is related to the Railways. Whereas in

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the present OA, the applicant is governed by the CCS(CCA) Rules, 1965. Rule 39(3) of the CCA (Leave) Rules, 1972 specifically provides for the circumstances under which the recovery can be made from the leave encashment. Therefore, the ratio laid down by the Hon'ble CAT, Patna Bench, Patna in Daya Shankar Prasad Vs. Union of India & Ors. Supra, is not applicable in the present OA.

15. Since the facts and law points involved in the present OA are similar to the facts and law points involved in OA No.498/2011 K.L.Dithwania Vs. Union of India & Ors.(supra) therefore, the present OA is decided in terms of the order dated 11.9.2013 passed in OA No.498/2011 K.L.Dithwania Vs. Union of India & Ors. Para 33 and 34 of the order dated 11.9.2013 are quoted below:-

"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 pre-condition is that the Government servant who retires

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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 30.9.2010 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. "

16. In OA No.53/2013 the punishment order was passed on 27.6.2011 (Annexure A/2) whereas the applicant retired on superannuation on 30.6.2011. It is admitted that on the date of his retirement on superannuation, the applicant was neither under suspension nor any disciplinary or criminal proceedings were pending against him. Similarly, in OA No.430/2013 the punishment order was passed on 28.6.2011 (Annexure A/2) whereas the applicant retired on superannuation on 30.6.2011. On the date of

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superannuation the applicant was neither under suspension nor any disciplinary or criminal proceedings were pending against him. Thus as held in the order dated 11.9.2013 in OA No.498/2011 (supra) the provision of Rule 39(3) of the CCS(Leave) Rules, 1972 is not applicable in both the present OAs.

17. Therefore, respondents are directed that if any recovery has been made from the applicant in pursuance to the punishment order dated 27.6.2011 (Annexure A/2) and Appellate Authority order dated 5.10.2012 (Annexure A/1) and in pursuance of punishment order dated 28.6.2011 (Annexure A/2) of OA No.430/2013 and appellate authority order dated 13.3.2013 from the leave encashment of the applicant then it should be refunded to the applicant within a period of three months from the date of receipt of a copy of this order.

18. With these directions both OAs are disposed of with no order as to costs.

19. A certified copy of this order be kept on the file of OA No.430/2013.

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20. It is made clear that these directions are subject to final outcome of the Writ Petition pending before the Hon'ble High Court filed against the order dated 11.9.2013 passed in OA No. 498/2011 and OA No.537/2012.

Anil Kumar
(ANIL KUMAR)

ADMINISTRATIVE MEMBER

Adm/