

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

ORIGINAL APPLICATION Nos. 290/000372/2016,
 290/00374/2016, 290/00375/2016 & 290/00376/2016

Reserved on : 27.11.2018

Pronounced on : 14.12.2018

CORAM:

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

OA No.290/00372/2016

Haja Ram Meena s/o Shri Amra Ram, aged about 53 years,
 b/c Meena, R/o-Vill+Po Bera Jetpura, District-Sirohi (Office
 Address:- Employed as SPM Umendabad 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)

OA No.290/00374/2016

Vijay Kumar Dave s/o Shri Jagdish Prasad Dave, aged about 58 years, b/c Brahman R/o H.No.65, Indra Nagar, Ahore Road, Jalore, District-Jalore (Office address:- Employed as APM Jalore HO 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)

OA No. 290/00375/2016

Lakma Ram Prajapat s/o Shri Harji Ram, aged about 55 years, b/c Kumhar, R/o Vill+Po Umedabad, District-Jalore (Office Address:- Employed as APM Jalore HO 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)

OA No. 290/000376/2016

Ran Singh Rajpurohit s/o Shri Amar Singh Rajpurohit, aged about 57 years, b/c Brahman, R/o Vill+ Po-Sakarna, District Jalore (Office Address:- Employed as SPM, Ahore 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 these OAs, a common question of law and facts involves, therefore, these are being decided by this common order.

2. Applicant in OA No.290/00372/2016 has challenged Memo dated 16.6.2016 whereby the Disciplinary Authority has awarded minor punishment of recovery to the tune of Rs. 1,35,950/- and the recovery of Rs. 10000/- per month is started from the salary of the applicant from the month of June, 2016 onwards. The appeal filed by the applicant against the penalty of recovery was rejected by the Appellate Authority vide Memo dated 4.10.2016.

Brief facts of the case, as stated by the applicant, are that while posted as Postal Assistant SB 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. The allegation against the applicant is that he did not compare the signature from withdrawal form and failed to check half margin verification memos in respect of the withdrawals of 5 MIS and RD accounts. Disciplinary proceedings under Rule 16 of CCS (CCA) Rules,

1965 were initiated and Disciplinary Authority was awarded minor penalty of recovery to the tune of Rs. 1,35,950/- to be recovered in 13 instalments of Rs.10,000/- and one instalment of Rs.5950/- started from June, 2016. Thereafter, the applicant filed appeal and the Appellate Authority vide order dated 4.10.2016 [Ann.A/1(a)] rejected the same.

3. Applicant in OA No.290/00374/2016 has challenged Memo dated 27.1.2016 (Ann.A/2) whereby the Disciplinary Authority has awarded minor punishment of recovery to the tune of Rs. 3,18,558/- and the recovery of Rs. 20,000/- per month is started from the salary of the applicant in 15 equal instalments and one instalment of Rs. 18,558/- from the month of January, 2016 onwards. The appeal filed by the applicant against the penalty of recovery was rejected by the Appellate Authority vide Memo dated 20.05.2016 (Ann.A/1).

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. 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 17 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. 3,18,558/- to be recovered in 15 instalments of Rs.20,000/- and one instalment of Rs. 18,558/- started from January, 2016. Thereafter, the applicant filed appeal and the Appellate Authority vide order dated 20.05.2016 (Ann.A/1) rejected the same and confirmed the punishment of recovery.

4. Applicant in OA No.290/00375/2016 has challenged Memo dated 27.1.2016 (Ann.A/2) whereby the Disciplinary Authority has awarded minor punishment of recovery to the tune of Rs. 1,30,659/- and the recovery of Rs. 20,000/- per month is started from the salary of the applicant in six equal instalments and one instalment of Rs. 10695/- from the month of January, 2016 onwards. The appeal filed by the applicant against the penalty of recovery was rejected by the Appellate Authority vide Memo dated 20.05.2016 (Ann.A/1) confirming the order dated 27.1.2016 passed by the Disciplinary Authority.

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. 2,91,30,671/- was detected at TSO Industrial Area committed by Shri Ganpat Singh Deora, the SPM. It is alleged that the applicant did not compare the signature from withdrawal form and failed to check half margin verification memos in respect of the withdrawals of 5 MIS and RD accounts. Disciplinary proceedings under Rule 16 of CCS (CCA) Rules were initiated and the applicant was awarded minor penalty of recovery to the tune of Rs. 1,30,695/- to be recovered in 6 instalments of Rs.20,000/- and one instalment of Rs. 10,695/- started from January, 2016. Thereafter, the applicant filed appeal and the Appellate Authority vide order dated 20.05.2016 (Ann.A/1) rejected the same confirming the punishment of recovery.

5. Applicant in OA No.290/00376/2016 has challenged Memo dated 27.1.2016 (Ann.A/2) whereby the Disciplinary Authority has awarded minor punishment of recovery to the tune of Rs. 6,64,446/- and the recovery of Rs. 25,000/- per month is started from the salary of the applicant in 26 equal instalments and one instalment of Rs. 14,446/- from the month of January, 2016 onwards. The appeal filed by

the applicant against the penalty of recovery was rejected by the Appellate Authority vide Memo dated 20.05.2016 (Ann.A/1) who confirmed the punishment of recovery imposed by the Disciplinary Authority.

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 be tune of Rs. 2,91,30,671/- was detected at TSO Industrial Area committed by Shri Ganpat Singh Deora, the SPM. Allegation against the applicant is that he did not compare the signature from withdrawal form and failed to check half margin verification memos in respect of the withdrawals of 33 of MIS and RD accounts. Disciplinary proceedings under Rule 16 of CCS (CCA) Rules were initiated and the applicant was awarded minor penalty of recovery to the tune of Rs. 6,64,446/- to be recovered in 26 instalments of Rs.25,000/- and one instalment of Rs. 14,446/- from January, 2016. Thereafter, the applicant filed appeal and the Appellate Authority vide order dated 20.05.2016 (Ann.A/1) rejected the same and confirmed the punishment of recovery.

6. The applicants aver that the main offender is behind the bar and as it has become difficult task for the

respondents to recover the misappropriated amount from the main offender/culprit, therefore, other way is adopted to compensate by collecting the amount as remedial measure 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 and compelling circumstances for the said recovery and also specific reasons are 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 to 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.

7. The respondents have filed reply 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 has withdrawn such money. But the applicants 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. If the applicants would

have vigilant towards their duties and check/compare the signature of the depositors on withdrawal forms of SB account, the fraud could have been detected earlier and huge loss sustained due to misappropriation of Government money by Shri Ganpat Singh Deora, Ex-SPM, Industrial Area, Jalore DSO could have been avoided. The applicants filed reply to the chargesheet and considering the reply, the Disciplinary Authority found the charges proved and imposed a punishment of recovery on the basis of contributory negligence on the part of the applicants. The applicants preferred appeal before the Appellate Authority and the same was rejected by the Appellate Authority.

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

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

10. 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 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 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.

11. 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 orders dated 16.6.2016 and 4.10.2016 (Ann.A/1 and A1(a) in OA No. 372/2016); the impugned orders dated 20.5.2016 and 27.1.2016 (Ann.A/1 and A/2 in OA No.374/2016); the impugned orders dated 20.5.2016 and 27.1.2016 (Ann.A/1 and A/2 in OA No.375/2016) and impugned orders dated 20.5.2016 and 27.1.2016 (Ann.A/1 and A/2 in OA No.376/2016) 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 applicants in accordance with law.

12. All the OAs stand disposed of in above terms with no order as to costs.

(HINA P.SHAH)
JUDL. MEMBER

R/