

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

**Original Application No. 332/00372/2017
This the 09th day of May, 2018**

Hon'ble Mr. Justice V.C Gupta, Member - I

Mool Chand Suman, aged about 59 years S/o Sri Durgadas, R/o Near Durga Devi Mandir, Ambikapuram, District – Sitapur.

..... Applicant

By Advocate: Sri A.P. Singh

VERSUS

1. Union of India through the Secretary of Communication Department of Post, New Delhi.

2. Superintendent of Post Office, Sitapur.

..... Respondents

By Advocate: Sri Sobhit Saxena

ORDER (ORAL)

Delivered by: Hon'ble Mr. Justice V.C Gupta, Member - I

Heard the counsel for the applicant and counsel for the respondents and perused the records.

2. This O.A has been filed by the applicant seeking the following reliefs:

- (a) Issuing/ passing of an order or direction setting aside the impugned order notice dated 23.04.2015 issued by O.P No. 2 as contained in Annexure No. 1 to the O.A vide which O.P No. 2 directed the applicant to deposit Rs. 150000/- as there were a proposal of recovery of amount of Rs. 250000/- amongst which the petitioner has deposited Rs. 100000/- under departmental proceedings.
- (b) Issuing/ passing an order or direction directing the O.P No. 2 not to proceed further for recovering the amount of Rs. 150000/- in pursuance of the impugned notice dated 23.04.2015.
- (c) Allow this original application with cost.

3. Brief facts giving rise to this petition are that the applicant was posted as Cashier in Head Post Office, Sitapur. While working as a Cashier, a FIR was lodged against the petitioner, Mool Chand Suman - Cashier, Jagmohan Lal - Counter Clerk and Chunni Lal - Assistant Post Master on 26.07.1997 having case Crime No. 449/1997 U/s 409 IPC at P.S Kotwali Sitapur. The trial ended in conviction by order dated 03.07.2000 and

consequently the applicant was removed from service vide order dated 24.08.2000. He preferred an appeal against the order of conviction having Criminal Appeal No. 02/2000 which was allowed vide an order dated 31.03.2004. The applicant was exonerated with the charges levelled U/s 409 IPC. The copy of order of acquittal passed in Appeal has been annexed as Annexure A-5 to this O.A. Perusal of the order reveals that the acquittal was granted on technical ground that no prosecution section has been obtained apart from other technical ground of not filing original copies of the statement etc. In consequence thereafter, the applicant was reinstated in service vide order dated 03.09.2004.

4. Earlier to it, after lodging of the FIR, the departmental loss was assessed of Rs. 5 lakh and department decided to recover the amount of Rs. 250000/- from the applicant and the rest from others by passing order dated 02.08.2001. The order of recovery was subject to challenge in writ petition filed by the applicant having writ petition No. 4543/2001 (MB). The Lucknow Bench of Hon'ble Allahabad High Court dismissed the aforesaid writ petition by an order dated 18.04.2017. The relevant portion of the judgement is extracted herein below:

“Sri Sharad Kumar Srivastava, learned Counsel for the respondent has submitted that order dated 30.11.2007 was an order of partial recovery and the remaining amount of Rs. 1,50,000/- is directed to be recovered vide order dated 23.04.2015, which has not been challenged under the present writ petition.

Appreciating the request of learned Counsel for the petitioner and the fact that petitioner did not chose to challenge the order dated 23.04.2015 in the present writ petition, the writ petition is dismissed as having become infructuous.”

5. During the pendency of this writ petition, revised recovery of Rs. 150000/- was proposed against the applicant vide order/ notice dated 23.04.2015, the copy of which has been annexed as Annexure No. A-1 to this O.A. Relevant portion of the notice issued to the applicant on 23.04.2015 is extracted herein below:

“विषयगत प्रकरण की विभागीय जाँच में अन्य कर्मचारियों के साथ आपको भी जिम्मेदार पाया गया था, अतएव आपसे विभागीय क्षति रू0 2,50,000/- की वसूली का प्रस्ताव है, जिसमें से आप द्वारा विभागीय अनुशासनात्मक कार्यवाही के परिणाम स्वरूप रू0 1 लाख जमा किये जा चुके हैं।

अतः आपको निर्देशित किया जाता है कि शेष क्षति रू0 1,50,000/- विभागीय कोश में अविलम्ब जमा करें, अन्यथा बाध्य होकर पी0ए0डी0 एक्ज के तहत कार्यवाही की जायेगी। जिसके हर्जे खर्चे के आप स्वयं जिम्मेदार होंगे।”

6. Against this notice of recovery of Rs. 150000/-, the applicant replied with a legal notice dated 15.06.2015, the receipt of which has not been denied. The fact that notice dated 23.04.2015 was replied through legal notice dated 15.06.2015 to respondent No. 2 was not denied because pleadings contained to this effect in Para 4.14 of O.A has not been denied in Para 16 of the CA and simply it has been mentioned that the contents of paras 4.14, 4.15 4.16 and 4.17 of the O.A being matter of record need no comments.

7. It is important to mention here that against the notice of recovery, the applicant represented through advocate by serving notice. The notice was not considered by the respondents and they continue to proceed with the matter without taking any final decision in the matter.

8. It has further been contended by the counsel for the applicant that once the applicant has been punished for the misconduct and punished with penalty of Rs. 1 lakh, further recovery of Rs. 1.5 lakh cannot be legally made on the basis of doctrine of *double jeopardy*.

9. Learned counsel for the respondents argued that out of amount of Rs. 2.5 lakh, an amount of Rs. 1 lakh was recovered in pursuance of the punishment order, as such remaining amount of Rs. 1.5 lakh can be recovered from the applicant on the basis of modification of the order dated 23.04.2015. The order of punishment which has been awarded to the applicant in pursuance of the departmental proceedings has also been annexed as Annexure A-7. The operative portion reads as under:

“मैने आरो पत्र मामले के संबंधित अभिलेख तथा कर्मचारी के प्रतिवेदन का सावधानीपूर्वक अध्ययन किया। कर्मचारी की लापरवाही से विभाग को 5 लाख की हानि हुयी। यदि सभी रिकार्ड सुरक्षित होते और सजगता से कर्मचारी कार्य करता तो वास्तविक कारण का पता लग सकता है। अतः श्री मूलचन्द्र सुमन उक्त कृत्य के लिए कठोर दण्ड के पात्र हैं लेकिन मैं दण्ड में शिथिलता दिखाते हुए उक्त हानि का अंश रू० 100000 (रू० एक लाख मात्र) कर्मचारी के वेतन से रू० 1500 – (रू० एक हजार पांच सौ मात्र) प्रतिमाह की दर से वसूल करने का आदेश देता हूँ।”

10. The perusal of this order reveals that due to negligence of the charged employee department sustained the loss of Rs. 5 lakh. The order further reveals that if records were kept safe and the applicant would have been cautious and worked diligently then actual reason could be

ascertained. Consequently, for the act of Mool Chand Suman, inspite of giving deterrent punishment he has awarded with minor punishment to recover Rs. 1 lakh which shall be payable by the applicant in installments of Rs. 1500/- per month. It is also not in dispute that the amount of Rs. 1 lakh has already been paid by the applicant in pursuance of the aforesaid order. Right to recover the remaining amount has not been kept reserved by the Disciplinary Authority, as such, after award of the punishment for the act committed by the applicant for which the punishment has been awarded in the form of recovery the respondents are precluded to recover remaining amount of the damage from the applicant.

11. Having considered the facts and circumstances of the case and keeping in view the submissions of the counsel for the parties, this Tribunal finds that this petition deserves to be allowed.

12. Consequently, the O.A No. 372/2017 is allowed. The impugned order dated 23.04.2015 is set aside. However, there shall be no orders to costs.

(Justice V.C. Gupta)
Member (J)

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