

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00031/2015

Pronounced on : 08.10.2018
(Reserved on : 20.09.2018)

...

CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)

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Vikash Kumar, S/o Shri Shyo Narayan, aged about 27 years, R/o H.No.33,
 New Postal Colony, Hiran Magari, Sector-V, Udaipur (Office Address:
 Employed as Postal Assistant at Shastri Circle Post Office at Udaipur.

...APPLICANT

BY ADVOCATE : Mr. S.P. Singh.

VERSUS

1. Union of India, through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawn, New Delhi.
2. The Chief Postmaster General, Rajasthan Circle, Jaipur-302007.
3. The Director, Postal Services, O/o Postmaster General, Southern Region, Ajmer.
4. Sr. Superintendent of Post Offices, Udaipur Division, Udaipur.

RESPONDENTS

BY ADVOCATE: Mr. B.L. Bishnoi, for R1 to R4.

ORDER

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HON'BLE SMT. HINA P. SHAH, MEMBER (J):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunal's Act, 1985, wherein the applicant seeks the following reliefs:

- "i) The impugned order Memo No.VIG/SR/44-88 (29)/13, dated 21.01.2014 forwarded by respondent no.3 (Annexure A1) and Memo No.F-2/4-2/10-11, dated 30.03.2012 (Annexure A2) may kindly be declared illegal unjust and improper and deserves to be quashed and set aside.
- ii) The respondents may kindly be directed to refund the recovered amount paid by applicant with interest.

- iii) By writ order or direction the order of appeal which is kept pending may also be quashed and set aside if it is adverse or against the applicant.
- iv) That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- v) The costs of this application may be awarded to the applicant."

2. The brief facts of the present case as narrated by the applicant are as under:-

i) The applicant was appointed as Postal Assistant at Udaipur HO on 29.03.2010. It is to be noted that SPM Pankaj Kumar Nigam, Fatehpura, had committed fraud on 27.03.2010. The applicant was served with the charge sheet dated 25.04.2011 with the allegation that he failed to challenge non-receipt of closed MIS passbooks along with LOT/closed vouchers in respect of Fatehpura MIS A/c No.31383 dated 27.03.2010 for Rs.2,97,000/-. It was also alleged that he failed to challenge payment in cash instead of cheque in respect of prematurely closure of Fatehpura MIS A/c No.31383 dated 27.03.2010 for Rs.2,97,000/-. He was further alleged for failing to challenge non-receipt of SB-7(a) required for closure of Fatehpura MIS A/c No.31383 dated 27.03.2010 for Rs.2,97,000/-.

ii) It is pertinent to mention here that the SPM Pankaj Kumar Nigam committed fraud at Fatehpura Post Office and the applicant is working at Udaipur HO. All the allegations held against the applicant are in respect of only one Account No.31383 dated 27.03.2010 and the charge sheet reveals the date on which SPM Fatehpura committed fraud and no where it is mentioned that the present applicant has committed fraud. It is also not revealed as to how the applicant is liable for recovery of amount mentioned in punishment order without mentioning it in the charge sheet. The charge memo reveals about the single act which is committed by SPM Fatehpura and after committing fraud by SPM Fatehpura, how the

applicant will be liable despite negligent in condition of precedent for fraud.

iii) The applicant further states that the respondents have not recovered any amount from the delinquents who committed misappropriation but the applicant is compelled to deposit the amount and same is to be recovered forcibly from him. Though, misappropriation was committed in 2009, but no action was taken by the respondents in the same year. The applicant further states that the main object of the department is to collect the misappropriated amount and also it is to be noted that the main offenders and co-offenders did not pay the amount but the applicant who is neither main offender nor the co-offender was punished and recovery was started against him. The respondents did not comply with Rule 11 of CCS (CCA) Rules, 1965 and they have only adopted pick and choose policy. The respondents passed punishment order dated 30.03.2012 (Annexure A2) against the applicant by imposing a recovery of Rs.89,842/- to be recovered in 26 installments of Rs.3400/- each, 27th installment in the sum of Rs.1,442/- which was challenged before this Tribunal as the applicant had not filed any appeal against the punishment order. It is vide order dated 06.05.2013 this Tribunal has disposed off the OA with a direction that the applicant may approach competent authority by way of an appeal and the said appeal to be decided within a time frame work, and if aggrieved by the said order, he was given liberty to file a fresh OA. Thereafter, the applicant filed an appeal dated 03.06.2013 and the said appeal was decided vide order dated 21.01.2014 (Annexure A1). The applicant states that the recovery of Rs.89,842/- is in violation under Section 4 of the Public Accountants Default Act, 1985. It is also submitted by the applicant that the respondents violated Rule 204 of the P&T Vol-III, as it is necessary for the competent authority to first arrive at clear

findings under the said Rule and make it clear that the departmental employee is held responsible for a particular act or acts of negligence or breach of order or rules, which had caused the loss. The respondents also did not consider Rule 106 & 107 of the Post Office Savings Bank Manual Vol-I, which states that in case of proceedings relating to recovery of pecuniary loss 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.

iv) The applicant further states that the punishment of recovery of an amount is a special type of punishment and it can be awarded only when there is a proven loss to the Government. In the present case, neither the nexus has been proved nor any loss has been caused on account of any actions of the applicant, and therefore, the punishment of recovery which has been awarded based on an erroneous decision arrived at on the question of law and material irregularity, which had resulted in a miscarriage of justice.

v) The applicant further states that it is completely shocking to note that though he joined on 29.03.2010 but he was charge sheeted for the fraud committed by SPM, Fatehpura on 27.03.2010. This act of the respondents also highlights the fact that the applicant was posted at Udaipur HO and the respondents did not reveal as to how the applicant was liable for the said fraud committed by SPM Fatehpura. So it is shocking for the applicant to note that he is being held guilty and recovery is being ordered against him. The applicant was imposed with the penalty of Rs.89,842/- vide order dated 30.03.2012 to be recovered in 26 installments, Rs.3400/- per month and 27th installment is at Rs.1,442/-.

The applicant has denied these charges and as per the directions of the Court has also filed an Appeal which was decided by the Appellate Authority vide order dated 21.01.2014. The Appellate Authority has not considered the grievance of the applicant raised in his appeal but has come to the conclusion that though it was the first day of the applicant in joining the Department, he simply followed the instructions of APM SBSO to assist him in preparing of consolidation of MIS and RD and that he was independently not responsible for the said act cannot be accepted. Similarly, the contention of the official that one day service official could not be perfect in all respects including procedure of knowledge etc was not accepted. The Appellate Authority held that it was accepted from the official that he would be able to perform duty exactly as per rules and procedure as well as he got practical and theoretical training during the induction training on his appointment as PA. Thus the Appellate Authority held that there was no reason to interfere in the orders of the SSPO's, Udaipur and the punishment of recovery was upheld. The applicant further added that the whole exercise of respondent Department seems to wreck the loss occurred due to fraud committed by Shri Pankaj Kumar Nigam and other such staff but the applicant was made a scapegoat to make for the loss suffered by the Department.

vi) The applicant relied on the judgment in the case of B.L. Verna Vs. UOI & Ors., in OA No.156/2011, decided on 22.05.2012. He relied on the judgment in the case of Mr. Teja Ram Nawal Vs. UOI & Ors. in OA No.295/2011, decided on 18.01.2013. He also relied on the judgment in the case of Ms. Sangeeta Kukreja Vs. UOI & Ors. in OA No.290/00253/2015, decided on 16.08.2018 passed wherein all these cases mentioned above, it was held by the Tribunal that the punishment order of recovery was illegal, unjust and improper and these OAs were allowed.

vii) The case of the applicant is that all these matters are identical to the present OA and that charge sheet under Rule 11 of CCS (CCA) Rules, 1965, penalty of recovery would have been ordered by the respondents only as an exceptional case for the reasons to be recorded in writing and the delinquent official should have had a reasonable opportunity of being heard regarding the exceptional and compelling circumstances on the basis of which such recovery is being ordered.

3. After issuance of notice, the respondents have filed their reply dated 12.10.2015 and have averred that the applicant while working as PA, SBSO in Udaipur Postal Division on 29.03.2010, received the premature account closure form in respect of MIS A/c No.31383 for Rs.2,97,000/- from Udaipur, Fatehpura Single Handed NDTSO. This amount was paid in cash by the then SPM Udaipur and no pass-book of closed MIS A/c was received with voucher/LOT in HO but the applicant had failed to enter the irregularity in the Error Book and also failed to challenge about these irregularities. The applicant also failed to address the depositor to confirm the genuineness of payment from the depositor in respect of premature withdrawal of Rs.2,97,000/- made from MIS A/c no.31383 on 29.03.2010 and thereby violated Rules 39(i) (ii), 168 (ii) and 48(ii) of POSB Manual Vol-I.

4. The respondents further state that it is due to the serious irregularities committed by the applicant, late Shri P.K. Nigam, SPM Udaipur Fatehpura Single Handed NDTSO succeeded to commit misappropriation of funds. Moreover, no recovery could be made from Shri Pankaj Kumar Nigam, principal offender as he expired on 02.04.2012 and during the investigations the applicant was identified subsidiary offender in the Udaipur, Fatehpura misappropriation case and accordingly the applicant was issued charge sheet under Rule 16 of CCS (CCA) Rules,

1965 on 25.04.2011 for the said fraud committed by Shri Pankaj Kumar Nigam to the tune of Rs.1,53,62,337/-. The applicant was awarded with penalty of recovery of Rs.89,842/- being the share of Government loss caused due to contributory negligence on the part of the applicant vide memo dated 30.03.2012. The applicant had approached this Tribunal by filing OA No.151/2012 and interim relief was granted to the applicant staying recovery vide order dated 20.04.2012. This Tribunal has passed the final order dated 06.05.2013 with liberty to the applicant to file an appeal and the same be decided within 30 days' thereafter. Also, liberty was given to the applicant that in case he has any grievance out of the order of the Appellate Authority, he may file a fresh OA. Accordingly, the applicant submitted his appeal to the competent authority dated 03.06.2013 and the same was rejected by the Appellate Authority vide its order dated 21.01.2014. It is the plea of the respondents that due to negligence of the applicant, the respondents suffered a loss, and the applicant is found to be subsidiary offender. Also, the applicant was given full opportunity to defend himself and whatever documents were demanded by the applicant, inspection to that effect was also given. Therefore a recovery was proportionate and the same commensurates with the gravity of offence, which was assessed correctly keeping in view the contributory negligence and in pursuance of instructions issued vide Rule 106, 107 and 111 of the P&T Manual Vol.III as well as in view of the Postal Directorate Memo dated 25.02.2003, and therefore, the penalty of recovery awarded, is just and proper.

5. The respondents relied on the judgment passed in OA No.01/2013 titled Shri Ram Sharma Vs. UOI & Ors., decided on 29.09.2014 by Hon'ble C.A.T. Jaipur Bench, wherein it has been held that proper departmental proceedings had been conducted by the respondents for imposing minor penalty of recovery of pecuniary loss caused by negligence of any official,

in such type of matter, this Tribunal did not find any ground for interference by the Tribunal in the action of the respondents in issuing Charge Memo, Penalty Order and Appellate Order. The respondents, therefore, submitted that the said case squarely covers the present case and is on the same issue, and therefore, the orders of recovery passed by the respondents are just and proper.

6. Heard Shri S.P. Singh, learned counsel for the applicant and Shri B.L. Bishnoi, learned counsel for respondents no.1 to 4 and perused the material available on record.

7. The learned counsel for the applicant contended that the applicant has joined as PA in Udaipur HO only on 29.03.2010 whereas the SPM Fatehpura, Shri Pankaj Kumar Nigam committed fraud on 27.03.2010 at Fatehpura Post Office. The charge sheet given to the applicant is that he has committed following irregularities on 29.03.2010. The charge memo is extremely vague and it does not reveal the quantum of recovery arrived at. The charge sheet does not mention as to how the rules are violated. The charge sheet and the Disciplinary Order and Appellate Order are based on mere presumption. The punishment of recovery of an amount is a special type of punishment and it can be awarded only when the result proved loss to the Government. He further contended that the recovery of any amount it has not been mentioned as minor penalty under CCS (CCA) Rules, 1964 and as per the provision to Sub Rule (ix) of Rule 11 in any exceptional case any other penalty can be made. The enquiry officer while imposing the penalty of Rs.89,842/- has not considered this aspect that whether any exceptional case is made against the applicant for imposing a penalty of Rs.89,842/-.

8. On the other hand, learned counsel for the respondents contended that an amount for recovery has been fixed according to the duties which

the learned official had failed to discharge, and that determination of amount for recovery from subsidiary offenders identified had been made depending upon the level of failure of performance of their responsibility.

9. I have carefully considered the rival contention of both the parties and perused the record.

10. I am not quite convinced with the arguments put forth by the counsel for the respondents, especially so because charge sheet does not contain the fact that any loss has been caused by the applicant to the Department and secondly even the Punishment Order as well as Appellate Order do not discuss the fact as to how much peculiar loss has been caused by the applicant to the respondent Department.

11. I have perused Annexure A1, A2 & A3 i.e. the Appellate Order as well as the Disciplinary order and Charge Sheet. Both the orders Punishment Order as well as Appellate Order do not state about the quantum or the amount of such recovery to have been determined in a proper manner because that would have required adherence to the principles of Rules 106 and 107 of the Post Office Savings Bank Manual Vol.I, and would essentially require the quantum of negligence on the part of the delinquent government official to be legally determined, which has not been done in this case. What was the total amount or quantum of loss suffered by the Department in the fraud case itself has not been correctly assessed and the respondent Department cannot be allowed to state that the quantum of responsibility of the applicant caused the peculiar loss of Rs.89,842/- out of total loss of Rs.1,53,62,337/- to the Department.

12. As per Rule 11 of the CCS (CCA) Rules, 1965, the recovery of any penalty can be imposed only in any exceptional circumstances and for special reasons recorded in writing. Thus, it is seen that five categories of

minor penalties in Sub-Rules- (i), (i), (iii), (iii) (a) and (iv) of Rule 11 and five categories of major penalties in Sub-Rules (v), (vi), (vii), (viii) and (ix) of Rule 11 and there is 11th category of penalty also described within Rule 11, which is included in the second proviso to the Rule.

13. It, therefore, appears that in case of any action taken against the delinquent Government servant, which does not fall under five categories of minor penalties or five categories of major penalties, but which has to be classified as an exceptional case, the only requirement is (a) that the special reasons may be recorded in writing, and (b) a corollary that under the Constitution of India, the delinquent Government servant should have had a reasonable opportunity of being heard regarding the exceptional or compelling circumstances.

14. In the instant case, there is no allegation of misappropriation/embezzlement or any charge which may cast a doubt upon the integrity upon the applicant, anything which may indicate even the slightest hint of complicity on the part of the applicant with the main offender. The charges relate to account and discharge of his function as PA. The sum and substance of the charges levelled against the applicant is that he remained negligent. It would appear that the respondents in their anxiety to recover the huge loss of public money are implicating employees without categorically establishing their guilt, current case being one such glaring example.

15. Accordingly, it is held that after having issued the charge sheet under Rule 16 of CCS (CCA) Rules, 1965, the penalty of recovery could have been ordered by the respondents only as exceptional case for the reasons to be recorded in writing and that delinquent Government servant should have reasonable opportunity of being heard regarding the

exceptional and compelling circumstances on the basis of which such recovery was being ordered, which is not the case in the instant case.

16. Therefore, in these circumstances of the case, the impugned charge sheet dated 25.04.2011 (Annexure A3) and Appellate Order dated 21.01.2014 (Annexure A1) and Punishment Order dated 30.03.2012 (Annexure A2) are required to be quashed and the same are accordingly quashed and set aside. The respondents are directed to refund the amount already recovered from the applicant within a period of six months' from the date of receipt of a certified copy of this order.

17. The O.A. is accordingly allowed, as stated above, with no order as to costs.

Dated: 08.10.2018
Place: Jodhpur

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(HINA P. SHAH)
MEMBER (J)