Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH JABALPUR

Original Application No.534 of 2011

Jabalpur, this Tuesday, the 14th day of August, 2018

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

Y.N. Shripad, S/o Late Narayan Shripad,
Aged about 61 years,
R/o Ward NO. 32,
Narmada Nagar, Balaghat-481001 **-Applicant**

(By Advocate **–Shri Vijay Tripathi**)

V e r s u s

1. Union of India,
through its Secretary,
Ministry of Communication,
Department of Post,
Dak Bhawan, New Delhi-110011

2. Chief Post Master General,
M.P.Circle,
Hoshangabad Road,
Bhopal-462001

3. Director, Postal Services,
O/o Chief Postmaster General,
M.P.Cirlce, Hoshangabad Road,
Bhopal-462001

4. Sr. Superintendent of Post Offices,
Balaghat Division,
Balaghat-481001 **-Respondents**

(By Advocate **–Shri S.K.Mishra**)

(Date of reserving the order:-01.08.2018)

O R D E R

By Navin Tandon, AM:-

The applicant has challenged the impugned order dated 28/31.12.2007 (Annexure A-1) of recovery of Rs. 1,50,000/- through this Original Application.

2. The brief facts of the case are that the applicant was working as Deputy Post Master at Balaghat Head Post Office from 02.11.2005. During this period one Shri Mahesh Padwar, Sub Post Master, Bisra Sub Post Office, caused loss of Rs. 26,55,488/- to the Government exchequer. The applicant was issued with a charge-sheet dated 16.11.2007 (Annexure A-5) under Rule 16 of Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as '**1965 Rules**'). He submitted reply to the charge-sheet dated 15.12.2007. After receiving the reply of the applicant and after considering all other materials, the disciplinary authority has passed an order dated 28/31.12.2007 (Annexure A-1), imposing a penalty of recovery of Rs. 1,50,000/-, which should be recovered at Rs. 4000/- per month from the salary of the applicant. The remaining amount will be recovered from the retiral dues of the applicant. Against the said order of punishment, he preferred an appeal dated 12.02.2008 (Annexure A-6), which was rejected by the Appellate Authority. The applicant submitted revision petition

dated 22.04.2009 (Annexure A-3), which was followed by a reminder on 16.03.2010 (Annexure A-8). Receiving no response form the respondent-department, the applicant filed Original Application No. 801/2010 with this Tribunal. The said Original Application was decided by this Tribunal on 01.11.2010 at admission stage directing the revising authority to decide the revision petition of the applicant, vide order dated 30.12.2010 (Annexure A-4), the revision petition was dismissed.

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

"8. **Relief(s) Sought:**

(i) Summon the entire relevant record from the possession of the respondents for its kind perusal.

(ii) Set aside the order dated 20th June 2008 ***Annexure A/1,*** *dated 9.1.2009* ***Annexure A/2****, and order dt. 30.12.2010* ***Annexure A/4.***

(iii) Command the respondents to provide all consequential benefits as if the impugned orders aforesaid are never passed.

(iv) Any other order/direction may also be passed.

(v) Award cost of the litigation to the applicant."

4. The respondents, in their reply, have submitted that the applicant has to perform the duties of Deputy Postmaster and to ensure proper work from his subordinates, but the applicant was

found careless in performing assigned duties, which resulted into commitment of fraud by Shri Mahesh Padwar.

4.1 It has further been contended by the respondents that punishment order was issued by the Disciplinary Authority after considering the representation of the applicant and all the facts and loss caused to the Govt. issued the punishment order.

5. Heard the learned counsel for the parties and perused the pleadings available on file.

6. Learned counsel for the applicant submitted that the applicant could not have been penalized as there is no direct relation with the allegation made against the applicant to the loss cause to the Government.

7. Learned counsel for the respondents placed reliance on orders passed on 28.09.2011 by the Hon'ble High Court of Madhya Pradesh in Writ Petition No. 10471 of 2010 (S) in the case of **Union of India & Ors.** vs. **M.L.Khare**. Hon'ble High Court ruled that it is not necessary that the delinquent employee may have been involved in embezzlement himself for a penalty to be imposed. Charges of negligence in supervising, which leads to siphoning of colossal amount of money by a co-accused, are serious enough to attract penalty.

8. It was also brought to our notice by learned counsel of respondents that citing the case of **M.L.Khare** (Supra), this Tribunal dismissed Original Application No. 708/2013 of **R.S.Dwivedi** vs. **Union of India & Ors.** in a similar case.

9. Learned counsel for the applicant has relied upon the decision of the Hon'ble High Court of Madhya Pradesh in the maters of **Union of India and others** vs. **Ajay Agrawal**, M.P. No. 1798 of 2017, decided on 02.01.2018.

10. 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 summarized 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 misbehavior 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 willful 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."

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."

11. We find that in the instant Original Application, a penalty of recovery of Rs. 1,50,000/- has been imposed upon the applicant without conducting any departmental enquiry. This amount exceeds the monetary equivalent of increments for a period of three years. Thus, the present case is fully governed by the said decision of Hon'ble High Court of Madhya Pradesh in the matters of **Ajay Agrawal** (Supra).

12. We are not going into the merits of the charge-sheet at this stage, and therefore, the decision in the matters of **M.L.Khare** (Supra) and **R.S.Dwivedi** (Supra) are distinguishable.

13. 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. No costs.

(Ramesh Singh Thakur) **(Navin Tandon)**
Judicial Member **Administrative Member**
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