

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...
Original Application No.290/00191/2017

Reserved on : 29.11.2018
Pronounced on : 11.12.2018

CORAM:

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

Radhey Shyam Swarnkar s/o Sh. Mohan Lal, aged about 55 years, r/o F-150, Shubhash Nagar, Bhilwara. Presently working on the post of Postal Assistant, at Head Post Office, Bhilwara.

...Applicant

(By Advocate: Shri. S.K.Malik)

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. Director, Postal Services, Rajasthan, Southern Region, Ajmer.
3. The Superintendent of Post Offices, Bhilwara Division, Bhilwara.

...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) By an appropriate writ order or direction impugned Memo dated 29.12.16 at Annx.A/1 and impugned Memo dated 08.03.17 at Annx. A/2 be declared illegal and be quashed and set aside.

- (ii) By an order or direction respondents may be directed to refund the entire amount already recovered from the salary of the applicant along with interest @ 18 % per annum.
- (iii) Exemplary costs be imposed on the respondents for causing undue harassment to the applicant.
- (iv) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.

2. Brief facts of the case, as stated by the applicant, are that while posted at Head Office, Bhilwara he was working in TDS Branch. The applicant was given the additional work of Sub Account Branch on overtime basis for three hours from 17.9.2013 to 27.12.2013 on different dates. It is stated that he worked in Sub Account Branch of HO, Bhilwara for 20 days only. He was issued a charge sheet under Rule 16 of CCS (CCA) Rules, 1965 alleging that while working on the post of Postal Assistant at Bhilwara HO from 6.5.2010 to 01.09.2014 in Sub Account Branch he has committed irregularities and failed to comply the departmental rules which resulted Shri Ram Kumar Meena, Sub Post Master, Mandal committing a fraud of Rs. 9,74,750 in payment of money orders. The applicant was asked to submit reply. Thereafter vide letter dated 13.8.2016 the applicant asked the respondents to supply some documents, but without considering his request, respondent No.3 vide Memo dated 29.12.2016 imposed

penalty of recovery of Rs. 60,000/- to be recovered in 12 equal instalments from the month of December, 2016 (Ann.A/1). The applicant has filed appeal dated 19.1.2017 (Ann.A/5) and respondent No.2 vide Memo dated 08.03.2017 dismissed the appeal (Ann.A/2). Therefore, aggrieved of the action of the respondents, the applicant has filed the present OA.

The applicant has averred that the charge sheet does not contain the facts that the loss to the department to the tune of Rs. 60,000/- was caused by the applicant as the charge was only to the effect that he received the lot of vouchers and paid MO vouchers from Mandal SO and while handing over the said list of vouchers and the paid MO vouchers to MO Paid and audit branch postal assistant did not take receipt from him, thereby the applicant violated the rules. Further, the recovery of any amount has not been mentioned as minor penalty under Rule 11 of CCS (CCA) Rules and as per proviso to sub-rule 9 of Rule 11 in any exceptional case for the reasons to be recorded in writing any other penalty can be imposed. The Disciplinary Authority while imposing penalty of Rs. 60,000/- has not considered this aspect whether any exceptional case is made against the applicant. Further, the applicant

demanded certain documents for reply of charge sheet, but the same were not supplied. The main/principal offender who misappropriated the Govt. money is Sh. R.K.Meena, SPM, Mandal as held by the circle level inquiry, but no recovery has been ordered from him till date. The applicant is not directly or indirectly involved in the case and while deciding appeal of the applicant, the mandatory requirement of Rule 27 of CCS (CCA) Rules, 1965 have not been followed by the Appellate Authority.

3. The respondents have filed reply on 1.5.2018. The respondents have stated that in the charge sheet dated 5.8.2016 two charges were framed against the applicant that while working as Postal Assistant, Bhilwara HO during 17.9.2013 to 27.12.2013 in Sub Account Branch, he failed to deliver the list of money order paid and money order payment vouchers to MO audit/MO payment branch under due receipt as received from Mandal Post Office along with daily account. He was also charged for the misconduct that after receipt of money order payment list and vouchers from the Mandal Post Office along with daily accounts but not delivered the same to MO audit/payment branch and in this manner failed to follow the departmental rules, consequently Shri Ram Kumar Meena, Sub Post Master,

Mandal PO succeeded to misappropriate a sum of Rs. 9,74,750 out of money order payment. The applicant asked for some documents, but in the absence of any provisions to supply the same under Rule 16 and having no relevancy with the charges framed against the applicant, such documents were not supplied. As the applicant did not file/submitted his representation to the said chargesheet, therefore, the Disciplinary Authority had no option except to proceed to decide the matter as done vide memo dated 29.12.2016 whereby a penalty of Rs. 60,000/- has been imposed as a punishment upon the applicant. So far as the challenge to the impugned orders on the ground that the chargesheet does not contain the details of loss to the department equal to the amount of penalty imposed upon the applicant, it is stated that the department suffered a total loss of Rs. 9,74,750/- in the whole fraud and applicant as a subsidiary offender failed to discharge the duty in the manner provided under the rules, has been punished in proportion of dereliction in performing the duties on his part. It is submitted that the action against all the culprits is proposed and is being undertaken in accordance with law as informed vide letter dated 13.04.2017 to the applicant.

Thus, the penalty of recovery imposed is just, proper and legal.

4. The applicant has filed rejoinder reiterating the averments made in the OA.

5. Heard the learned counsels of the parties and perused the material available 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 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. In view of above, without going into elaborate discussions in the matter, I am of the considered view that

the impugned orders are required to be quashed. Accordingly, the impugned punishment order dated 29.12.2016 (Ann.A/1) and the appellate order dated 8.3.2017 (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

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