

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

ORIGINAL APPLICATION No. 290/000295/2016
With Misc. Application No.290/00135/2017
&
ORIGINAL APPLICATION NO.290/00473/2016

Reserved on : 03.12.2018
Pronounced on : 13.12.2018

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

OA No.290/000295/2016 with MA No. 290/00135/2017

Gopal Singh Rajpurohit s/o Late Shri Mishra Ram Rajpurohit, aged about 59 years, b/c Brahaman, R/o Vill + Po-Ramaniya Mokalsar, District-Barmer (Office Address:- Employed as Postal Assistant SBCO at Barmer HO under SPO, Barmer Divsion, Barmer.)

...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 Bhawan, New Delhi
2. The Chief Postmaster General, Rajasthan Circle, Jaipur
3. The Postmaster General, Western Region Rajasthan, Jodhpur
4. Director, Postal Services, O/o Postmaster General Office, Western Region, Jodhpur.
5. Superintendent of Post Offices, Sirohi Division, Sirohi.
6. Superintendent of Post Offices, Barmer Division, Barmer

...Respondents

(By Advocate: Shri K.S.Yadav)

OA No.290/00473/2016

Babu Lal Lohar s/o Late Shri Chhaganji Lohar, aged about 50 years, b/c Lohar (OBC) R/o Vill+ Po-Dattani, via-Abu Road, District Sirohi (Office Address:- Employed as SPM Gandhinagar, Abu Road under SPO, Sirohi Division Sirohi)

...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 Bhawan, New Delhi
2. The Chief Postmaster General, Rajasthan Circle, Jaipur
3. The Postmaster General, Western Region Rajasthan, Jodhpur
4. Director, Postal Services, O/o Postmaster General, Western Region, Jodhpur.
5. Superintendent of Post Offices, Sirohi Division, Sirohi.

...Respondents

(By Advocate: Shri K.S.Yadav)

ORDER

In both the OAs, a common question of law and facts is involved, therefore, these are being decided by this common order.

2. Applicant in OA No.295/2016 has challenged the Memo dated 31.3.2016 (Ann.A/1) whereby the Disciplinary Authority has awarded minor penalty of recovery to the tune of Rs. 4,80,000/- to be recovered in 16 equal instalments of Rs. 30,000/- per month from the month of April, 2016.

Brief facts of the case, as stated by the applicant, are that while posted as Postal Assistant SBCO at HO Jalore under SPO Sirohi, a fraud to the tune of Rs. 2,86,75,771/- was detected at TSO Industrial Area, committed by Shri Ganpat Singh Deora, the SPM. The applicant is charged that he did not compare the signature from withdrawal form, the amount was paid without witnesses in case of thumb impression on withdrawal form, the accounts were closed without original pass book and the final withdrawal form was not enclosed with the original pass books and opening form (SB-3). Disciplinary proceedings under Rule 16 of CCS (CCA) Rules were initiated and the Disciplinary Authority awarded a minor penalty of recovery to the tune of Rs. 4,80,000/- in 16 equal instalments of Rs. 30,000/- started from April, 2016. The applicant filed appeal against the penalty, which is pending.

3. Applicant in OA No.290/00473/2016 has challenged Memo dated 27.5.2016 (Ann.A/1) whereby the Disciplinary Authority has awarded minor punishment of recovery to the tune of Rs. 12,91,400/- and the recovery of Rs. 11000/- in 117 equal instalment per month and one instalment of Rs. 4400/- is started from the salary of the applicant from the month of May, 2016 onwards. The appeal filed by the applicant was rejected vide Memo dated 12.09.2016 (Ann.A/2).

Brief facts of this case, as stated by the applicant, are that while posted as Postal Assistant SBLC at HO Jalore under SPO, Sirohi, a fraud to be tune of Rs. 2,91,30,671/- was detected at TSO Industrial Area committed by Shri Ganpat Singh Deora, the SPM. It is alleged that he did not compare the signature from withdrawal form and failed to check half margin verification memos in respect of the withdrawals of MIS and RD accounts. Disciplinary proceedings under Rule 16 of CCS (CCA) Rules, 1965 were initiated and the applicant was awarded minor penalty of recovery to the tune of Rs. 12,91,400/- to be recovered in equal 117 instalments of Rs. 11,000/- and remaining one instalment of Rs. 4400/- from May, 2016. Thereafter, the applicant filed appeal, but the appeal was rejected vide

order dated 12.09.2016 (Ann.A/2) by the Appellate Authority.

4. The applicants aver that the main offender is behind the bar and it has become difficult task to recover the misappropriated amount from the main offender/culprit, therefore, other way is adopted to compensate by collecting the amount as remedial measure by alleging them as subsidiary offenders. The punishment is awarded on presumption and to recover the amount misappropriated by SPM, TSO Industrial Area, Jalore as remedial measure because the negligence does not precede as mandatory in fraud case. The punishment order does not reveal the exceptional case as compelling circumstances and the specific reason is required to be recorded in writing which is obligatory for awarding the punishment of recovery under Rule 11 of CCS (CCA) Rules, 1965. The applicants presented representation but no heed was paid. The respondents did not correctly assess the amount and the charge sheet is issued without mentioning the amount of loss caused by the applicants. The respondents did not comply with Rule 11 of CCS (CCA) Rules, 1965 which clearly reveals that the compelling circumstances and specific reasons are required to be recorded in writing and

quantum of amount is to be fixed after correctly assessing the loss with clear finding on fixing the liability. The action of the respondents shows glaring example of arbitrariness and discriminatory function as they have adopted pick and choose policy and violated Article 14 and 21 of the Constitution of India. The respondents have also violated the principles of natural justice. In support of their averments, the applicants have referred the judgment of Hon'ble Apex Court in the case of Kuldip Singh vs. Commissioner of Police & Ors., (1999) 2 SCC 10 that suspicion or presumption cannot take the place of proof even in domestic inquiry. The applicants have also relied upon various earlier judgments of this Tribunal on the issue.

5. The respondents have filed reply to OA No. 295/16 and stated that Shri Ganpat Singh Deora processed the multiple closing/half withdrawals with fake signatures from various MIS/RD Accounts and deposited such fraud money in 17 Saving Bank Accounts and later on by way of withdrawal forms with fake signatures of real account holder, withdrawn such money. But the applicant failed to check such withdrawal forms as detailed in the charge sheet and also failed to compare such signatures with

specimen/sample signatures of the real account holder available on the account opening form which is mandatory process before taking place a transaction complete. The applicant filed reply to the chargesheet and considering the reply, the Disciplinary Authority found the charges proved and imposed a punishment of recovery of Rs. 4,80,000/- from the pay of the applicant in 16 equal instalments of Rs. 30,000/- each vide order dated 31.3.2016. The applicant preferred appeal before the appellate authority, but without waiting for outcome of the appeal, he has filed this OA.

6. In reply to OA No.473/2016, the respondents have stated that the applicant was supposed to check and compare the signature/thumb impression of account holders on withdrawal form (SB-7) with sample signatures of account holder available in account opening form but by performing the duty negligently, he failed to compare the fake signatures/thumb impression on withdrawal forms with the specimen signatures given at the time of opening the account in SB-3 form. The applicant also failed to prepare half margin verification memos of SB A/c in respect of 44 transactions detailed in the chargesheet. Therefore, the applicant violated various rules of PO SB Manual Vol.I and failed to perform the duties as entrusted to him and in this

way facilitated the misappropriation committed by main culprit Mr. Ganpat Singh Deora. The applicant was found subsidiary offender and thus he was issued chargesheet under Rule 16 of the CCS (CCA) Rules, 1965. After considering representation of the applicant, the Disciplinary Authority found the charges as proved and consequently imposed a punishment of recovery of Rs. 12,91,400/- from the pay of the applicant. Thereafter the applicant filed appeal against the punishment order dated 27.5.2016, and the Appellate Authority in a fair and reasoned manner dismissed the appeal vide order dated 12.9.2016 and the order of the Disciplinary Authority was confirmed.

7. The applicants have filed rejoinder to the reply filed by the respondents and have reiterated the averments made in the OAs.

8. I have heard the learned counsels of both the parties and perused the material available on record.

9. The issue involved in these OAs is not res-integra and the same has already been decided by this Bench of the Tribunal in various OAs as well as by other Benches of this Tribunal. In **B.L.Verma vs. Union of India and Ors.**, OA No.156/2011 decided on 22.5.2012, this Tribunal has held

that after having issued 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 the delinquent Government servant should have had a reasonable opportunity of being heard regarding the exceptional and compelling circumstances, on the basis of which such recovery was being ordered. In **Sunil Kumar Joshi Vs. UOI & Ors.**, OA No.252/2012, decided on 09.08.2013 this Bench on the same analogy quashed impugned recovery order and the OA was allowed. The respondents thereafter approached the Hon'ble High Court of Rajasthan and the Hon'ble High Court has also dismissed the WP No.1695/2014, challenging the order of this Tribunal in the said OA vide judgment dated 20.03.2014. The SLP (CC) No.673/2015, filed by the respondents in the said WP, stands dismissed vide order dated 19.01.2015. In the case of **Ram Lal vs. Union of India**, OA No.134/2016 decided on 1.8.2018, this Bench of the Tribunal in a similar matter quashed the impugned order and the respondents were directed to refund the amount already recovered from the applicant. In OA No.251/2012- **S.N.Singh Bhati vs. Union of India**, this Bench has already taken a view that as per

Rule 11 of 1965 Rules, penalty of recovery can be imposed only in exceptional circumstances and for special reasons to be recorded in writing. The said order was challenged before the Hon'ble High Court of Rajasthan by way of DB Civil Writ Petition No.2494/2014 and the Hon'ble Rajasthan High Court vide order dated 4th April, 2014 upheld the view taken by this Tribunal and the same was further upheld by the Hon'ble Apex Court in SLP No. 17525/2015 vide order dated 1.12.2017.

10. Applying the above ratio to the present facts and circumstances of the cases, without going into elaborate discussions, I am of the considered view that the impugned orders are required to be quashed. Accordingly, the impugned order dated 31.03.2016 (Ann.A/1 in OA No.295/16), order dated 12.9.2016 (Ann.A/2 in OA No.473/16) and order dated 27.05.2016 (Ann.A/1 in OA No.473/16) are quashed and set aside. The respondents are directed to refund the amount already recovered from the applicants within a period of six months from the date of receipt of a certified copy of this order. However, the respondents are not precluded from proceeding against the applicants in accordance with law.

11. These OAs stand disposed of in above terms with no order as to costs.

12. In view of the order passed in the OAs, the Misc. Application No.290/00135/2017 in OA No. 290/00295/16 has become infructuous and the same is accordingly dismissed.

(HINA P.SHAH)
JUDL. MEMBER

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