

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

**Original Application No.290/00315/2016
With Misc. Application No.290/00238/2016**

Reserved on : 27.11.2018
Pronounced on : 12.12.2018

CORAM:

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

Hukma Ram Meena s/o Shri Hindu Ram Ji aged about 58 years, resident of village Chamundery via-Nana, Distt-Pali at present employed on the post of Sub Post Master at Pindwara Distt- Sirohi (Raj) – 307022

...Applicant

(By Advocate: Shri. J.K.Mishra)

Versus

1. Union of India through Secretary to the Govt. of India, Department of Posts, Ministry of Communications & IT, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Director, Postal Services, O/o Postmaster General, Western Region, Rajasthan, Jodhpur.
3. Superintendent of Post Offices, Sirohi Division, Sirohi.

...Respondents

(By Advocate: Shri K.S.Yadav)

ORDER

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:

- (i) The impugned chargesheet dated 18.9.2015 (Annexure A/1), penalty order dated 27.1.2016 (Annexure A/2) and

appellate order dated 20.5.2016 served vide letter dated 27.5.2016 (Annexure A/3) imposing penalty of recovery of an amount of Rs. 16,18,532/- from the pay of appellant confined to Rs. 35000/- only per month instead of Rs. 45000/- and rest of the amount to be recovered in lump sum from arrear of pay and allowances if becomes payable any to the appellant till his retirement and leave encashment on the superannuation, may be declared as illegal, and the same may be quashed. The respondents may be directed to allow all consequential benefits including refund of any amount deducted/recovered from his salary, if any, as if the impugned order were never in existence.

- (ii) That any amount recovered in pursuance of the above impugned orders may be ordered to refund along with interest.
- (iii) 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.
- (iv) That the costs of this application may be awarded.

2. Brief facts of the case, as stated by the applicant, are that while working as SPM, Pindwara, the applicant was issued a charge sheet dated 18.9.2015 under Rule 16 of CCS (CCA) Rules, 1965 alleging that while working as APM (SB), Jalore HO during the period mentioned in the chargesheet, he failed to compare the signature of depositors with specimen signature and sign below the signature of depositors on withdrawal forms of SB Account of Industrial Area, Jalore DSO as required under Rule 38 (1) (a) of PO SB Manual Volume-I and also failed to check half margin verification Memos in respect of withdrawals made by Shri Ganpat Singh Deora, Ex SPM, Industrial Area, Jalore

DSO as required under Rule 85 of PO SB Manual Volume-I. Due to above act of the applicant, Shri Ganpat Singh Deora, Ex-SPM Industrial Area, Jalore DSO committed misappropriation/fraud of Govt. money in MIS & RD Accounts resulting loss of the department for Rs. 2,91,30,671. By committing above act, he failed to maintain absolute integrity and devotion to duty as required under Rule 3(1)(ii) & 3(2)(i) of CCS (Conduct) Rules, 1964. The applicant has denied the charges and submitted a representation dated 5.10.2015. He appraised the authorities about intimation to the Superintendent Post Offices, Jalore letter dated 8.10.2009 which was written to and report was called from ASPO, Jalore regarding misappropriation of Rs. 92,351/- and other irregularities committed by Shri Ganpat Singh Deora on various occasions. But nothing was done and no action was taken against the accused Ganpat Singh Deora. He clearly mentioned therein that if enquiry and action against accused Shri Ganpat Singh Deora would have been taken timely, so called fraud would have not been committed. He also requested the authorities to drop the proceedings since he is not responsible for the alleged misappropriation/fraud. Thereafter respondent No.3 imposed penalty of recovery of

Rs. 16,18,532/- from the pay of the applicant in 19 instalments of Rs. 45000/- per month commencing from January, 2016 to continue till his superannuation and remaining amount in lump sum from arrears of pay and allowances due to implementation of Seventh Pay Commission and leave encashment of the applicant on his superannuation vide order dated 27.1.2016.

3. Thereafter the applicant filed OA No.290/00145/2016 before this Bench and the same was disposed of with a direction to file appeal to the Appellate Authority vide Tribunal's order dated 25.02.2016. Accordingly, the applicant filed appeal dated 8.3.2016, but the said appeal has been rejected vide order dated 20.05.2016 by modifying the penalty order to the extent of reducing the recovery from Rs. 45000/- to Rs. 35000/- per month. The applicant stated that none of the grounds taken in the appeal has been objectively considered and the same has been rejected in a stereotype manner. The charge does not relate to the duty of the applicant. The chargesheet and punishment order are void ab initio as there has been total denial of reasonable opportunity and no detailed inquiry has been held in the matter and no reasons are forthcoming for the same. The applicant has relied upon the order dated

29.8.2013 passed in OA No.252/2012- Sunil Kumar Joshi vs. Union of India and Ors., which has been upheld by the Hon'ble Rajasthan High Court in DBCWP No.1695/2014 vide order dated 20.3.2014 (Ann.A/9).

4. The respondents have filed reply on 2.9.2016. They have stated that the while posted as APM (SB), Jalore HO during the period between 2008 to 2011, the applicant was entrusted with the duty to counter check the signatures of various account holders with the specimen signatures available in the respondent department at the time of withdrawal. The applicant failed to compare signature of depositors with specimen signature and the signature available on withdrawal forms regarding SB accounts of the Industrial Area, Jalore Post Office. Such comparison is required as per rules. The applicant also failed to check half margin verification memos in respect of about 56 withdrawals made by Shri Ganpat Singh Deora, Ex-SPM, Industrial Area Jalore HO. If the applicant would have remained vigilant about his duties, the fraud would have been brought out earlier and the loss of public money could have been avoided. Accordingly, charge sheet was served and after considering reply of the applicant, the Disciplinary Authority passed order dated 27.1.2016 imposing the

penalty of recovery. The appeal filed by the applicant has been dismissed by the Appellate Authority and the recovery of Rs. 16,18,532/- has been maintained.

5. The applicant has filed rejoinder to the reply reiterating the submissions made in the OA and the respondents have further filed additional reply.

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

7. The issue involved in this OA 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 an 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 29.08.2013 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.

8. Applying the above ratio to the present facts and circumstances of the case, without going into elaborate discussions, I am of the considered view that the impugned orders are required to be quashed. Accordingly, the impugned charge sheet dated 18.9.2015 (Ann.A/1), the punishment order dated 27.01.2016 (Ann.A/2) and the appellate order dated 20.05.2016 (Ann.A/3) are 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. However, the respondents are not precluded from proceeding against the applicant in accordance with law.

9. The OA stands disposed of in above terms with no order as to costs.

10. In view of the order passed in the OA, the Misc. Application No.290/00238/2016 has become infructuous and the same is accordingly dismissed.

(HINA P.SHAH)
JUDL. MEMBER

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