

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Orders reserved on : 09.02.2018

Orders pronounced on : 13.02.2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

O. A. No.330/1011/2012

Madhusudan Rai aged about 54 years S/o late Bhagawati Prasad Resident of 137/1 Chhota Baghara, Allahabad and presently serving as A.P.M. at Allahabad Kutcheri P.O., Allahabad.

..... *Applicant*

(By Advocate : Shri Swayamber Lal)

Versus

1. *Union of India through its Secretary, Ministry of Communication, Department of Posts, Govt. of India, New Delhi-110011.*
2. *Director General, Posts, New Delhi-110011.*
3. *Chief Post Master General, U.P. Circle, Lucknow.*
4. *Director, Postal Services, Allahabad Reason, Allahabad.*
5. *Senior Supdt. of Post Offices, Allahabad Division, Allahabad.*

..... *Respondents*

(By Advocate : Shri R.P. Singh)

ORDER

The Applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"A. To issue, writ, order or direction in the nature of certiorari to quash the impugned order dated 29-02-2012 (Annexure A1, to compilation No.1) passed by Respondent No.5 and order dated 4/7/2012 (Annexure-A-2) passed by Respondent No.4.

B. To issue, a writ, order or direction in the nature of mandamus to refund the recovered amount, if any, during the pendency of the O.A. along with 18% p.a. interest from the date of recovery to the date of actual refund.

C. To issue another writ, order or direction in favor of the applicant as deem fit and proper in the circumstances of the case.

D. Award the cost of application in favor of the applicant."

2. Brief facts of the case as narrated by the applicant in this case are that the applicant at present is serving as A.P.M. in Allahabad Kutchery P.O., Allahabad.

2.1 The applicant while serving at Hindia Sub P.O., Allahabad as S.P.M., a theft took place in the night of 22/21-01-2010 in Tehsil Treasury Handia, where the iron chest of Post Office was embedded in which amounting to Rs.3,20,000/- as well as KVP & NSC bundle were kept and locked by applicant and joint custodian. This Treasury of Tehsil is protected by security guards, i.e., U.P. Police deputed by the Tehsildar or other authorities. In the night of 20/21-01-2010 an account of aforesaid theft the cash amounting to Rs.3,20,000/- was stolen by thieves by cutting the locks of iron chest of the Post Office in Tehsil Treasure, Tehsil, Handia, District, Allahabad.

2.2 When the applicant went to Tehsil Treasury to bring the cash and other articles kept in the iron chest along with joint custodian and Group (D) on 21.01.2010 at 0930 a.m., we found that the locks of the iron chest have been cut and cash amount as stated above was missing with other articles kept in iron chest. The applicant then informed to SSPOs Allahabad on telephone. He reached on the spot of the theft and along with applicant, Joint Custodian, Group (D) and SSPOs Allahabad went to the Police Station, Handia, where we lodged the FIR regarding the aforesaid theft on 21-01-2010. The complete details were given in FIR dated 21-01-2010 (Annexure A-3).

2.3 On account of aforesaid theft, the Director Postal Services, Allahabad also visited to Handia Post Office on 22-01-2010 (Annexure A-4).

2.4 After a lapse of about one year, applicant was served with a Memo of Charge dated 14-12-2010 levelling alleged false and fabricated charges against him under Rule 16 of CCS (CC&A) Rules, 1965, i.e., for major penalty (Annexure A-5).

2.5 The applicant demanded the copies of the relevant documents to enable him to submit the proper reply to the said Memo of Charge vide application dated 27-12-2010 (Annexure A-6). Applicant also submitted another application dated 27-01-2011 to supply copies of certain other

documents (Annexure A-7). Applicant submitted another application dated 28-02-2011 by which one more document was also demanded by the applicant (Annexure A-8).

2.6 The disciplinary authority refused to supply the relevant documents demanded by the applicant vide letter dated 29.8.2011 (Annexure A-9) which was received by the applicant on 3.9.2011. However, the disciplinary authority directed the applicant to see certain documents instead of supplying copies of demanded documents. Thus, disciplinary authority violated the principles of natural justice as he was not afforded an opportunity of defending his case reasonably.

2.7 The applicant was detailed for training to be conducted at Saharanpur from 12.09.2011 to 15.10.2011. Accordingly, the applicant was relieved on 09.09.2011 A.N. for attending the aforesaid training. Therefore, applicant was unable to inspect the documents as stated in the letter dated 29.08.2011 and could not be able to submit the reply to Memo of Charge within the time specified in the letter dated 29.08.2011. The applicant then moved an application dated 09-09-2011 to permit him to verify the documents after his training period to submit the reply to the said Memo of Charge (Annexure A-10).

2.8 After training period when the applicant joined his duties on 17-10-2011 (Annexure A-11), he gave another application on the same day to the disciplinary authority

requesting him to permit the applicant to inspect the relevant documents in order to submit the proper reply to the Memo of Charge served upon him.

2.9 The disciplinary authority issued a letter dated 20-10-2011 (Annexure A-12) and directed the applicant to submit the reply of aforesaid Memo of Charge.

2.10 The applicant, therefore, submitted his reply to the said Memo of Charge vide his reply dated 24-10-2011 (Annexure A-13) and 27-10-2011 (Annexure A-14), without affording an opportunity of consulting the relevant documents as demanded by the applicant which were the essential documents for submitting the reply.

2.11 The disciplinary authority, according to the applicant, without considering the legal requirement in the case and also without affording the opportunity to defend the case by the applicant passed an arbitrary and illegal order without application of mind by which applicant has been ordered for the recovery of Rs.1,06,667/- from the pay and allowances of the applicant in 14 instalments, by order dated 29-02-2012 (Annexure A-1).

2.12 The applicant has submitted his appeal dated 19.03.2012 (Annexure A-15) challenging the order of disciplinary authority dated 29-02-2012 and also filed an OA No.361/2012 (Madhusudan Rai vs. Union of India and others) for seeking relief during the pendency of the appeal

submitted to the appellate authority as the respondents started making recovery in pursuance of order dated 29.02.2012 from the pay and allowances of the applicant.

2.13 The said OA filed by the applicant was disposed of by this Tribunal vide Order dated 13.4.2012 (Annexure A-16) by granting the stay order till the order is passed on the appeal of the applicant. The applicant submitted the said Order of this Tribunal to the respondents vide his application dated 17.4.2012 (Annexure A-17).

2.14 The appellate authority rejected the aforesaid appeal of the applicant vide order dated 4.7.2012 (Annexure A-2).

2.15 The applicant feeling aggrieved by the aforesaid orders has filed this OA seeking the reliefs as quoted above on the grounds:-

(i) Relied upon documents have not been supplied to him which amounts to violation of principles of natural justice;

(ii) The applicant is not connected with the loss of Government property directly in any way, as the same was on account of theft as given in the aforesaid FIR as such no recovery can be made against the applicant in view of Order of Ahmedabad Bench of this Tribunal in the case of J.M. Makawana vs. Union of India and others, reported in ATJ 2002 (1) CAT Ahmedabad 283. The head note is given as under:-

"One who is not directly responsible for causing any pecuniary loss to the government cannot be made responsible for recovery of the loss sustained by the government."

As such the order of the disciplinary authority is arbitrary and illegal and the same is not sustainable in the eye of law.

(iii) The order of the disciplinary authority is also liable to be quashed as the same has been passed without considering the points raised in the appeal and as such the same amounts to unreasoned order.

(iv) No enquiry has been conducted in the case and no opportunity of hearing has been afforded to the applicant to defend his case.

(v) The impugned orders have been passed by the disciplinary and appellate authorities without application of mind violating all norms of law and as such the recovery order is not sustainable in the eye of law and the same is liable to be quashed by this Tribunal.

6. Notices were issued to the respondents who in turn filed their reply stating therein that while working as SPM Handia, applicant kept Rs.3,20,000/- a/w N.S.C./K.V.P. in security bag to be kept in iron chest embedded in Handia Tehsil Treasury for the security over night on 20.1.2010 after close of the business hours of Handia P.O. whereas remaining cash Rs.19460/- with postage stamps/stationary and Indian Postal Orders were not kept in that security bag. The

applicant neither got sealed the locks of iron chest nor took signature in token of having receipt of said security bag from the police guard engaged for the security of Tehsil Treasury Handia, Allahabad.

6.2 It is also stated that the maximum authorised cash balance was fixed for Rs.3,00,000/- but the applicant retained Rs.339640/- having shown bogus liabilities. The applicant should remit the excess cash to the Bank after the close of the business hours of the P.O. Handia. He was also not residing in his residence allotted to him in Handia P.O. building.

6.3 It is further stated that Rs.3,20,000/- was stolen by the unknown thieves by cutting locks of the iron chest embedded in Handia Tehsil Treasure in the night of 20/21.1.2010. During the circle level enquiry, the applicant was identified as co-offender for the loss of Govt. money and he was punished with recovery of Rs.106667/- in 14 instalment @ Rs.8000/- in 13 instalment and Rs.2667/- in the last instalment vide SSPOs Allahabad Memo dated 29.2.2012. The applicant preferred an appeal dated 19.3.2012 to the Director Postal Services, Allahabad Region Allahabad against the said recovery Memo dated 29.2.2012. The appellate authority rejected the appeal and confirmed the punishment awarded by the disciplinary authority vide Memo dated 4.7.2012.

6.4 It is further submitted that although the applicant demanded certain documents but he was directed to peruse the relevant documents as desired by him. There was ample time to inspect the documents as desired by the applicant but according to his own accord, he did not attend the office to inspect the required documents as desired by him.

6.5 It is also submitted that the case of the applicant relates to Rule 16 of CCS (CCA) Rules, 1965 and supply of documents is not mandatory and this will not entail the violation of provisions of rules and also will not amount to denial of natural justice. The applicant was permitted to examine the required documents. There is no provision for supply of documents in minor penalty case.

6.6 The appellate authority after considering the points raised by the applicant in his appeal rejected the same vide order dated 4.7.2012 and as such in no way the order passed by the appellate authority can be said to be arbitrary and illegal. Lastly it is submitted that the instant OA is liable to be dismissed by this Tribunal.

7. The applicant has also filed his rejoinder affidavit in which while reiterating the averments made in the OA, denied the contentions raised by the respondents in their counter affidavit. So far as the contentions of the respondents that the applicant has not taken signature from police for token of

receipt of the said security bag, there was no such instructions from the department for the same also.

8. The respondents have also filed their supplementary counter affidavit and stated that the applicant detained Rs.3,20,000/- against authorised cash limit Rs.30,000/- of Handia PO showing bogus liabilities. The applicant did not take any acknowledgement from security guards of Tehsil Treasury Handia engaged for security overnight 20/21.01.2010. In spite of above, the applicant violated various rules regarding excess detaining cash of Handia Post Office, sealing of locks of iron chest embedded in Tehsil Treasury Handia and signature of security guards in token of keeping the cash box in Tehsil treasury Handia. Were Rs.3,20,000 was kept for security overnight by the security guards engaged by the U.P. Police/Tehsildar Handia, Improper submission of PA-17(a) report and E.C.B. memo were also found on the part of applicant, hence the punishment of recovery was imposed upon the applicant by the impugned order and the appeal preferred by the applicant was also rejected after considering the points raised by the applicant in his appeal.

9. We have heard learned counsel for the applicant and learned counsel for the respondents and have carefully perused the material placed on record.

10. Counsel for the applicant submitted that applicant was issued a Memorandum of Chargesheet under Rule 16 of the CCS (CCA) Rules, 1965 and that was almost a year after the incident. The respondents without making any inquiry passed the impugned order of recovery amounting to Rs.1,06,667/- from the pay and allowances of the applicant. Counsel for the applicant also relied upon the Order passed by the CAT, Principal Bench in OA 2569/1996 (Nirmal Narula vs. LG of NCT of Delhi and others).

10.1 Counsel for the applicant submitted that the applicant cannot be held responsible for loss to the Government as there was no direct connectivity with the act of the applicant and the incident. The applicant's counsel relied upon the judgment of the Apex Court in the case of O.K. Bhardwaj vs. U.O.I. on the point of no enquiry has been conducted and no opportunity has been given to the applicant to defend his case.

10.2 Counsel for the applicant further submitted that in a similarly placed situation when a joint custodian, namely, Shri Prem Nath Pandey was also found guilty and was directed to refund the same amount of Rs.1,06,667/-, he filed OA before this Tribunal which was registered as OA No.1068/2012 and the Tribunal decided the same on 11.1.2014 and quashed the recovery of said amount and further directed the respondents therein the amount

recovered be refunded to the applicant therein. The case of the applicant in the instant OA is similar to that of Shri Prem Nath Pandey, as the applicant was also joint custodian of the alleged amount.

11. Counsel for the respondents submitted that recovery from the applicant has been ordered as a consequence of minor penalty imposed upon the applicant by following the due process. He further contended that the main lapse of the applicant was the violation of departmental rules regarding the amount to be retained in the cash chest of the post office and the requirement of sealing of the cash etc. and obtaining signatures of the guards whenever cash is being deposited for safe custody, i.e., in the Treasury of the Tehsil. It is not the case of the respondents that the applicant had any role to play in the theft from the Tehsil cash chest. It is further submitted that if the applicant had adhered to the rules regarding handling of cash, then the loss would have been limited to the authorized cash balance limit of Rs.30,000/-.

11.1 Counsel further submitted that by way of supplementary affidavit that against the Order passed by this Tribunal in the case of Shri Prem Nath Pandey (supra), the respondents preferred a Writ Petition No.37811/2014 (***Superintendent of Post Offices Allahabad Division and others vs. Prem Nath Pandey and another***) before the Hon'ble High Court of Allahabad and the High Court vide

Order dated 6.10.2015 allowed the said Writ Petition and quashed the aforesaid Order of this Tribunal passed in the case of **Prem Nath Pandey** and further directed that if after making recovery of the loss as aforesaid, his balance post retiral benefits be released without any delay. Accordingly, counsel for the respondents submitted that the applicant cannot be allowed to take benefit of the aforesaid Order of this Tribunal passed in Prem Nath Pandey's case as the same has already been set aside by the High Court of Allahabad.

12. We are unable to accept the contentions raised by the learned counsel for the applicant as it is an admitted position that the applicant's case is similarly situated as that of Prem Nath Pandey as both were joint custodian of the aforesaid amount and the both were awarded the penalty of recovery of Rs.1,06,667/- each from their pay and allowances in instalments. The sole ground of the applicant that since in the case of Shri Prem Nath Pandey (supra), this Tribunal has already quashed the similar impugned recovery order, hence, the similar order be passed in his favour cannot be accepted as the Writ Petition filed by the respondents against the Order passed by this Tribunal in Prem Nath Pandey's case has been quashed and set aside by the High Court of Allahabadd and the said Writ Petition was allowed. It is also important to mention here that the High Court while allowing the aforesaid Writ Petition observed as under:-

"We have examined the records of the present petition.

From the records it is established beyond doubt that the cash holding limit for the post office concerned was prescribed as Rs.30,000/- and it was the responsibility of the respondent no. 1 while working as Joint Custodian to ensure that cash up to Rs. 30,000/- alone was kept in the Treasury. It is not in dispute that because of negligence of the respondent no. 1 of not adhering to the maximum limit so prescribed, he had put Rs. 3,20,000/- in the Treasury chest of the post office on the fateful day. Because of this negligence, loss of Rs.3,20,000/- had been caused to the post office. The respondent no. 1 was admittedly the Joint Custodian and keeping of the excess cash in the Treasury chest was directly attributable to the respondent no. 1 and others.

Absolutely no discrepancy in the procedure adopted while conducting the departmental enquiry, in the facts of the case, could be pointed out.

Relevant CCS (CCA) Rules, 1965 dealing with imposition of penalty reads as follows :

"(12) Imposition of the penalty of recovery---

(a) General conditions - In the case of proceedings relating to recovery of pecuniary losses caused to the Government by negligence or breach of orders by a Government servant, the penalty of recovery can be imposed only when it is established that the Government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach caused the loss."

The Tribunal under the order impugned has recorded that the negligence on the part of respondent no.1 of not adhering to the cash holding limits prescribed for various offices to minimize the losses in such eventualities cannot be ruled out. Meaning thereby the respondent no. 1 has been held the guilty of negligence. The Tribunal has however proceeded to interfere with the recovery only because of the next sentence added after return to the guilty of negligence as quoted herein below :

"This impacts the "direct responsibility" of the applicant for the loss to

government caused in this incident. Even if the applicant had observed all rules and procedures the crime of theft could not have been prevented by him though the loss could have been minimized. To that extent the amount of excessive loss is attributable to the petitioner's negligence. It may be noted that the cash holding limits are prescribed for various offices mainly to minimize the possibility of large losses in such eventualities. Hence, the petitioner's negligence cannot also be ignored in this case. However, the mindset of the disciplinary authority to recover a defined fraction of loss from the petitioner, cannot be held justified as punishment in view of the nature of his negligence. It is noted here that the department has not awarded any other penalty besides the recovery of the one third of the loss from the applicant. It is noticed that there is no violation in spirit of Rule 27(2) of the CCS (CCA) Rules, 1965 in this case."

We, in the facts of the case, are not able to appreciate as to how the Tribunal could interfere with the apportionment of the loss amongst the three persons who were responsible for the negligence during departmental proceedings. Absolutely no reasons have been recorded for interfering with the fraction of the loss which was sought to be recovered from the respondent no. 1.

In our opinion, the petitioner (the department) has been more than fair and just in equally distributing the recovery of the loss amongst all held responsible for the negligence.

For the reasons recorded herein above, we are of the considered opinion that the order passed by the Tribunal proceeded on mere surmises and conjunctures. The order of the Tribunal is hereby set aside."

13. In view of the aforesated observations made by the High Court, it is not possible to grant any relief as claimed by the applicant in this OA and thus, the OA deserves to be

dismissed which is accordingly dismissed. There shall be no order as to costs.

**(Justice Dinesh Gupta)
Member (J)**

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