

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00223/2016

with Misc. Application No.290/00312/2016

AND

Original Application No.290/00224/2016

with Misc. Application No.290/00313/2016

Reserved on : 28.01.2019

Pronounced on: 04.02.2019

CORAM:

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

OA No.290/00223/2016

Jagdish Mali s/o Shri Rupa Ram, aged about 28 years, b/c Mali, R/o-Vill + Po-Riyambidi, District-Nagaur (Office Address:- Employed as Postal Assistant at Riayanr Post Office under SPO, Nagaur Division, Nagaur)

...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, Nagaur Division, Nagaur

...Respondents

(By Advocate: Shri K.S.Yadav)

OA No.290/00224/2016

Vikas Nimawat s/o Shri Sita Ram Nimawat, aged about 26 years, b/c Brahman, R/o Vill + Po-Dhanipura, District Nagaur (Office Address:- Employed as Postal Assistant at Nagaur HO under SPO, Nagaur Division, Nagaur

...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.
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4. Director of Postal Services, O/o Postmaster General, Western Region, Jodhpur.
5. Superintendent of Post Offices, Nagaur Division, Nagaur

...Respondents

(By Advocate: Shri K.S.Yadav)

ORDER

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

2. In OA No.290/00223/2016 filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant prays for quashing and setting aside the impugned Memo dated 30.03.2016 (Ann.A/1) by which the Disciplinary Authority has imposed a minor penalty of recovery to the tune of Rs. 6,00,000/- in 75 equal instalments of Rs. 8000/- from the Month of April, 2016 and the Memo dated 13.6.2016 (Ann.A/1(a)) by which the punishment order was confirmed and the appeal filed by the applicant was rejected by the Appellate Authority.

In OA No.290/00224/2016 also the applicant prays for quashing and setting aside the impugned punishment Memo dated 30.3.2016 (Ann.A/1) whereby penalty of recovery of Rs. 9,00,000 has been imposed upon the applicant to be recovered in 100 instalments of Rs.9000/- from April, 2016 and the appellate order dated 13.6.2016 (Ann.A/1(a)) whereby the Appellate Authority has rejected the appeal and confirmed the punishment awarded by the Disciplinary Authority.

3. In both the OAs, it is alleged that during the year 2013, one Shri Dilip Kumar Meena erstwhile SPM, Marwar-Mundwa SO withdrew the cash from SBBJ without any

liabilities and sent the daily account to Nagaur SO where the applicants were posted to check the same. The cash in hand remained higher than the maximum authorized limit, but the applicants have not challenged and consequently, a sum of Rs. 85,83,303 was found short in cash in hand head of Marwar-Mundwa, SO. The applicants failed to object and inform such irregularity and overdrawn of cash to the higher authorities and in this manner they were found subsidiary offenders to facilitate the fraud committed by Shri Dilip Kumar Meena. A charge sheet under Rule 16 of CCS (CCA) Rules, 1965 was issued. The applicants filed representations against the chargesheet and after considering the same, the Disciplinary Authority imposed a punishment of recovery. Thereafter, appeal was also filed by the applicants against the punishment order, but the same was rejected by the Appellate Authority confirming the punishment awarded by the Disciplinary Authority.

4. The respondents by filing reply have justified their action of imposing penalty of recovery by the Disciplinary Authority, which has further been confirmed by the Appellate Authority and stated that applicant is not entitled to any relief.

5. The applicants have also filed rejoinder to the reply reiterating the averments made in the OA.

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

7. 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 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 punishment order dated 30.03.2016 (Ann.A/1 in

both the OAs) and the appellate order dated 13.06.2016 (Ann.A/1(a)) in both the OAs) 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.

9. Both the OAs stand disposed of in above terms with no order as to costs.

10. In view of the order passed in the OAs, no order is required to be passed in MA Nos.290/00312/2016 and 290/00313/2016, which also stand disposed of accordingly.

(HINA P.SHAH)
JUDL. MEMBER

R/