

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.1091 of 2013

Date of CAV:27.10.2017.

Date of Order : 22.11.2017.

Between :

MD.Lateefuddin, s/o Shamshuddin,
aged about 56 yrs, Occ:Sub-Postmaster,
Narayankhed SO – 502 286,
Sangareddy Division, Medak District.

... Applicant

AND

1. Union of India, rep., by the Secretary,
M/o Communication & IT, Dept. Of Posts,
India, Dak Bhavan, Sansad Marg,
New Delhi-110 001.

2. The Chief Postmaster General,
A.P.Circle, Hyderabad-500 001.

3. The Director of Postal Services,
Hyderabad Region, O/o the Postmaster General,
Hyderabad Region, Hyderabad-500 001.

4. The Superintendent of Post Offices,
Sangareddy Division, Sangareddy-502 001.

... Respondents

Counsel for the Applicant ... Mr.M.Venkanna

Counsel for the Respondents ... Mr.T.Hanumantha Reddy, Sr.PC for CG

CORAM:

THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)

THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The applicant was proceeded against under Rule 14 of the CCS (CCA) Rules, 1965, vide Annexure.A-III memo dated 24.11.2008. The aforesaid memo contains three articles of charge. The charges in a nutshell, are that while working as Ledger Clerk-III in SB Branch of Sangareddy HPO from 18.06.2004 to 31.07.2005, he (i) failed to prepare and send the half margin verification memos in respect of the higher value withdrawals that had taken place in certain Savings Bank Accounts of MIG Colony TSO for verification to the concerned Sub-Divisional Inspector (SDI) while posting the transactions in the ledger cards; (ii) failed to compare the signatures available on the applications for withdrawal with the specimen signatures available in the SB-3 cards and the signatures on the warrant of payment with the signatures in the applications for withdrawal. (iii) failed to compare and check the balances entered by the depositors on the pay-in-slips/applications for withdrawals with the balance available in the ledger cards and also failed to make initial against each entry of transaction in the list of transactions of MIG Colony TSO. On account of the aforesaid lapses and failure to follow the provisions of the Post Office Savings Bank Manual, the applicant contributed to the committal of fraud by one Sri K.Ramakotaiah, the then SPM, MIG Colony TSO.

2. The applicant contends that the inquiry was held perfunctorily without giving reasonable opportunity in terms of supplying the required documents like Memo of Distribution of Work (MDW) to prove that he was not responsible for the frauds committed by the SPM, MIG Colony TSO. The Inquiry Officer has given his findings without the support of documentary evidence and oral evidence to suggest that he was responsible for the loss sustained by the department on account of the fraud committed by Sri K.Ramakotaiah, the then SPM. He submitted Annexure-V

representation against the report of the Inquiry Officer on 02.09.2012. However, the 4th respondent without application of mind on the vital points raised by him mechanically accepted the findings of the Inquiry Officer and ordered recovery of an amount of Rs.6,51,666/- towards his share of the loss in 41 instalments from his pay and allowances commencing from December 2012. It was also ordered that his pay be reduced by two stages from Rs.19,100/- to Rs.18,000/- in the Pay Band of Rs.4200-20200 + 4200 Grade Pay for a period of two years with effect from 01.12.2012 and that he would not earn increments of pay during the period of reduction. However, the reduction will not have the effect of postponing the future increments of pay.

3. The applicant points out that the order of punishment passed by the 4th respondent does not reveal as to how he has quantified the amount of loss of Rs.6,51,666/- towards his share in the alleged loss on account of his contributory negligence. Further, the Disciplinary Authority has failed to consider certain important material facts which were elicited during the course of the inquiry. It is contended by him that during the course of examination of the witnesses 1, 4, 5 and 9, it was elicited that it was the duty of the Ledger Clerk-IV to maintain the High Value Withdrawal Register for verification of Half Margin Memos, which are to be sent for verification. The applicant, however, was Ledger Clerk-III during the period under consideration. Although he sought for MDW of Sangareddy HO for the entire period from 18.06.2004 to 31.07.2005, the Disciplinary Authority has supplied only a part of the same. Therefore, the Disciplinary Authority cannot fix up responsibility for contributory negligence unless his duties are clearly examined. Therefore, the findings of the Inquiry Officer are perverse and baseless and the Disciplinary Authority has accepted the findings of the Inquiry Officer without any discussion on the evidence. He also

submits that the Disciplinary Authority even without verifying as to whether he was on duty on the dates on which alleged transactions in which the frauds were committed by the principal offender, held him responsible for those transactions as sub-offender. He has also submitted a list of 8 such transactions in which frauds were alleged to have been committed during the period when he was on leave. It has also been argued that the applicant has caused the issue of Half Margin Memos in respect of higher withdrawals for onward transaction to the concerned Sub-Divisional authorities in respect of Serial Nos.1, 3, 14,15 and 23 shown in the Article-I. However, these Half Margin Memos were duly returned back to the Head Office after being verified by the Sub-Divisional authorities with regard to the genuineness inspite of this, the very same transactions are now being cited in the charge memorandum to prove the charges . Had the Sub-Divisional authorities really verified the genuineness of the transaction, the frauds committed by the then SPM, MIG Colony could have been detected much earlier. Hence, the applicant cannot be blamed and penalized with such a harsh penalty.

4. The applicant has also furnished a list of 12 transactions for which Half Margins were sent and the transaction was certified as genuine. Thus, it is clear that there was no negligence on his part and that the Disciplinary Authority had somehow wanted to recoup the loss by apportioning the same among the officials who happened to work in the Head Post Office. Further, despite several requests during the course of the inquiry for supply of the SB-3 cards showing specimen signatures at the time of opening of accounts neither the Inquiry Officer nor the Disciplinary Authority supplied the same and have held the charges as proved. Further, the prosecution could not dispute the signatures available on the paid vouchers with reference to the standard signature available on SB-3.

5. With regard to the 3rd Article of charge, the applicant submits that the pay-in-slip in respect of Account No.30859 at Serial No.8 was not at all produced during the course of inquiry. It is also submitted that two vouchers relating to transactions in Account No.30984 at Serial Nos.9 and 10 were not supplied and the documents SE-4, SE-5, SE-6, SE-8 and SE-80 are only unattested xerox copies, which cannot be accepted as a valid evidence.

6. The applicant submits that he also submitted Annexure.A-VI appeal to the 3rd respondent against the punishment awarded by the 4th respondent. He also filed O.A.No.1470/2012 for a direction to the respondents to stop the recovery. Accordingly, this Tribunal had stayed the recovery, vide its orders dated 21.12.2012. The applicant also submits that it is a well settled principle of law that the penalty of recovery can be imposed only when the official commits breach of orders or rules and such breach has a bearing on the commission of fraud or the loss sustained by the department. When there is only a remote nexus with the loss sustained by the department, the official in that capacity cannot be held responsible. Further, the penalty of recovery can be imposed only when it is established that the official was responsible for the particular act of negligence or breach of orders or rules and that such negligence or breach resulted in the loss. He also submits that since the Inquiry Officer has not held the charges as proved based on the evidence on record the punishment awarded on the basis of no evidence is not sustainable in the eyes of law.

7. The respondents have filed a reply statement stating that one Sri K.Ramakotaiah, who was the then Sub-Postmaster, MIG Colony SO, committed frauds in SB/RD/MIS/SCSS Accounts to the tune of Rs.1,10,74,047/- over a period of more

than 4 years from 18.05.2003 to 21.05.2007, in a total of 156 accounts. The applicant was identified as a co-offender in the fraud case for his failure to follow the prescribed procedure while working as Ledger Clerk-III of Sangareddy HO during the period from 18.06.2004 to 31.07.2005, which facilitated the commission and continuance of huge fraud. As per Rule 85 (i) and (iii), Rule 38 of Postal SB Manual Volume-I, when any withdrawal above Rs.5000/- takes place at the Branch Office, the concerned Ledger Clerk, who is entrusted with the work of issuing SB Higher Withdrawal Memos, has to issue the same and send them to the Sub-Divisional Head for their verification by contacting the depositor for confirmation as to whether they have actually withdrawn the amount or not. The applicant failed to issue Half Margin verification memos in respect of higher withdrawals that took place at MIG Colony SO, while posting the transactions in the Ledger Cards of Sangareddy Head Office. Likewise, as per Rule 38 of the Postal SB Manual Volume-I when the amount of withdrawal is paid by a Sub-Office, the balance entered by the depositor on the application shall be checked by the Ledger Assistant with the balance in the Ledger Card. The signature of the depositor on the applicant should also be compared by him with the specimen in the application form/SS Card and signature of the person who received the payment, would be compared with the signature on the application. Thus, the applicant had failed to issue SB Higher Withdrawal memos by not verifying the genuineness of the signatures with that available on SB-3 Cards, and by not calling for the Pass Books to reconcile the differences and balances noted by the Depositor in LOT/SB-103/SB-7 forms with the balances available in the Ledger Cards at the time of posting transactions. The applicant has thus contributed to the fraud. Had he complied with the provisions of the Postal SB Manual Volume-I, the fraudulent withdrawals made by the main offender would come to light and the continuance of fraud would have been averted.

8. The respondents have refuted the contention of the applicant that the inquiry was held perfunctorily. They submit that he was given reasonable opportunity to prove his innocence during the inquiry. They concede that the memo of distribution of work (MDW) for the period from 18.06.2004 to 16.12.2004 and a few SB vouchers could not be supplied during the inquiry. But, as per the nominal roll, the applicant has performed the duties of Ledger Clerk-III and is responsible for preparation of half margin verification memos in respect of the higher withdrawals at MIG Colony SO, while posting the transactions in the ledger cards of Sangareddy HO. They also concede that as some documents could not be supplied as the said documents were cited in various Rule 14 cases and also in the Police and CBI cases. However, mere non-supply of MDW prior to 17.12.2004 will not be a hurdle to prove the charge levelled against the applicant. The prosecution documents such as MDW for the period with effect from 17.12.2004, register of high value withdrawal memos maintained at Sangareddy HO, nominal roll, withdrawal vouchers etc., are sufficient to show the failure of the applicant in preparing the half margin verification memos as well as his failure to verify the signatures of the depositors on the withdrawals with reference to the specimen signatures available on record at Sangareddy HO, as well as the failure to call for the pass books for reconciliation of difference in balances. They state that the documents produced during the inquiry clearly establishes the lapses on the part of the applicant. The contention of the applicant that the inquiry officer has reached a conclusion without evidence has been refuted.

9. The respondents also have clarified that the quantum of punishment awarded is based on the amount of fraud worked out as Rs.1,80,68,231/- (Principal – Rs.1,10,74,047-00 + Interest – Rs.69,94,184-00 = Rs.1,80,68,231/-) as on

31.08.2012. They also submit that in accordance with the provisions contained in Rules 106 to 108 of Postal Manual Volume-III, the disciplinary authority can impose the penalty of recovery of loss caused to the Government by negligence or breach of orders by a Government servant, from the officials responsible for the loss sustained by the Government. As per the aforesaid provisions and after taking into consideration the officials who are found to have contributed to the non-detection of fraud, an amount of Rs.6,51,666/- was quantified as the share of the applicant for the loss sustained by the Government.

10. The respondents have refuted the contention of the applicant that the disciplinary authority had mechanically accepted the findings of the Inquiry Officer without any discussion on the evidence pertaining to the charge. They submit that all points have been broadly discussed with the evidence available on the record. Had the applicant prepared the memos and put up to the Supervisor, the same would have found place in the register concerned. But, as per the register, it is evident that the applicant has not prepared the said memos.

11. The respondents have also denied the contention of the applicant that the transactions mentioned at Serial Nos.5, 7, 13, 21, 24 and 25 had taken place during his leave period. They also point out that the first article of charge has mentioned that the applicant failed to issue half margin verification memos in respect of 26 high value withdrawals. Therefore, the contention of the applicant that he issued half margin verification memos in respect of 4 transactions and that the same were returned by the SDI(P) duly verified and that he should not be blamed or penalized is not correct as this is only an attempt to throw the blame on to the SDI(P) by ignoring his own failure

in issuing half margin verification memos in the remaining cases. Further, the result of the verification of 4 memos by the SDI(P) cannot be a justification at all for not preparing the half margin verification memos in the other cases. Thus, the applicant is responsible for non-issue of half margin verification memos and also for continuance of fraud for a long period.

12. The respondents concede that the SB-3 Cards could not be produced during the inquiry as they were readily not available. They submit that the applicant has nowhere stated in his defence that he verified the signatures on the withdrawal forms with the specimen signatures available at HO in respect of transactions mentioned in the 2nd Article of charge. In fact, during the inquiry, the applicant replied that he verified the signatures available on SB-7 vouchers with the signatures available on SB-3 cards in all the 21 cases mentioned in Article-II and did not find any difference in the signatures available on withdrawal vouchers with that of the signatures in SB-3 cards. In these circumstances, the Inquiry Officer concluded that when the official verified the signatures and found no difference in all the 21 cases, "it was not clear as to what the applicant was intended to derive from the SB-3 cards". Further, on perusal of the SB-7 vouchers, it was evident that the applicant's initials were not available on SB-7 vouchers to the effect that he verified the signatures of the depositors with reference to the SB-3 cards even when the amounts withdrawn were very high and required check at the HO as per the provisions of the Postal Savings Bank Manual, Volume-I.

13. The respondents concede that the documents related to Account No.30984 mentioned at Serial Nos.9 and 10 of the 3rd Article of charge could not be supplied as the same were readily not available. However, the documents SE-4, SE-5, SE-6, SE-8

and SE-80 were supplied in original. They have rejected the contention of the applicant that the finding of the Inquiry Officer that the charge proved was not supported by any documentary or oral evidence of the witnesses. They also submit that for the lapses on the part of the SDI(P), he was also identified as a co-offender and disciplinary action was initiated against him. The punishment has been imposed on the applicant based on the documentary evidence, which points to lapses on his part. They have also submitted that they are making efforts to recover the loss sustained by the department from the main offender as well as the subsidiary offender and that the share of the co-offender/subsidiary offender has been worked out and punishment of recovery ordered against such officials.

14. It is also submitted by the respondents that as per the CCS (CCA) Rules 1965, the charged official can be imposed with a penalty including recovery of loss sustained by the Government. They submit that the applicant is responsible for the failure on three counts as mentioned in the charge memorandum and as such the penalty imposed on him is reasonable. However, the 3rd respondent and the Appellate Authority has modified the penalty by reducing his pay by two stages for a period of one year as against two years ordered by the disciplinary authority. Hence, the orders passed by the respondents are in accordance with the law.

15. Heard the learned counsel on both sides and perused the record.

16. During the course of the hearing, the learned counsel for the Applicant cited the judgment of the Ahmedabad Bench of this Tribunal in O.A.No.54/2004 in *Smt.Hemlata R.Kapadia v. Union of India* dated 09.03.2004, the judgment of the Jabalpur Bench of

this Tribunal in O.A.No.344/2003 & batch dated 22.11.2004 in Smt.Kalpana Shinde and Others v. Union of India and the orders of this Tribunal in OA.No.1145/2015, dated 22.3.2017 in which it was held that even if the Government servant has been negligent in his duties, such negligence would not be a cause for imposing a punishment of recovery.

17. Conversely, the learned Standing Counsel submitted that tallying of signatures is a fraud preventive measure, which the applicant has failed to exercise and he was therefore responsible for the fraud that has been committed.

18. The issues that arise for consideration in this OA are -

- i. Whether there is a basis for quantification of the loss purported to have been caused by the negligence of the applicant.
- ii. Whether such negligence which allegedly led to committal of fraud by the main offender can be a ground for imposition of the penalty of recovery of the loss from the applicant.
- iii. Whether the imposition of the punishment of reduction of pay by two stages for a period of one year is justified.

19. We have carefully considered the charge memorandum, the statement of imputations, the report of the Inquiry Officer and the orders of the Disciplinary Authority and the Appellate Authority. The charges against the applicant are that by his failure to adhere to the procedures laid down in the Post Office Savings Manual, he had contributed to the fraud committed by then SPM, MIG Colony TSO. The three specific lapses mentioned in the charge memorandum are that he failed to send the half

margin verification memos in respect of the higher value withdrawals in respect of 26 withdrawals and that he failed to compare the signatures available on the applications for withdrawal with the specimen signatures available in the SB-3 Cards in respect of 21 withdrawals and that he failed to compare and check the balance entered by the depositors in pay-in-slips and failed to make initials against each entry of transactions in token of having posted the transactions in the Ledger Cards.

20. The aforementioned procedures have undoubtedly been stipulated as safeguards to prevent the occurrence of fraud in the Post Office Savings Bank Accounts. The contention of the respondents is that had these procedures been faithfully adhered to, further frauds could have been averted.

21. On perusal of the record, it is seen that the applicant has no convincing explanation for not submitting the half margin verification memos in respect of the withdrawals. He has contended that as per the memo of distribution of work, it is not his duty and that this duty was assigned to Ledger Clerk-IV. However, at the same time, he admits that he has sent the half margin verification memos in respect of four accounts mentioned in Article-I of the charge memorandum. This by itself would indicate that this was one of the duties assigned to the applicant. However, what is pertinent in this is that, the applicant has pointed out that he had sent the half margin verification memos in respect of 14 withdrawals and that these memos were duly returned back to the Head Office after being verified by the Sub-Divisional authorities as being genuine, and despite this, these same accounts are mentioned in the charge sheet alleging that by his failure, fraud has been committed in the said accounts. These contentions of the applicant have not been refuted by the respondents. Their

only stand is that the mere submission of the half margin verification memos in four cases would not exonerate him from the charge of non-submitting of similar memos in the other cases. It may be necessary to point out that inclusion of these accounts in the charge memorandum is not proper as the applicant has admittedly discharged his duty by sending memos to the concerned authority. Further, by inclusion of the cases in which high margin verification memos were sent in the Article of charge, it would appear that even the total amount of fraud which is imputed to the negligence of the applicant has not been worked out properly. It is also the applicant's case that although the article of charges contained the detail of some account numbers and the withdrawals, there is nothing forthcoming to indicate as to how the applicant's share has been finalized as Rs.6,51,666/-. After going through the charge memo and connected statement of Imputations and the orders of the Disciplinary Authority, we are in agreement that there is no discussion at all on the total loss and the applicants share in the loss. It is only in the reply statement that the respondents have mentioned that the total amount of fraud over a period of more than 4 years was Rs.1,80,68,231/- including interest. The fraud as alleged had taken place from 18.05.2003 to 21.05.2007 involving 156 accounts. During the period of 4 years, the applicant has worked for only a period of one year from 18.06.2004 to 31.07.2005. Further, he has been charged for failure to send the half margin verification memos in respect of 26 accounts and failure to compare signatures in 21 accounts and failure to check the balances in pay-in-slips in 11 accounts. The records do not point to the actual loss that the applicant is responsible for. Even the reply statement which mentions the total loss has not brought out the basis for quantifying the applicant's share as Rs.6,51,666/-. Hence, there is no sound or rational basis for arriving at the loss. In the absence of a proper basis for quantifying the loss that was alleged to have

been caused, we hold that the loss has been fixed on the basis of surmises. The first issue is answered in favour of the applicant.

22. The second issue as to whether the negligence on the part of the Government servant leading to the fraud committed by another person can be a ground for imposing the penalty of recovery has been settled in various judgments of the Coordinate Benches of this Tribunal. The Ahmedabad Bench of the Central Administrative Tribunal has considered this matter at length in the judgment in O.A.No.54/2004, dated 09.03.2004. The said OA was allowed and the order of the Disciplinary Authority imposing the penalty of recovery in respect of misappropriation committed by another Branch Postmaster on account of the applicant's failure to follow the procedural instructions, was set aside.

23. Further, in O.A.No.344/2003 & batch, dated 22.11.2004, the applicants had approached the Jabalpur Bench of the Central Administrative Tribunal, challenging the orders of the Disciplinary Authority and the Appellate Authority imposing the penalty of recovery on the ground tht they were negligent in not detecting the frauds committed by the the staff of the Shabda Pratap Ashram, Gwalior Sub-Office. The charges levelled against the applicants pertain to the violation of the Postal Savings Bank Volume.I and Rule 3 (i) (ii) and (iii) of the CCS (Conduct) Rules, 1964. After considering the question as to whether violating a non-statutory rule by an employee can invite a penalty of recovery under Rule 11 of the CCS (CCA) Rules, 1965, the Tribunal held as follows:

“10. In somewhat similar cases of failing to detect the fraud by the employee of a Bank, the High Court of Gujarat has observed that this cannot be considered to be a negligence

punishment of the recovery of the amount. In the case of J.M.Trivedi vs. Reserve Bank of India reported in 2004 (2) GLH 514 referring to the Reserve Bank of India's circular and the intention of the applicant in not perpetuating the fraud, the High Court has observed as under:-

“When the intention of the appellant was considered by the Board and was not doubted by the Board, then the question of negligence does not arise. No specific period has been specified for reporting to the controlling authority in any circular. Circular dated August 24, 1981 is not applicable to the case of the appellant. It was relating to some fraud/suspected fraud which is required to be reported to the Reserve Bank of India. Therefore, non-reporting by the appellant has been considered as a negligence on the part of the appellant. If there is any procedural irregularity, same cannot be termed as a 'negligence' if such negligence is not having any connection with intention. In this case, considering his contention, the Board gave benefit of doubt. Therefore, negligence is not connected with intention.”

We find that in the case of S.K.Chaudhury vs. Union of India and Ors in OA.504/1996 decided on dated 26.3.2001, the Ahmedabad Bench of CAT while dealing with similar case of fraud having been perpetuated by somebody else and the applicant therein being held responsible for negligence in not detecting the same has observed as under:-

*“The reasoning of the disciplinary authority proceeds on the ground that if the applicant had carried out these duties, no fraud would have been committed but this is a mere surmise, as even after carrying out these duties the Sub-Post Master being in possession of the cash was in a position to misappropriate the amount. **Further more such negligence even if there is one, cannot be a cause for punishing the applicant with***

the recovery of loss sustained by the department. The applicant obviously was not directly responsible for the misappropriation of this amount and therefore, the recovery if any was to be made for the loss of the amount ought to have been made from the person directly responsible for the misappropriation merely because the department found that it was not possible to recover the amount from the main culprit some other scape goat cannot be found out and cannot be levied with the punishment of recovery of the loss.”

12. Again in the case of C.N.Harihar Nandan v. Presidency Post Master, Madras SPO, reported in a similar situation observed that the employee was sought to be made responsible for the pecuniary loss caused to the Govt., on the ground that he was negligent in performing his duty. He was also tried to be made technically responsible due to the non-compliance of the instructions by not getting every sixth transaction entry properly verified. Quashing the recovery order, the Madras Bench has observed that the applicant was not directly responsible for causing any pecuniary loss to the Govt.

13. Again in the case of J.M.Makwana v. Union of India & Others, in O.A.No.750/98 decided on 4.9.2001 by the Ahmedabad Bench of this Tribunal, same question of holding somebody else liable for the fraud perpetrated by somebody else was involved. Quashing and setting aside the order of the recovery passed by the Disciplinary Authority therein, the Tribunal has observed as under:-

“We have no hesitation in concluding that the whole order of the disciplinary authority as well as of the appellate authority is based on misconception of the term negligence and n utter disregard to the provisions

of Rule 11 (3) of the CCS (CCA) Rules. It appears that the disciplinary authority and the appellate authority believe that whenever some fraud has taken place in the department and there is loss of revenue, somebody should be held guilty for the loss caused to the department. It is not kept in mind by the disciplinary authority as well as the appellate authority that the rule providing for imposing penalty i.e. Rule 11 (3) of CCS (CCA) Rules clearly lays down that the recovery can be imposed from the pay of the Govt. Servant if the pecuniary loss is caused by him to the Govt., by the negligence or the breach of the orders. We fail to understand how the penalty of recovery of Rs.9000/- could have been imposed by the disciplinary authority on the applicant and confirmed by the appellate authority, when the charges levelled against the applicant is not that, he by his act of negligence caused any pecuniary loss to the Govt. The charge levelled against the applicant was that by his negligence in not posting the entries of passbooks in the error book, the fraud was not detected earlier.”

The Tribunal had further gone to observe that even if for a moment, we believe that applicant was negligent in not posting the entries of the passbooks in the error book, then also this negligence was not such that it would be a cause for punishing the applicant with recovery of loss sustained by the department as well as withholding of of one increment. The applicant obviously is not directly responsible for the misappropriation of this amount and therefore, the recovery if any was to be made for the loss of the amount ought to have been made from the person directly responsible for the misappropriation.

14. We are in complete agreement with the ratio laid down by the above judgments. The order passed by the Disciplinary Authority and upheld by the Appellate Authority imposing punishment of recovery of the applicants is not in accordance with the provisions of Rule 11 (3) of CCS (CCA) and therefore cannot be sustained. The order can easily be said to be illegal and as such, deserves to be quashed and set aside in all the cases.”

24. The aforesaid ratio has also been followed by this Tribunal in O.A.No.1145/2015, dated 22.03.2017.

25. In view of the settled position of law that a penalty of recovery of loss cannot be imposed on a Government servant for his failure or negligence in adhering to procedures/instructions, which might have resulted in the committal of fraud by a third party, the respondents are not justified in imposing a penalty of recovery on the applicant. This issue is answered in favour of the applicant.

26. As regards the third issue, the respondents have in addition to the penalty of recovery reduced the pay of the applicant by two stages for a period of one year for the lapses that have been established in the course of the inquiry. The applicant would contend that the duty of sending the half margin verification memos was not assigned to him and that the memo of distribution of work has not been supplied for the entire period from 18.06.2004 to 31.07.2005. However, the very fact that he himself has admitted that he has sent the half margin verification memos in respect of certain accounts would establish that he was fully aware that this was one of his duties as Ledger Clerk. The applicant has also contended that he was not on duty on certain days on which the fraudulent transactions were alleged to have been taken place. The

respondents have refuted this contention by stating that as per the nominal rolls, the applicant has worked as Ledger Clerk-III from 22.11.2004 to 30.11.2004 and also worked as Ledger Clerk-IV on OTA from 29.11.2004 to 30.11.2004, besides Ledger Clerk-III. They have also pointed out that the applicant has worked as Ledger Clerk-III and Ledger Clerk-IV on OTA on 16.06.2005 and 16.6.2005 and thereafter continued to work as Ledger Clerk-III. Further, certain transactions were found to have taken place when he was Senior Cadre PA. As the applicant has not produced any material evidence and has not controverted the stand of the Respondents, we are unable to accept the contentions of the applicant in this regard.

27. In this view of the matter, the applicant cannot be totally absolved of the charge of negligence in the performance of his duties. Hence, the punishment of reduction of his pay by two stages for a period of one year does not warrant interference.

28. In view of the foregoing discussions, the OA is partly allowed by quashing and setting aside the penalty of recovery of Rs.6,51,666/-. There shall be no order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 22nd day of November, 2017

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