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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...
ORIGINAL APPLICATION NO.290/00499/2012

RESERVED ON : 06.03.2018

PRONOUNCED ON :

08.06.2018

CORAM:

**HON'BLE MS. B.BHAMATHI, MEMBER (A)
HON'BLE MR. SURESH KUMAR MONGA, MEMBER (J)**

**JASSA RAM S/O SHRI KHIMA RAM MENDA, AGED ABOUT 41 YEARS,
R/O-H.NO. 29, KARNI NAGAR, BASANI-I, JODHPUR, DISTRICT-JODHPUR
(OFFICE ADDRESS:- JODHPUR HO, WORKING AS POSTAL ASSISTANT)**

**...APPLICANT
(BY ADVOCATE: SHRI S.P.SINGH)
VERSUS**

- 1. UNION OF INDIA THROUGH THE SECRETARY, GOVERNMENT OF INDIA,
MINISTRY OF COMMUNICATION, DEPARTMENT OF POST, DAK TAR
BAWAN, NEW DELHI.**
- 2. THE CHIEF POST MASTER GENERAL, RAJASTHAN CIRCLE, JAIPUR-302 007.**
- 3. THE DIRECTOR, O/O POST MASTER GENERAL, WESTERN REGION,
JODHPUR.**
- 4. SR. SUPERINTENDENT OF POST OFFICES, JODHPUR DIVISION, JODHPUR.**

**...RESPONDENTS
(BY ADVOCATE: MR. K.S.YADAV)**

**ORDER
PER: SURESH KUMAR MONGA, MEMBER (J)**

THE PLEADED CASE OF THE APPLICANT HEREIN IS THAT IN THE YEAR 2005 HE WAS POSTED AS POSTAL ASSISTANT AT JODHPUR HEAD OFFICE. AN AMOUNT OF RS. 50,000/- WAS WITHDRAWN BY A DEPOSITOR AT PHALODI POST OFFICE FROM HIS ACCOUNT NO.711742 DURING 1.1.2005 TO 8.8.2005. THE SAID AMOUNT WAS PAID BY THE SUB POST MASTER, PHALODI POST OFFICE. THE SUB POST MASTER, PHALODI POST OFFICE PUT HIS SIGNATURE ON THE MAIN FOLIO, BUT HE DID NOT PUT HIS

SIGNATURE ON THE OTHER PART OF THE FOLIO. THE POSTAL ASSISTANT WHO WAS POSTED IN THE SAID POST OFFICE, HAD ALSO PUT HIS SIGNATURE OVER THE SAID FOLIO. A CHARGE MEMO DATED 28.2.2011 WAS SERVED UPON THE APPLICANT WITH A STATEMENT OF IMPUTATION ALLEGING THEREIN THAT SPECIMEN SIGNATURE OF THE DEPOSITOR WAS NOT VERIFIED BY THE SUB POST MASTER, PHALODI WHICH WAS ALSO NOT CHALLENGED BY SHRI JASSA RAM (APPLICANT HEREIN). ACTUALLY THIS WITHDRAWAL WAS FALSE. IT WAS FURTHER ALLEGED THAT THE APPLICANT FAILED TO CHECK THE BALANCE AND SPECIMEN SIGNATURE OF THE DEPOSITOR AND VIOLATED THE PROVISIONS OF RULE 50(1)(A) OF THE SAVING BANK MANUAL VOLUME-II. THE APPLICANT SUBMITTED A REPRESENTATION AND APPRISED THE SUBSTANTIAL FACTS AND CIRCUMSTANCES, BUT THE RESPONDENTS WITHOUT TAKING INTO CONSIDERATION THE EVIDENCE AVAILABLE ON RECORD REJECTED HIS REPRESENTATION. IT HAS FURTHER BEEN AVERRED BY THE APPLICANT THAT A FRAUD WAS COMMITTED AT PHALODI SUB POST OFFICE BY TWO OFFICIALS NAMELY SHRI PANCHA RAM AND ARJUN RAM. THE APPLICANT, WHO WAS WORKING AT JODHPUR HEAD OFFICE HAD NO LINK WITH THE SAID PERSONS AND THE ALLEGATIONS ABOUT NOT CHALLENGING THE SIGNATURE HAVE NO SUBSTANCE. AN FIR WAS ALSO GOT REGISTERED AGAINST THOSE TWO OFFICIALS AND IN THE SAID FIR NEITHER THE APPLICANT WAS NAMED, NOR HIS INVOLVEMENT WAS FOUND IN THE CRIME BY THE INVESTIGATING AGENCY. BY IGNORING ALL THESE ASPECTS OF THE MATTER, THE RESPONDENT NO.4 PASSED AN ORDER DATED 25.6.2012 INFILCTING A PENALTY OF RECOVERY OF RS. 50,000/- FROM APPLICANT'S PAY. THE APPLICANT PREFERRED AN APPEAL AGAINST THE SAID ORDER WHICH WAS DISMISSED VIDE ORDER DATED 7.11.2012 BY DIRECTOR, POSTAL SERVICES, RAJASTHAN WESTERN REGION, JODHPUR. AGGRIEVED BY THE SAID ORDERS, THE APPLICANT HAS PREFERRED THE INSTANT ORIGINAL APPLICATION BY INVOKING JURISDICTION OF THIS TRIBUNAL U/S 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985.

2. THE RESPONDENTS BY WAY OF FILING A JOINT REPLY HAVE JOINED THE DEFENCE AND OPPOSED THE ORIGINAL APPLICATION FILED BY THE APPLICANT. IT HAS BEEN PLEADED THAT THE APPLICANT WHILE WORKING AS POSTAL ASSISTANT AT JODHPUR HEAD OFFICE DURING THE PERIOD FROM 1.1.2005 TO 8.8.2005 RECEIVED SAVING BANK LIST OF TRANSACTIONS OF PHALODI POST OFFICE ON 3.8.2005. A WITHDRAWAL OF RS. 50,000/- WAS MADE IN SB ACCOUNT NO.711742 IN WHICH THE SPECIMEN SIGNATURE OF THE DEPOSITOR WAS NOT VERIFIED BY THE SUB POST MASTER, PHALODI, BUT THE SAME WAS NOT CHALLENGED BY THE APPLICANT WHILE MAKING LEDGER POSTING. DURING THE DIVISIONAL LEVEL INQUIRY OF PHALODI FRAUD CASE, THE APPLICANT WAS IDENTIFIED AS SUBSIDIARY OFFENDER AND HE WAS SERVED WITH A MEMO OF CHARGES UNDER RULE 16 OF THE CENTRAL CIVIL SERVICE

(CLASSIFICATION, CONTROL AND APPEAL) RULES, 1965 (HEREINAFTER CALLED THE '1965 RULES'). AFTER DUE CONSIDERATION OF HIS DEFENCE REPRESENTATION AND KEEPING IN VIEW THE RECOVERY ASPECT IN PHALODI FRAUD CASE FOR HIS CONTRIBUTORY NEGLIGENCE, HE WAS PENALIZED WITH RECOVERY OF RS. 50,000/- FROM HIS PAY IN INSTALMENTS VIDE MEMO DATED 25.6.2012. THE APPEAL PREFERRED BY THE APPLICANT WAS CONSIDERED BY THE DIRECTOR POSTAL SERVICES, RAJASTHAN WESTERN REGION, JODHPUR (RESPONDENT NO.3) AND THE SAME WAS REJECTED VIDE MEMO DATED 7.11.2012. IT HAS FURTHER BEEN PLEADED THAT THE APPLICANT WAS DUTY BOUND TO CHALLENGE THE IRREGULARITIES COMMITTED BY THE THEN SUB POST MASTER, PHALODI WHILE MAKING DATA ENTRIES IN JODHPUR HEAD OFFICE AS HE WAS WORKING AS POSTAL ASSISTANT SO (SB), JODHPUR HEAD OFFICE AT THE TIME OF FALSE PAYMENT OF RS. 50,000/-. THE APPLICANT FAILED TO CHALLENGE THE NON-VERIFICATION OF THE SIGNATURES OF THE DEPOSITOR IN RESPECT OF PHALODI SB ACCOUNT NO. 711742 AND THE BALANCE MENTIONED IN THE WITHDRAWAL FORM. THOUGH IT HAS BEEN ADMITTED THAT THERE WAS NO DIRECT INVOLVEMENT OF THE APPLICANT WITH THE MAIN TWO OFFENDERS OF PHALODI FRAUD CASE, BUT BY NOT CHALLENGING THE IRREGULARITIES BEING COMMITTED BY THE THEN SUB POST MASTER, PHALODI FOR A LONG TIME, THE APPLICANT FACILITATED THEM TO COMMIT FRAUD BY FREE HANDS. THE APPLICANT HAS BEEN RIGHTLY PUNISHED KEEPING IN VIEW THE IRREGULARITIES COMMITTED BY HIM FOR NOT PERFORMING HIS DUTY AS PRESCRIBED UNDER THE RULES. THE APPEAL FILED BY HIM HAS ALSO BEEN RIGHTLY REJECTED BY RESPONDENT NO.3 VIDE ORDER DATED 7.11.2012. WITH THESE PLEADINGS, THE RESPONDENTS HAVE PRAYED FOR DISMISSAL OF THE OA.

3. THE APPLICANT WHILE FILING HIS REJOINDER, APART FROM REITERATING THE ASSERTIONS MADE IN THE ORIGINAL APPLICATION, HAS ALSO PLEADED THAT IN AN IDENTICAL CASE I.E. OA NO.251/2012 TITLED AS S.N.SINGH BHATI VS. UNION OF INDIA AND ORS., THIS TRIBUNAL VIDE ORDER DATED 29.8.2013, WHILE QUASHING THE ORDER OF PENALTY HAS DIRECTED THE RESPONDENTS TO MAKE A REFUND OF THE AMOUNT RECOVERED FROM THE APPLICANT IN THE SAID CASE.

4. THE RESPONDENTS WHILE FILING REPLY TO SAID REJOINDER HAVE SUPPLEMENTED THE PLEADINGS WITH THE ASSERTION THAT THE FRAUD IN PHALODI LSG SO WAS BEING COMMITTED FOR A LONG TIME, BUT IT CAME TO LIGHT ON 4.6.2009 ON A SUDDEN VISIT OF THE THEN SENIOR SUPERINTENDENT OF POST OFFICES, JODHPUR. SO MANY OFFENDERS WERE IDENTIFIED AS CO-OFFENDERS/SUBSIDIARY OFFENDERS, WHO INDIRECTLY SUPPORTED THE MAIN TWO OFFENDERS. ALL THE SUBSIDIARY OFFENDERS WERE FAILED TO CARRY OUT PROCEDURAL CHECK AS REQUIRED AND THUS, THEY HAD FACILITATED THE MAIN OFFENDERS TO COMMIT FRAUD.

5. HEARD LEARNED COUNSELS FOR THE PARTIES.

6. SHRI S.P.SINGH, LEARNED COUNSEL FOR THE APPLICANT CONTENDED THAT THE CHARGE MEMO NEITHER REVEALS THE DATE OF OCCURRENCE NOR IT EXPLAINS THE QUANTUM OF RECOVERY ARISES. THE APPLICANT WAS WORKING AT JODHPUR HEAD OFFICE WHEREAS, THE FRAUD HAD TAKEN PLACE AT SUB POST OFFICE, PHALODI, WHICH IS SITUATED AT A DISTANCE OF ABOUT 130 KMS. AN FIR WAS REGISTERED AGAINST THE OFFENDERS NAMELY SHRI PANCHA RAM AND ARJUN RAM. NEITHER THE APPLICANT WAS NAMED IN THE SAID FIR NOR HIS INVOLVEMENT WAS FOUND IN THE FRAUD COMMITTED BY THOSE OFFICIALS BY THE INVESTIGATING AGENCY. HE FURTHER ARGUED THAT SO FAR AS THE ALLEGATIONS ABOUT NOT CHALLENGING THE SIGNATURE AND THE BALANCE IN THE ACCOUNT ARE CONCERNED, THOSE CANNOT BE ATTRIBUTED TO THE APPLICANT AS EACH AND EVERY DOCUMENT WAS AVAILABLE WITH THE SUB POST MASTER, PHALODI POST OFFICE. THE HEAD OFFICE DISCONTINUED MAINTAINING DUPLICATE LEDGER IN RESPECT OF ACCOUNTS OPENED IN SUB POST OFFICE W.E.F. 20.1.2003 AFTER DE-CENTRALIZATION OF MIS WORK FROM HEAD OFFICE TO SUB OFFICES. LEARNED COUNSEL SUBMITTED THAT THE PENALTY OF RECOVERY HAS BEEN IMPOSED BY THE RESPONDENTS WITHOUT EVEN ASCERTAINING THE FACT WITH REGARD TO EMBEZZLEMENT OF THE AMOUNT. THE CONCEPT OF SUBSIDIARY OFFENDER IS UNKNOWN TO LAW. HAD HE BEEN AN OFFENDER, HE WOULD HAVE BEEN DEFINITELY NAMED IN THE FIR AND THE INVESTIGATING AGENCY COULD ALSO HAVE INQUIRED INTO THE MATTER. THE APPELLATE AUTHORITY WHILE CONSIDERING HIS APPEAL HAS ALSO NOT APPLIED ITS MIND AND ARBITRARILY REJECTED HIS APPEAL VIDE ORDER DATED 7.11.2012. LEARNED COUNSEL, THUS, ARGUED THAT THE ORDER OF RECOVERY CANNOT BE SUSTAINED AND DESERVES TO BE QUASHED.

7. PER CONTRA, LEARNED COUNSEL FOR THE RESPONDENTS CONTENDED THAT THE APPLICANT FAILED TO DISCHARGE HIS DUTY AS HE COULD NOT CHALLENGE THE NON-VERIFICATION OF SIGNATURE OF THE DEPOSITOR AND CONSEQUENT THERETO HE CONTRIBUTED IN FALSE WITHDRAWAL OF RS. 50,000/- AT SUB POST OFFICE, PHALODI. THE APPLICANT ALSO FAILED TO CHECK THE BALANCE MENTIONED IN THE WITHDRAWAL FORM AND THE SPECIMEN SIGNATURE OF THE DEPOSITOR. THEREFORE, HE WAS RIGHTLY CHARGESHEETED BY THE RESPONDENTS. THE REPRESENTATION SUBMITTED BY HIM AGAINST THE SAID CHARGE MEMO WAS DULY CONSIDERED BY THE DISCIPLINARY AUTHORITY AND AN ORDER INFILCTING PENALTY OF RECOVERY OF RS. 50,000/- WAS PASSED IN ACCORDANCE WITH LAW. THE APPEAL SUBMITTED BY THE APPLICANT WAS ALSO CONSIDERED BY THE APPELLATE AUTHORITY AND A REASONED ORDER HAS BEEN PASSED IN ACCORDANCE WITH LAW IN

WHICH THE APPLICANT HAS FAILED TO POINT OUT ANY ILLEGALITY OR IRREGULARITY. HE, THUS, SUBMITTED THAT THE ORDER OF PENALTY DESERVES TO BE UPHELD AND THE OA IS LIABLE TO BE DISMISSED.

8. CONSIDERED THE RIVAL CONTENTIONS OF THE LEARNED COUNSELS FOR THE PARTIES AND PERUSED THE RECORD.

9. ADMITTEDLY, AT THE RELEVANT POINT OF TIME WHEN THE FRAUD TOOK PLACE IN SUB POST OFFICE, PHALODI, THE APPLICANT WAS WORKING AT JODHPUR HEAD OFFICE, WHICH IS AT A DISTANCE OF ABOUT 130 KMS. AS PER THE RESPONDENTS' OWN CASE, THE FRAUD IN PHALODI SUB POST OFFICE WAS COMMITTED FOR A LONG TIME AND IT CAME TO LIGHT ON 4.6.2009 ON A SUDDEN VISIT OF THE THEN SENIOR SUPERINTENDENT OF POST OFFICES, JODHPUR. TWO OFFICIALS NAMELY SHRI PANCHA RAM BISHNOI AND ARJUN RAM BISHNOI WORKING AT PHALODI SUB POST OFFICE WERE IDENTIFIED AS OFFENDERS AND AN FIR WAS ALSO REGISTERED AGAINST THEM. THE RESPONDENTS THEMSELVES HAVE PLEADED THAT THERE IS NO DIRECT CONNECTION/INVOLVEMENT OF THE APPLICANT IN PHALODI FRAUD CASE, BUT HE WAS CHARGESHEETED AS HE HAD SHOWN NEGLIGENCE WHILE PERFORMING HIS DUTY AT JODHPUR HEAD OFFICE AND FACILITATED THE MAIN OFFENDERS OF THE PHALODI FRAUD CASE INDIRECTLY. A RECOVERY OF RS. 50,000/- HAS BEEN SOUGHT TO BE JUSTIFIED BY MAKING A FURTHER ASSERTION THAT THE APPLICANT HAS NOT BEEN HELD RESPONSIBLE FOR WHOLE OF THE FRAUD OF RS. 1.97 CRORES COMMITTED BY THOSE TWO OFFENDERS AT PHALODI SUB POST OFFICE. WE, HOWEVER, DO NOT FIND ANYTHING ON RECORD AS TO HOW THE APPLICANT WAS IDENTIFIED AS SUBSIDIARY OFFENDER FOR THE LAPSES COMMITTED AT PHALODI SUB POST OFFICE BY THE AFORESAID TWO OFFENDERS. OUT OF THOSE TWO OFFENDERS, ONE HAS BEEN DISMISSED FROM SERVICE AND DISCIPLINARY CASE WITH REGARD TO ANOTHER ONE IS AT FINAL STAGE. IT IS ALSO THE CASE OF THE RESPONDENTS THAT THREE CBI CASES AGAINST THOSE TWO MAIN OFFENDERS ARE SUB-JUDICE BEFORE THE SPECIAL JUDGE, CBI COURT, JODHPUR. IT APPEARS THAT THE LOSS CAUSED TO THE GOVERNMENT HAS NOW BEEN SOUGHT TO BE RECOVERED FROM THE OTHER SO CALLED SUBSIDIARY OFFENDERS BY ANY MEANS. REPEATEDLY, IT HAS BEEN PLEADED BY THE RESPONDENTS THAT THE APPLICANT INDIRECTLY SUPPORTED THE RESPONDENTS, BUT NOTHING TANGIBLE HAS COME UP ON RECORD TO SUPPORT THE SAID CONTENTION AS TO HOW THE APPLICANT SUPPORTED THE MAIN OFFENDERS INDIRECTLY IN COMMITTING THE FRAUD TO THE TUNE OF RS. 1.97 CRORES. IN AN IDENTICAL CASE, DEALING WITH THE SAME VERY INCIDENCE OF MISAPPROPRIATION OF FUNDS AT PHALODI SUB POST OFFICE, THIS TRIBUNAL WHILE DECIDING OA NO.251/2012 TITLED AS S.N.SINGH BHATI VS. UNION OF INDIA AND ORS. HAS ALREADY TAKEN A VIEW THAT AS PER RULE 11 OF THE '1965 RULES' PENALTY OF RECOVERY CAN BE IMPOSED

ONLY IN EXCEPTIONAL CIRCUMSTANCES AND FOR SPECIAL REASONS TO BE RECORDED IN WRITING. IT HAS FURTHER BEEN HELD THAT AFTER HAVING ISSUED A CHARGE SHEET, UNDER RULE 11 OF THE '1965 RULES', THE PENALTY OF RECOVERY COULD 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. THE INSTANT CASE IS SQUARELY COVERED BY THE SAID JUDGMENT. THUS, THERE IS NO ESCAPE BUT TO HOLD THAT THE ORDER DATED 25.6.2012 (ANN.A/2) INFILCTING PENALTY OF RECOVERY OF RS. 50,000/- AND THE ORDER DATED 7.11.2012 (ANN.A/1) PASSED BY THE APPELLATE AUTHORITY REJECTING THE APPLICANT'S APPEAL AGAINST THE ORDER OF PENALTY, CANNOT BE SUSTAINED AND THE SAME DESERVE TO BE QUASHED.

10. ACCORDINGLY, THE INSTANT OA IS ALLOWED. THE ORDERS DATED 25.6.2012 (ANN.A/2) AND 7.11.2012 (ANN.A/1) ARE HEREBY QUASHED. THE RESPONDENTS ARE DIRECTED TO REFUND THE AMOUNT OF RS. 50,000/- RECOVERED FROM THE APPLICANT WITHIN A PERIOD OF TWO MONTHS FROM THE DATE OF RECEIPT OF A CERTIFIED COPY OF THIS ORDER. THERE SHALL BE NO ORDER AS TO COSTS.

(SURESH KUMAR MONGA)
MEMBER(J)

(B.BHAMATHI)
MEMBER (A)

R/

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OA NO.290/00499/2012