

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH, CHENNAI****ORIGINAL APPLICATION No. 310/00536/2014****Dated this day, the 20th day of September, 2018****CORAM: HON'BLE SMT JASMINE AHMED, MEMBER (J)****&****HON'BLE SHRI T.JACOB, MEMBER(A)**

T.P. Sivakami
Postal Assistant
Erode HO
Erode – 638 001.

... Applicant

(By Advocate M/s S. Arun)

Versus.

1. Union of India
Rep. by Director of
Postal Service
Western Region
Tamil Nadu Circle
Coimbatore 641 002.

2. The Senior Superintendent of Post Offices
Erode Division
Erode – 638 001.
... Respondents

(By Advocate Mr. J. Vasu)

Reserved on 31.08.2018

Pronounced on 20.09.2018

ORDER(Pronounced by Hon'ble Shri. T. Jacob, Member (A))

The applicant has filed this OA under section 19 of the Administrative Tribunals Act seeking the following relief:-

“to set aside Memo No.F1/5/08-09 dated 31.10.2011 and Memo No.STB/15-165/2012 dated 22.01.2014 passed by the 2nd & 1st Respondents respectively besides to direct the 2nd Respondent to refund a sum of Rs.90,000/- already recovered from him pursuant to the impugned orders....”

2. Succinctly, the facts of the case leading to filing of this OA are that the applicant, while working as Postal Assistant, Erode, was issued with a Charge Memo under Rule Rule 16 of CCS (CCA) Rules, 1965 on 26.7.2011 for causing loss to the Government due to contributory negligence. The charges against the applicant are summarised as follows:

- i. Failed to verify the Balance After Transaction in SB 103 with that of SO ledger card in r/o SB A/c No. 208759 of Smt. Dhanabagiyam standing open at Kollampalayam BO a/w Erode Railway Colony SO for deposit of Rs. 800/- on 10.01.2006.
- ii. Failed to notice that the part withdrawal of Rs. 7000/- was paid without proper identification in r/o RD A/s. No. 4710829 on 29.08.2008 standing open at Kollampalayam BO a/w Erode RC SO in the name of Shri. M. Arivalagan,
- iii. Failed to notice that part withdrawal (forged) of Rs. 7000/- was paid without proper identification on 29.08.2008 though she made a remark on the top of the payment order as “S.S.Differs. Pay on P/I Revised SB3 wanted”. in respect of RD Account No. 4710831 standing opened at Kollampalayam BO a/w Erode Railway Colony SO in the name of Sri. M. Arivalagan as required in Rule 113 of POSB Manual Volume I
- iv. Failed to notice that the SB 28 Receipt No. Issued to RD A/c No. 4705451 standing in the name of Sel. Vijayashanthi, in lieu of passbook was not noted in the BO daily account which was sent to AO on 01.09.08 for closure orders as per BO daily account dated 01.09.2008.
- v. Failed to notice that the SB 28 Receipt No. Issued to RD A/c No. 4702617 standing in the name of Sel. Vijayashanthi, in lieu of passbook was not noted in the BO daily account which was sent to AO on 01.09.08 for closure orders as per BO daily account dated 01.09.2008.

3. The applicant submitted a detailed representation, whereby she denied the imputations in the Charge memo and requested 4th respondent to exonerate her from the charges, besides requesting the respondents to order

an oral inquiry under Rule 16(1) of CCS(CCA) Rules if her request to exonerate her charges are not acceded to. The disciplinary authority after going through the applicant's written explanation and other documents ordered a recovery of Rs. 90,000/- as a punishment to be recovered in 18 installments of Rs. 5000 per month commencing from the pay of November 2011. As against the above order of the disciplinary authority, the applicant preferred an appeal dated 13.12.2011 *which however*, was rejected on 22.1.2014/3.2.2014.

The *grounds of challenge* by the applicant are as under:-

- (a) that after issue of notice, she had sought for perusal of the error book maintained by her while she was working as Postal Assistant in Erode RC SO in order to establish her innocence. However, it is alleged that the respondents have not allowed her to peruse the error book nor was she given a copy of the same.
- (b) On 29.8.2008, the duties of SB Postal Assistant were looked after by Sub Postmaster himself due to shortage of staff. However, at the request of the Sub Post Master of RD Erode SO, she passed the withdrawal in RD Pass Book No.471082 and 471831 maintained in Kollampalayam BO which were received for sanction of part withdrawal of Rs.7000/- with the remark that the signature found in the withdrawal form differs and not to pay the withdrawal amount without proper identification and verification of specimen signature of the depositor. Despite the above, she was held responsible for the alleged loss to the department.
- (c) Even on 1.9.2008, she was not posted as SB PA in Erode RC SO and was posted only as MPCM PA. Since there is no SB Postal Assistant available on that day, she had signed the List of Transaction to submit

the same to Head Office of the Department. However, she was held responsible for the alleged loss to the department.

- (d) The authorities have not ordered a regular inquiry as contemplated under Rule 16 (1-A) of CCS (CCA) Rules, 1965 and hence she was unable to prove the extenuating circumstances in which she was working during the relevant period.
- (e) The modus operandi of the fraud committed by one T. Sivakumar, GDSBPM Kollampalayam BO was not at all explained in the Charge Memo. The charge memo simply says that the GDSPM committed frauds by suppressing of deposits, fraudulent withdrawals and unaccounted withdrawals from certain saving bank and recurring deposit accounts without explaining as to how she managed to suppress the deposits and commit fraudulent/unaccounted withdrawals from the said accounts.
- (f) The disciplinary authority has not applied his mind while arriving at a decision and has issued the order in a mechanical way.

Hence the applicant has filed this OA seeking the above relief.

4. Per contra, the respondents in their reply statement have stated that one T. Sivakumar, GDSBPM, Kollampalayam BO a/w Erode RC Colony SO committed frauds in SB/RD accounts. The fraud came to light in December 2008. The said T. Sivakumar, credited the amounts towards adjustment of loss to the Department. However, since the entire fraud committed by Sivakumar could not be recovered, contributory lapses on the part of the applicant had been assessed and charge sheet under Rule 16 of CCS (CCA) Rules, 1965 issued on the lapses contributed by them for commission of fraud by T. Sivakumar. The second respondent issued Rule 16 charge sheet against the applicant on 28.7.2011. The applicant submitted her representation denying the charges

leveled against her. After considering the representation and other connected records, the second respondent imposed the penalty of recovery of Rs.90,000/- @ Rs.5000/- per month to be paid in 18 monthly installments commencing from the pay of November 2011. The appeal preferred by the applicant was rejected by the appellate authority vide Memo dated 22.1.2014 / 03.02.2014. The applicant was identified as subsidiary offender in the said case. Action was taken against the main offender and he was removed from service.

4.1 The respondents further submit that the applicant while working as PA, Erode Railway Colony SO was identified as one of the subsidiary offenders in the multiple frauds committed by T. Sivakumar, Ex.GDS, BPM, Kollampalayam BO. She was issued charge sheet under Rule 16 for the lapses on her part vide Memo dated 26.7.2011. She submitted a representation requesting for detailed enquiry as per the provisions of Rules 16(1)(a) of CCS (CCA) Rules, 1965. However, the disciplinary authority being satisfied that a detailed enquiry is not necessary, imposed the punishment of recovery of Rs.90,000 from the salary of the applicant by order dated 31.10..2011. The appeal preferred by the applicant against the order of recovery was rejected by the appellate authority vide order dated 3.2.2014. The applicant had herself informed that to pass the withdrawal amount in RD A/c No.4710829 of Kollampalayam BO a/w Erode RC SO it is necessary that both SBPA and SPM should verify the depositor's signature available in withdrawal form and that she herself signed in the said vouchers. It is clear that she worked as SBPA on 29.8.2008. On 1.9.2008 also she had worked as SBPA. She had passed the SB7, signed the LOT, made remarks in the SB7 as SS differs and to make payment on proper identification. The shortage of staff cannot be equated for the negligence on the part of the applicant. Hence the respondents pray for dismissal of the OA.

5. Counsel for the parties had presented the case in tandem with their respective pleadings.

6. Learned counsel for the applicant has submitted that the charges are vague and the enormous delay of more than 5 years in issuing the charge memo dated 26.07.2011 is also unjust and arbitrary. He also relied on the decision of the Hon'ble Supreme Court in the case of **M.V. Bijlani Vs UOI & Ors (2006) 5 SCC 88**. He has also submitted that the action of the respondent in issuing the impugned orders of recovery is unjust and arbitrary because the same is in complete violation of Rule 107 of Postal Manual Volume III which mandates the authorities to assess the contributory negligence of the officers if any after taking into account the extenuating circumstances in which they are performing their duties.

7. On the other hand the learned counsel for the respondents had submitted that the appellant was charge sheeted for lapses which caused huge loss to the exchequer. The punishment was imposed based on the gravity of charges against the applicant after following the due procedure as laid down in CCS (CCA) Rules.

8. With regard to Charge No.1, the applicant submits that she had verified the balance in the SB 103 of SB Account No.208759 (Smt. Dhanabagiyam) maintained in Kolampalayam BO and on finding difference between the SO Ledger and SB 103, made entries in the error book of her branch and also brought it to the notice of the Sub Postmaster of Erode RC SO. In order to establish her innocence, when she sought for perusal of the error book maintained by her she was not allowed to peruse the error book nor was she given a copy of the same to defend herself during enquiry. This apart, there was also a delay of more than five years in issue of the charge memo dated 26.7.2011.

9. With regard to the Charge Nos. 2 & 3, the stand of the applicant is that she did not work as SB Postal Assistant on 29.8.2008 and in fact, she worked as Postal Assistant in MPCM counter. The duties of SB Postal Assistant were looked after by Sub Postmaster himself due to shortage of staff on 29.8.2008. However, at the request of the Sub Post Master of RD Erode SO, she passed the withdrawal in RD Pass Book No.4710829 and 4710831 maintained in Kollampalayam BO which were received for sanction of part withdrawal of Rs.7000/- with the remark that the signature found in the withdrawal form differs and to pay the withdrawal amount on proper identification besides obtaining a revised SB 3 specimen signature of the depositor in the SB7. The depositor's signature available in withdrawal forms with that of SB3 card were verified by her and Sub Postmaster of the Erode RO SO. However, this ground was not considered by the respondents and she alone was fixed responsible for the alleged loss to the department.

10. With regard to the charge Nos.4 & 5, the applicant submits that she was not posted as SB PA in Erode RC SO on 1.9.2008 and was posted only as MPCM PA. All the counter vouchers of Savings Bank were passed by the SPM himself along with the duties of SPM due to shortage of staff on that day. However, her submission was negated by the respondents stating that she had signed the List of Transaction of Erode RC SO and so it is deemed that she worked as Savings Bank Postal Assistant on 1.9.2008. Since there is no SB Postal Assistant available on that day, the applicant who was only working as MPCM Postal Assistant signed the List of Transaction to submit the same to Head Office of the Department.

11. Arguments were heard and documents/records perused.

12. First as to the legal ground that inquiry though requested for was not conducted by the Disciplinary Authority. Admittedly, the memorandum issued

was under Rule 16 of the CCS(CC&A) Rules, 1965. The said rule reads as under:-

16. Procedure for imposing minor penalties

(1) *Subject to the provisions of sub-rule (3) of rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of rule 11 shall be made except after-*

(a) *informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;*

(b) ***holding an inquiry in the manner laid down in sub-rules (3) to (23) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;***

(c) *taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;*

(d) *recording a finding on each imputation or misconduct or misbehaviour; and*

(e) *consulting the Commission where such consultation is necessary.*

(1-A) ***Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.***

The above gives a broad picture as to the contingencies when regular inquiry is to be conducted. Vide GOI instructions appended to Rule 16, when a delinquent calls for holding regular inquiry, here again, the Disciplinary Authority, on application of mind, shall use his discretion judiciously and either order for regular inquiry or decline to hold by passing an order in this regard. The said instructions, inter alia read as under:-

2. The above suggestion has been given a detailed consideration. Rule 16 (1-A) of the CCS (CCA) Rules, 1965 provide for the holding of an inquiry even when a minor penalty is to be

imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed, Rule 16 (1) ibid leaves it to the discretion of disciplinary authority to decide whether an inquiry should be held or not. The implication of this rule is that on receipt of representation of Government servant concerned on the imputations of misconduct or misbehavior communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In case where a delinquent Government servant has asked for inspection of certain documents and cross examination of the prosecution witnesses, the disciplinary authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the disciplinary authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice.

[Dept. of Personnel & Training OM No. 1101218/85-Ests.(A) dated 28th October, 1985]

Here again, request by the applicant for holding inquiry is only in a case where a delinquent Government servant has asked for inspection of certain documents and cross examination of the prosecution witnesses, The Disciplinary Authority has considered the request of the applicant but declined to hold inquiry. The reply filed by the respondent confirms the fact of the Disciplinary Authority having been satisfied that there is no need to hold regular inquiry.

Thus, the decision not to hold the inquiry in view of absence of any such penalty having telescopically having an impact upon the pension of the applicant coupled with the fact of the Disciplinary Authority having been satisfied in this case not to hold inquiry, the ground that regular inquiry has not been held does not stand judicial scrutiny.

13. Now on merit. From the records perused, it has been seen that the applicant had not taken action to rectify the difference in the balance in respect of SB A/c No.208759 on 10.1.2006 till detection of fraud was noticed in December 2008. This is a clear omission on her part. Had the difference been rectified in time in 2006 itself, there would not have been any further fraud which multiplied to a stupendous Rs.4.87 lakhs. Further, it is not correct on the part of the applicant to state that the SPM had done all the works of SB Branch. That the applicant passed the SB7, signed the LOT, made remarks in the SB7 as "SS differs and pay on proper identification" cannot absolve herself from the responsibility to contend that she is not responsible for the non entry of SB Receipt in the BO daily account for the RD PB No.4710829 and 4710831 for sanction of part withdrawal on 29.8.2008 which passed the warrant of payment without verifying the balance in the PB with SO Ledger Card and without making entry in SB 45 Register. Also, the applicant having signed the List of Transaction and the vouchers on 1.9.2008 cannot say that she only worked as MPCM PA and not as SBPA. Hence the recovery ordered by the respondents is sustainable in the eye of law.

14. It is trite law that the scope of interference of this Tribunal with the punishment imposed in a disciplinary case is very limited. It is not the decision but the decision making process that has to be subjected to judicial scrutiny. In the instant case, no fault could be found on the decision making process. The applicant has been given due opportunity to explain her case. Thus, principles of natural justice has been fully complied with. In so far as quantum of penalty is concerned, the Hon'ble Apex Court has time and again directed that the Tribunals/Courts should not interfere with the punishment imposed by the disciplinary authority unless the punishment so imposed is "shockingly disproportionate" to the charges proved against the delinquent. Here, on a comparison with the extent of punishment imposed, the main

offender T. Sivakumar, GDS, BPM was awarded with the penalty of removal from service. *Prima facie*, the applicant having been identified as one of the subsidiary offenders in the multiple frauds committed by the said T. Sivakumar, was imposed only the punishment of recovery of Rs.90,000/- from the salary of the applicant by order dated 31.10.2011 as in the cases of other subsidiary offenders. The amount of recovery is also commensurate with the loss caused by the applicant to the public exchequer. The delay in issuing the charge sheet as complained of also does not seem to have prejudiced the applicant. For, it is not her case that she could not remember the incident and has been specific in her contentions, though the same was found to be untrue. Thus, the delay will in no way exonerate the irregularities committed by the applicant the Disciplinary Authority has examined the case records in detail and felt that detailed enquiry under Rule 16(1)(b) is not necessary.

Thus, we do not find any illegality or irregularity in the enquiry proceedings nor is there any ground warranting interference of this Tribunal with the imposition of penalty by the respondents.

15. In the result, the OA is liable to be dismissed and is accordingly dismissed with no order as to costs.

(T. JACOB)
MEMBER (A)

20.09.2018

(JASMINE AHMED)
MEMBER (J)