

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00506/2016

Date of order: 8th January, 2019

CORAM:

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

Nehru Lal Vyas s/o Late Shri Jata Shankar Vyas, aged about 61 years, b/c Brahman, r/o Shivaji Nagar, Jalore, District-Jalore (Office Address:- Worked as APM Jalore 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 of 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

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

- (i) The impugned order Memo No. STA/WE/44-A/3/2016 dated 28-1-2016 forwarded by respondent No.4 (Annexure-A/1) and Memo No.F7-01/Nehru Lal Vyas/2013-14 dated 24.11.2015 forwarded by respondent No.5 (Annexure A/2) may kindly be declared illegal, unjust, improper and deserves to be quashed and set aside.
- (ii) That by writ, order or direction the respondents may kindly be directed to refund the recovered amount with interest @ 18% pa.
- (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 to the applicant.

2. Brief facts of the case, as stated by the applicant, are that while he was posted as APM (SB) at HO Jalore under SPO Sirohi, a fraud to the tune of Rs. 2,91,30,671/- was detected at TSO Industrial Area, Jalore committed by Shri Ganpat Singh Deora, the SPM. FIR was lodged against the main offender and he is behind the bar. The applicant was posted at Jalore HO at a far distance and it is alleged that he did not compare the signature from withdrawal form and failed to check half margin verification memos in respect of withdrawals of MIS and RD accounts. The applicant avers that he was working in SB Account, and the

misappropriation was committed in MIS and RD Accounts, therefore, there is no role of the applicant in the misappropriation made by Shri Ganpat Singh Deora, the SPM, Industrial Area, Jalore. Disciplinary proceedings were initiated under Rule 16 of CCS (CCA) Rules, 1965 and the applicant was awarded minor punishment of recovery to the tune of Rs. 180955/- started from November, 2016. The applicant filed appeal which was rejected by increasing the EMI to Rs. 30,000/- per month and last EMI was fixed at Rs. 30,955/-. The applicant further avers that the punishment is awarded on presumption and to recover the misappropriated amount by SPM, TSO Industrial Area, Jalore as remedial measure because the negligence does not precede as mandatory in fraud case. The respondents did not comply Rule 11 of CCS (CCA) Rules, 1965 which clearly reveals that the compelling circumstances and specific reasons are to be recorded in writing and quantum of amount is to be fixed after correctly assessing with clear finding on fixing his liability, but nothing has been done. The applicant informed the competent authority vide letter dated 5.10.2009 and 6.10.2009 that there is some irregularity committed by TSO Industrial Area, Jalore which is admitted vide letter dated 8.10.2009, but no action was

taken in time which resulted the SPM, TSO Industrial Area, Jalore committing fraud. The respondents have not recovered the amount from the delinquents who committed misappropriation, but the applicant is compelled to deposit the amount forcibly. The action of the respondents clearly shows the glaring example of arbitrariness, discriminatory function and an exercise of pick and choose policy. The applicant has also relied on several judgments of this Tribunal, Hon'ble High Court and Hon'ble Apex Court in this regard.

3. The respondents have filed reply on 22.5.2017. They have stated that the while posted as APM (SB), Jalore HO during the period from 27.1.2010 to 8.2.2011, the applicant was entrusted with the duties attached to the post of APM (SB) and thus he 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 duties negligently, he failed to compare the fake signature/thumb impression on withdrawal forms. The applicant also failed to check high value withdrawal memos/half margin verification memos. Therefore, he violated the rules contained in PO SB Manual Vol.I and

failed to perform the duties as entrusted to him and in this way the applicant facilitated misappropriation by Shri Ganpat Singh Deora. If the applicant remained vigilant about his duties such fraud and misappropriation of huge public money could have been unearthed on initial occasion. Therefore, being subsidiary offender, he was served with charge sheet dated 18.9.2015. The applicant replied to the charge sheet. Considering the reply in detail, the Disciplinary Authority found the charges proved and imposed punishment of recovery from the pay of the applicant. Thereafter, the applicant preferred appeal before the Appellate Authority and the same was decided in a fair and reasoned manner. Each and every contention raised by the applicant in his appeal has been considered by the Appellate Authority, but the explanation given by the applicant has not been found appropriate and thus the same has been turned down and the order passed by the Disciplinary Authority has been confirmed with modifications.

4. The applicant has filed rejoinder to the reply reiterating the submissions made in the OA.

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

6. 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.

7. 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 appellate order dated 28.1.2016 (Ann.A/1) and the punishment order dated 24.11.2015 (Ann.A/2) 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.

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

(HINA P.SHAH)
JUDL. MEMBER

R/