

- ( i ) The applicant is an employee of Department of Posts. The applicant is at present working as Sub Postmaster at Katoria Sub Post Office under Banka Head Post Office in Bhagalpur Postal Division. The applicant was implicated in a minor

Disciplinary Proceedings vide memo dated 07.04.2017 and ultimately he was imposed penalty of Rs.3,00,000/- for violation of Rles 106, 107, 111 o P&T Manual Vol III as well as D.G. P&T No. 114/176/78-Disc II, dated 13<sup>th</sup> February 198. The penalty was recoverable @ Rs.10,000/- in 30 instalments commencing from June 2017.

- (ii) It has further been submitted by the applicant that the Disciplinary authority has not taken into consideration of his written statement submitted by the applicant in his defence and the Disciplinary Authority has passed the order. The l/c for applicant further submitted that the applicant has filed an appeal before the Appellate Authority but the respondent authority has started the recovery from his salary.
- (iii) The applicant has referred a similar case i.e O.A 612/2017 (Permanand Sah) in which the recovery of penalty was stayed by this Tribunal vide order dated 12.10.2017. He further submitted that the impugned order issued by the Disciplinary Authority is non-speaking and the points submitted by the applicant in the written statement in his defence has not been discussed and considered by the Disciplinary Authority.
- [iv] It is further submitted that, the applicant had filed an Appeal before the Appellate Authority on 27.06.2017 against the punishment order dated 31.05.2017, the said appeal is pending for adjudication. (Annexure A/5 series refer).
- [ v ] It is further submitted that the applicant requested the Appellate Authority to decide the same, but till date it is not answered and in the meantime respondents have started recovery @ Rs.10,000/- per month from his salary since June 2017 in pursuance to the impugned punishment order, hence the applicant has no alternative remedy except to file this O.A.

3. In response to the notice, the respondents have filed their written statement and submitted as below :-

- (i) The learned counsel for respondents submitted that Shri Suresh Prasad Yadav, PA, Banka H.O. under Bhagalpur Postal Division started his service in PA cadre in the year 1996 in Bhagalpur Division. While working as APM SBSO, Banka H.O during the period from 01.11.2011 to 24.02.2013 have not taken action to verify the signature on SB-7 of Punsia S.O SB Account No.- 1826267 dated 22.05.2012 for Rs.1,00,000/- SB Account No.1816530 dated 25.11.2011 for Rs.1,40,000/- SB Account No.1820327 dated 01.06.2012 for Rs.60,000/- as balance was more than Rs.5000/- of single handed SO under Bank H.O. He also failed to put his signature below the signature of depositor of SB-7 of the said accounts satisfying him as verified the signature. He also failed to maintain register, prepare and issue ledger and to properly check LOT of the Punsia SO dated 22.05.2012, 25.11.2011 & 01.06.2012. Due to such type of supervisory lapses the Department has sustained a loss tune of Rs.33,18,980/- therefore he was charged by the Superintendent of Post Offices, Bhagalpur for violation of Rule 38(1)(a), Rule 85 (i) (ii) of POSB Manual Volume I & Rule 3(I) (i)(ii) of CCS (Conduct) Rule 1964 and due to his lapses caused fraudulent withdrawal from SB and other accounts to the tune of Rs.33,18,980/- for which the applicant has been punished.
- (ii) The l/c for respondents further submitted that due to negligence of applicant the department sustained a loss of amount of Rs.33,18,980/- at Punsia SO. The applicant failed to check of LOT of the Punsia SO dated 22.05.2012, 25.11.2011 & 01.06.2012 as half margin verification memo of withdrawal of single handed Sub Post offices. The punishment has been imposed for misdeed of applicant and this O.A is liable to be dismissed.

3. Heard the parties, perused the documents and considered their submissions.

4. In the instant OA the applicant is aggrieved by the decision of the Disciplinary Authority dated 31.05.2017 whereby the said authority had imposed penalty of recovery of Rs.3,00,000/- from his pay in 30 instalments @ Rs.10,000/- per month commencing from June 2017. In pursuant to punishment order passed under Rule 12 of CCS (CCA) Rule 1965 holding the charge levelled against the delinquent employee stands fully proved.

5. It is noticed that against the said punishment order the applicant had filed an appeal before the Appellate Authority on 27.06.2017 and it is pending for final adjudication. The main submission of the learned counsel for applicant with regard to recovery of Rs.10,000/- per month in pursuant to the said punishment order is causing the applicant question of maintenance of his domestic affair and financial crunch. Moreover, the Appellate Authority is not deciding the appeal which is pending since May 2017. It is contended that in identical case of one Shri Permanand Sah who was also implicated for the same disciplinary proceeding and he was imposed punishment of only Rs.1,00,000/- by the same Disciplinary Authority, the said order was challenged before this Tribunal by way of O.A 612/2017 and this Tribunal by way of interim order, the recovery in pursuant to order dated 24.05.2017 has been ordered to be stayed till final decision of the O.A after considering the fact that 50% of the amount had already been recovered from the said delinquent. (Annexure A/8 refers). The applicant also placed reliance upon the order dated of this Tribunal dated 30<sup>th</sup> July 2015 in O.A 813/2013 in which the facts and circumstances of the case was identical and this Tribunal had quashed and set aside the order of recovery and the said order of this Tribunal was upheld by the Hon'ble Patna High Court vide order dated 16.02.2016 in CWJC 2505/2016. (Annexure A/6 series refers). On this basis, the l/c for applicant submitted that the impugned order of imposing punishment of recovery is bad in law.

6. Since the statutory appeal filed by the applicant is pending for adjudication before the Appellate Authority, we find it appropriate to direct the respondent authority to decide the appeal dated 27.06.2017 filed by the delinquent applicant within a period of three months from the date of receipt of the copy of this order. In the meantime, the respondents are directed not to recover any amount from the pay/salary of the applicant till final outcome of the Appeal pending before the Appellate Authority. Accordingly, this O.A is disposed of with no order as to costs.

(Jayesh V. Bhairavia ) M [ J ]

(A.K. Upadhyay) M ( A )

/mks/