Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : GWALIOR

Original Application No.202/00459/2017

Gwalior, this Thursday, the 11th day of January, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Jyoti Goyner, W/o Shri Arjun Bansal, Aged – 27 years,
Occupation – Service in Postal Department,
R/o 15, Nehru Colony, Thatipur,
Gwalior – 474011 (M.P.) **-Applicant**

(By Advocate – Shri Alok Kumar Sharma)

V e r s u s

1. Union of India through the Secretary, Department of Post,
Dak Bhawan, New Delhi – 110001.

2. Chief Post Master General, M.P. Circle,
Bhopal 462012 M.P.

3. Director Postal Services, Indore Region,
Indore 452001 M.P.

4. Superintendent of Post, Morena Division,
Morena – 476001 M.P. **-Respondents**

(By Advocate – Shri Akshay Jain)

(Date of reserving order: 09.01.2018)

O R D E R

By Navin Tandon, AM.

The applicant has challenged the impugned order of penalty of recovery of Rs.2,88,000/- through this Original Application.

2. The brief facts of the case are that the applicant was appointed as Office Assistant on 08.08.2011 in the respondent-department and after completing requisite training she was posted in the office of Superintendent of Posts, Chambal Division, Morena from 02.01.2012 to 13.10.2012. On 27.09.2012, the Division office received a letter dated 27.09.2012 from Postmaster Bhind in respect of negative balance of Rs.3,91,673/- in Saving Account No.852355 of Nai Zameen Sub Post Office, Bhind. The applicant was issued with a charge-sheet under Rule 16 of Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as '**1965 Rules**') vide memo dated 23.07.2014. She submitted her representation dated 30.03.2015 (Annexure A7) against the said charge sheet. The disciplinary authority after considering her representation and other materials, found her guilty and imposed upon her penalty of recovery of Rs.2,88,000/- vide impugned order dated 21.07.2015 (Annexure A-1), which is to be recovered from her salary in 36 equal installments of Rs.8,000/- per month. Against the said order of punishment, she preferred an appeal dated 02.11.2015, which was dismissed by the appellate authority vide order dated 29.03.2016 (Annexure A-2). Her revision-petition dated 01.10.2016 against

the appellate order has also been dismissed vide order dated 22.03.2017. Hence, this Original Application.

3. The applicant has sought for following reliefs in this Original Application:

> "**8.1** That, the action and orders impugned Annexure A/1 dated 21.07.2015, Annexure A/2 29.03.2016 and Annexure A/3 dated 22.03.2017 may kindly be declared illegal and the same may kindly be quashed.
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> **8.2** That, respondents may kindly be directed to refund the entire recovered amount with interest at market rate.
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> **8.3** Any other suitable relief which this Hon'ble Tribunal deem fit and proper in the circumstances of the case may also be given to the applicant along with cost of this O.A."

4. The respondents, in their reply, have submitted that the applicant has not presented the letter dated 27.09.2012 in time, which resulted in delay in taking action on it. If she had taken quick action on it, then fake withdrawals from the accounts of Nai Zameen Sub Post Office of Social/Old age Pension Beneficiaries, could have been detected 5 months back. A charge-sheet for minor penalty under Rule 16 of the 1965 Rules was issued to the applicant being found a subsidiary offender in the misappropriation case. The same was replied by her vide reply dated 30.03.2015. On considering the documents and material available on record, the applicant was found guilty and penalty of Rs.2,88,000/- was imposed on her, which is to be recovered in 36

installments of Rs.8,000/- per month. The charge-sheet has been issued on the basis of enquiry at several levels and also on the basis of material available on record. The order of punishment has been passed taking into consideration the financial loss of Rs.1,34,50,685/- caused to the department due to the negligence of the applicant in performing her duty. The applicant was afforded full opportunity to defend her case. The appellate authority and the revisionary authority had also taken into consideration all the facts, documents and other relevant material available on record while upholding the punishment order.

5. Learned counsel for the applicant submitted that the applicant could not have been penalized as there is no direct relation with the allegations made against the applicant to the loss caused to the Government by fraudulent transactions which took place in Bhind. The recovery of amount of Rs.2,88,000/- has no reasonable basis as the amount is not connected to any of the figures in the allegation. It was further submitted that though a minor penalty has been imposed on the applicant under Rule 16 of 1965 Rules, but in fact it is a major penalty because every month Rs.8,000/- is to be deducted from the salary of applicant for 36 months, and thus, the said recovery is excessive punishment on the applicant without conducting a regular departmental enquiry. In

support of the claim, the learned counsel for the applicant has relied on the decision of the Hon'ble High Court of Madhya Pradesh in the matters of **Union of India and others** Vs. **Ajay Agrawal**, M.P. No. 1798 of 2017, decided on 02.01.2018.

6. Heard the learned counsel for the parties and perused the pleadings and the documents submitted by the respective parties.

7. We have also carefully gone through the facts of the instant case as well as the decision of the Hon'ble High Court in the matters of **Ajay Agrawal** (supra), relevant paragraphs of the said order read thus:

> "A Division Bench of this Court in Union of India and Anr. Vs. C.P. Singh [2004 (2) MPJR 252] had an occasion to examine the issue as to whether an inquiry can be dispensed with, in all cases where the penalty purposed is recovery of pecuniary loss caused by negligence or breach of orders categorized as minor penalty? Their lordships taking note of decisions in C.R. Warrier Vs. State of Kerala (1983 (1) SLR 608), V. Srinivasa Rao Vs. Shyamsunder (ILR 1989 Ker. 3455); G. Sundaram Vs. General Manager, Disciplinary Authority, Canara Bank (ILR 1998 Kar. 4005); O.K.Bhardwaj Vs. Union of India and others [(2001) 9 SCC 180] and Food Corporation of India Vs. A. Prahalada Rao [(2001) 1 SCC 165] were pleased to observe:
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> > "**(16)**. The position as can be gathered from the Rules and the aforesaid decisions can be summarised thus:
> > **(i)** In a summary inquiry, a show cause notice is issued informing the employee about the proposal to take disciplinary action against him and of the imputations of misconduct or misbehaviour on which such action is proposed to be taken. The employee is given an opportunity of making a representation against the proposal. The Disciplinary Authority considers the records and the representation and records of findings on each of the imputations of misconduct.

(ii) In a regular inquiry, the Disciplinary Authority draws up the articles of charge and it is served on the employee with a statement of imputation of misconduct, list of witnesses and list of documents relied on by the Department. The Disciplinary Authority calls upon the employee to submit his defence in writing. On considering the defence; the Disciplinary Authority considers the same and decides whether the inquiry should be proceeded with, or the charges are to be dropped. If he decides to proceed with the enquiry, normally an Inquiring Authority is appointed unless he decides to hold the inquiry himself. A Presenting Officer is appointed to present the case. The employee is permitted to take the assistance of a co employee or others as provided in the rules. An inquiry is held where the evidence is recorded in the presence of the employee. The employee is permitted to inspect the documents relied upon by the employer. The employee is also permitted to call for other documents in the possession of the Management which are in his favour. The delinquent employee is given an opportunity to rebut the evidence of the management by cross-examining the management witnesses and by producing his evidence both documentary and oral. Arguments-written and/or oral-are received/heard. The delinquent employee is given full opportunity to put forth his case. Therefore, the Inquiring Authority submits his report. The copy of the report is furnished to the employee and his representation is received. Thereafter the Disciplinary Authority considers all the material and passes appropriate orders. The detailed procedure for such inquiries is contained in sub-rules (6) to (25) of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 corresponding to sub-rules (3) to (23) of Rule 14 of the Central' Civil Services (CCA) Rules, 1965 and M.R Civil Services (CCA) Rules, 1966.

(iii) The normal rule, except where the employee admits guilt, is to hold a regular inquiry. But where the penalty proposed is a 'minor penalty', then the Rules give the Disciplinary Authority a discretion to dispense with a regular inquiry for reasons to be recorded by him, and hold only a summary enquiry.

(iv) Though the Rules contemplate imposing a minor penalty without holding a regular enquiry, where the Disciplinary Authority is of the opinion that such enquiry is not necessary, such decision not to hold an enquiry can be only for valid reasons, recorded in writing. Dispensation with a regular enquiry where minor penalty is proposed, should be in cases which do not in the very

nature of things require an enquiry, for example, (a) cases of unauthorised absence where absence is admitted but some explanation is given for the absence; (b) non-compliance with or breach of lawful orders of official superiors where such breach is admitted but it is contended that it is not wilful breach; (c) where the nature of charge is so simple that it can easily be inferred from undisputed or admitted documents; or (d) where it is not practicable to hold a regular enquiry.

(v) But, even where the penalty proposed is categorised as minor penalty, if the penalty involves withholding increments of pay which is likely to affect adversely the amount of pension (or special contribution to provident fund payable to the employee), or withholding increments of pay for a period exceeding three year or withholding increments of pay with cumulative effect for any period, then it is incumbent upon the disciplinary authority to hold a regular inquiry.

(vi) Position before decision in FCI:

Where the charges are factual and the charges are denied by the employee or when the employee requests for an inquiry or an opportunity to put forth the case, the discretion of the Disciplinary Authority is virtually taken away and it is imperative to hold a regular inquiry.

Position after decision in FCI:

Where the Rules give a discretion to the Disciplinary Authority to either hold a summary enquiry or regular enquiry, it is not possible to say that the Disciplinary Authority should direct only a regular enquiry, when an employee denies the charge or requests for an inquiry. Even in such cases, the Disciplinary Authority has the discretion to decide, for reasons to be recorded, whether a regular enquiry should be held or not. If he decides not to hold a regular enquiry and proceeds to decide the matter summarily, the employee can always challenge the minor punishment imposed, on the ground that the decision not to hold a regular enquiry was an arbitrary decision. In that event, the Court or Tribunal will in exercise of power of judicial review, examine whether the decision of the Disciplinary Authority not to hold an enquiry was arbitrary. If the Court/Tribunal holds that the decision was arbitrary, then such decision not to hold an enquiry and the consequential imposition of punishment will be quashed. If the Court/Tribunal holds that the decision was not arbitrary, then the imposition of minor penalty will stand.

(17). It is also possible to read the decisions in Bharadwaj and FCI harmoniously, if Bharadwaj is read as stating a general principle, without reference to any specific rules, that it is incumbent upon the Disciplinary Authority to hold a regular enquiry, even for imposing a minor penalty, if the charge is factual and the charge is denied by the employee. On the other hand, the decision in FCI holding that the Disciplinary Authority has the discretion to dispense with a regular enquiry, even where the charge is factual and the employee denies the charge, is with reference to the specific provisions of a Rule vesting such discretion.

(18). There is yet another aspect which requires to be noticed. ***Where the penalty to be imposed though termed as minor, is likely to materially affect the employee either financially or career-wise then it is not possible to dispense with a regular enquiry.*** In fact, this is evident from sub-rule (2) of Rule-11 which says that where the penalty to be imposed, though termed as minor penalty, involves withholding of increments which is likely to affect adversely the amount of pension or special contribution to provident fund, or withholding of increments of pay for a period exceeding three years or withholding of increments of pay with cumulative effect, then an enquiry as contemplated under Rule-9 (6) to (25) is a must. Thus, categorisation of penalties into 'major' and 'minor' penalties, by itself may not really be determinative of the question whether a regular enquiry is required or not.

(19). While 'censure' and withholding of increments of pay for specified period may conveniently be termed as minor punishments, ***we feel very uncomfortable with 'recovery of pecuniary loss, for negligence or breach of 'orders' without stipulating a ceiling, being considered as a 'minor penalty'.*** 'Recovering small amounts, as reimbursement of loss caused to the employer byway of negligence or breach of orders from the pay of the employee can be a minor penalty. ***But can recovery of huge amounts running into thousands and lakhs, by way of loss sustained on account of negligence or breach of orders, be called as a minor penalty ?*** For example, in this case, recovery sought to be made from the petitioner is Rs.75,525/- determined as being 50% of the total value of 74 rail posts. Theoretically, what would be the position if the loss was 740 or 7400 rail posts.? Does it mean that recovery of Rs.7.5 lakhs or Rs.75 lakhs can be ordered from the Government servant, still terming it as a minor

penalty, without holding any enquiry? It is time that the State and authorities take a second look as what is termed as ’minor penalty' with reference to recovery of losses. The recovery of pecuniary loss on account of negligence or breach of order though termed as a minor penalty may have disastrous consequences, affecting the livelihood of the employee, if the amount sought to be recovered is huge.

(20). In the absence of any ceiling as to the pecuniary loss that can be recovered by treating it as minor penalty, it is necessary to find out whether there is any indication of the limit of amount that can be recovered without enquiry, by applying the procedure for imposition of minor penalties. We get some indication of the pecuniary limit in Rule-11 (2) which provides that if the minor penalty involves withholding of increments of pay for a period exceeding three years then a regular enquiry is necessary. Thus, we can safely assume that the pecuniary loss proposed to be recovered exceeds the monetary equivalent of increments for a period of three years, then a regular enquiry has to be held.

(21). ***The fastening of pecuniary liability on the basis of negligence or breach of orders, involves decision on four relevant aspects:***

(a) What was the duty of the employee?

(b) Whether there was any negligence or breach of order on the part of the employee while performing such duties?

(c) Whether the negligence or breach of order has resulted in any financial loss to the employer?

(d) What is the quantum of pecuniary loss and whether the pecuniary loss claimed include any remote damage and whether the employer has taken steps to mitigate the loss?

These are not matters that could be decided without evidence, and without giving an opportunity to the employee to let in evidence. Therefore, where the charge of negligence or breach of lawful order is denied, a regular enquiry is absolutely necessary before fastening financial liability on the employee, by way of punishment of recovery of pecuniary loss from the employees. However, having regard to the decision in FCI, regular inquiry can be dispensed with, for valid reasons, if the amount to be recovered is small (which in the absence of a specific provision, does not exceed the equivalent of three years increment at the time of imposition of penalty). Any attempt to fasten any higher monetary

> ***liability on an employee without a regular enquiry, by terming it as a minor penalty, would be a travesty of justice.***"
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> Careful reading of these decisions and applying the principle of law in the facts of present case leaves no iota of doubt that the disciplinary authority acted arbitrarily in dispensing from holding a regular departmental enquiry for no recorded reasons. Or even if there were reasons the same were not communicated. The impugned order when tested on the anvil of above analysis cannot be faulted with as would warrant an indulgence. Consequently, petitions fail and are dismissed. However no costs".

8. In the instant case also, we find that the applicant was working as Office Assistant under the respondent-department and the negligence alleged on her part was that she had not presented a particular letter in time to higher authorities, which resulted in delay in taking action on it and, therefore, penalty of recovery of a huge amount of Rs.2,88,000/- was imposed, without conducting a full-fledged enquiry. Since the pecuniary loss of Rs.2,88,000/- proposed to be recovered exceeds the monetary equivalent of increments for a period of three years, the respondents were required to conduct a full-fledged regular enquiry, as has been held in the aforesaid decision of the Hon'ble High Court of Madhya Pradesh in the matters of **Ajay Agrawal** (supra) which has not been done in her case. Thus, the present case is fully governed by the said decision of the Hon'ble High Court and is, therefore, liable to be allowed.

9. Accordingly, the present Original Application is allowed. The impugned orders are quashed and set aside. The respondents are directed to refund back the amount so recovered from the applicant, within a period of 60 (sixty) days from the date of communication of this order. However, the applicant shall not be entitled for any interest on the said amount. The respondents are, however, at liberty to proceed in accordance with law. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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