



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A/350/221/2015

Reserved on 29.03.2019

Date of Order: 7.5.19.

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member

Smt. Mousumi Satapathi, H/o of Mr. Swadesh Kumar Satpathi, aged about 42 years, working as P.A. Kharapur Telenology, S.O., residing 32/4, Rughunathpur, P.O. Jhargaram, Dist. Paschim Midnapure, Pin Code 721507.

.....Applicant

Vrs.

- I) The Union of India, service through the Secretary Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi 1.
- II) The Chief Post Master General, Yogayog Bhawan, C.R. Avenue, Kolkata 700012.
- III) The Director or Postal South Bengal Region, Yogayog Bhawan, C.R. Avenue, Kolkata 700012.
- IV) The Senior Superintendent of Post Offices, Midnapur Division, P.O. Midnapur, Dist. Paschim Midnapur 721101.

.....Respondents

For the Applicant(s): Mr. A.Chakraborty & Ms. P.Mondal, Counsel

For the Respondent(s): Ms. R.Basu, Counsel

ORDER

Bidisha Banerjee, Member (J):

Aggrieved on being penalised with a recovery to the tune of Rs. 1,45,000/- in monthly instalments, in a minor penalty proceedings initiated under Rule 11(iii) of CCS (CCA) Rules, 1965, the applicant has preferred this O.A. to seek the following relief:

"8.(a) Charge sheet dated 07.04.2014 issued by the Sr. Superintendent of Post Offices, Midnapur Division, Midnapur cannot be tenable in the eye of law and as such the same may be quashed.

(b) Order dated 29.05.2014 issued by the Sr. Superintendent of Post Offices, Midnapore Division, imposing punishment cannot be sustained and as such the same may be quashed.

(c) Order dated-01.01.2015 issued by the Director of Postal Services, South Bengal Region, cannot be tenable in the eye of law and as such the same may be quashed.

(d) An order do issue directing the respondents to refund the amount recovered from the salary of the applicant."

2. The order, under challenge, dated 29.05.2014 issued by the Disciplinary Authority, Sr. Superintendent of Post Offices, Midnapore Division, imposing punishment, is extracted hereunder with supplied emphasis for better understanding of the matter:

"In the office memo of even no. dated 07.04.2014, it was proposed to take action under Rule-16 of CCS(CCA) Rules, 1965 against Smt. Mousumi Satpathy, P.A. Jhargram H.O., now working as P.A. Kharagpur Technology S.O. on the statement of imputation of misconduct or misbehaviour enclosed therewith which is reproduced below.

"Smt Mousumi Satpathy, P.A. Jhargram H.O. while working as P.A. Sub Account Branch, Jhargram H.O. during the period from 06.08.2010 to 15.02.2014 was responsible for maintaining a check over the B.O. balances as well as B.O. transit amount of Tapsia S.O. During such time on 15.02.2014 an incident of shortage of office cash of Tapsia S.O. of an amount of Rs. 9,71,602/- was unearthed during a surprise visit by IOP, Jhargram Sub Dn. And IOP, Garhbeta Dn. but Smt Satpathy herself overlooked certain fake transit and remittance between Tapsia S.O. with some B.O. 's named here under.

Name of the B.O	Amount	Date of fake remittance	Date up to which transit amount was shown pending at B.O.	Date on which transit amount was nil but not acknowledged by B.O.
Kukrakhupi	1,80,000/-	07.11.2013	10.12.2013	11.12.2013
Laupara	2,00,000/-	25.11.2013	16.01.2014	17.01.2014
Jahanpur	1,80,000/-	10.12.2013	23.01.2014	24.01.2014
Kanpur-Salboni	2,00,000/-	16.01.2014	03.02.2014	05.02.2014
Kukrakhupi	1,80,000/-	23.01.2014	03.02.2014	05.02.2014
Total	9,40,000/-			

In spite of the above suspicious remittance by SPM Tapsia the prescribed checking of transit amount and subsequent duly acknowledgement by the B.O.'s have not been carried out by Smt. Satpathy through the B.O. daily A/c of concerned B.O.'s under Tapsia S.O. Though the transit amount was not acknowledged by the concerned B.O.'s within the stipulated period of one day Smt Satpathy did not bring the above discrepancy to the notice of the Asstt. Postmaster, (Try & Sub A/c) Jhargram HO or of the Postmaster Jhargram H.O. For such negligence as a Sub A/c Assistance, Smt Satpathy gave a scope to the then SPM Tapsia S.O. Sri Bhagabat Murmu to misappropriate the office cash by way of fake remittance to it's B.O.'s as a result the department sustained a loss of Rs. 9,71,602/-. This is due to lack of proper attention and check on transit amount and balance of B.O.'s by Smt. Satpathy.

By doing so, Smt Mousumi Satpathy has neglected her duty and violated the provision made in Rule-58 of Postal Manual Vol-VI, Part-III and thereby failed to maintain absolute integrity and devotion to duty which were required of her under Rule-3 (1) (i) & 3 (1) (ii) of CCS (Conduct) Rules, 1964."

In the said memo Smt Satpathy was given 10 days time from the date of receipt of the memo to submit her representation against the proposal. The said memo was received by Smt Satpathy on 12.04.2014. On receipt of the said memo Smt Satpathy submitted a letter dated 21.04.2014 requesting supply of some documents. She was allowed under this office letter of even no. dated 24.04.2014 to inspect relevant document at Midnapore Divisional office. Smt Satpathy attended at Midnapore Divisional office on 30.04.2014 and inspected the relevant documents. After that Smt Satpathy was again asked to submit her representation within 3 days vide this office letter of even no. dated 15.05.2014, But Smt Satpathy did not submit any representation till date. So an ex parte decision is taken in this case.

Findings of the Disciplinary Authority:

The undersigned has gone through carefully in open mind all connected records & rules including the statement of imputation of misconduct and observed that the incident of embezzlement took place due to careless and negligent attitude on the part of the APM (Sub A/c & Try), P.A. Sub A/c, Postmaster Jhargram HO and they deliberately did not play their role of supervision over BO and SO account as per rules.

It was observed that Smt Satpathy did not check the B.O. daily a/c of all BOs' under Tapsia S.O. and S.O. daily A/c of Tapsia S.O. itself as per departmental rules to verify the transit item in particular and failed to comprehend the falsification in the account of Tapsia S.O. being done by Sri Bhagbat Murmu with the objective of embezzlement of office cash.

In the light of the above findings it is very clear that Smt Satpathy did not discharge her duty properly as a part of H.O. monitoring system over sub offices that led to the Govt loss of total

Rs. 9,71,602/- which is clearly established on the basis of available records and statement of the concerned officials in this case.

Therefore the following order is issued.

ORDER

I, Abhijit Bhattacharyya, Sr. Superintendent of Post Offices, Midnapore Division, Midnapore in exercise of the powers conferred upon me under Rule-12 of CCS (CCA) Rules, 1965, hereby punish Smt Mousumi Satpathy, P.A. Kharagpur Technology S.O. (formerly P.A. Jhargram H.O.) with recovery of Rs. 1,45,000/- (Rupees One lakh forty five thousand) only from pay commencing from the pay of June' 2014 paid in July' 2014 @ Rs. 4500/- in 32 instalments and the rest amount Rs. 1000/- in last instalment under Rule-11 (iii) of CCS (CCA) Rules, 1965.

Sd/-

*Sr. Superintendent of Post offices,
Midnapore Division, Midnapore-721101"*

By an order dated 01.01.2015, the said penalty has been confirmed by the Director of Postal Services, South Bengal Region, in exercise of power under Rule 24 of the CCS(CCA) Rules, 1965, which is also challenged in the present O.A.

3. The applicant has highlighted the following legal lacuna in the conduct of proceedings.

(1) Rule 11(iii) of CCS(CCA) Rules was not applicable in her case, as she did not cause any pecuniary loss to the Government.

(2) Such punishment could not have been awarded when it was nobody's case that the applicant helped the main culprit Sri Murmu to misappropriate the money and aided in commission of misconduct.

(3) Both the Disciplinary Authority and Appellate Authority have not concluded that the applicant failed to maintain absolute integrity and, as such, there was no question of contributing anything to the misappropriation.

(4) Charge was framed for one offence, while punishment was imposed for another.

(5) Authorities have failed to conclude that the negligence shown by the applicant helped Sri Murmu to misappropriate the money, which can only be proved upon initiation of proceedings under Rule 14 of the CCS (CCA) Rules, 1965.

4. In support of his contention that for an alleged lack of supervision the applicant could not have been penalized with recovery, the Ld. Counsel for the applicant, at hearing, would place the following decisions:

(1) Rendered by Ahmedabad Bench in **J.M.Makwana Vs. UOI & Ors.** on 04.09.2001.

(2) **Inspector Prem Chand Vs. Govt. of N.C.T. of Delhi & Ors.** rendered by Hon'ble Apex Court on 05.04.2007.

(3) **O.K.Bhardwaj Vs. UOI & Ors.** [2002 SCC (L&S) 188]

5. Per contra, Ld. Counsel for Respondents, while vehemently opposing the submissions and contentions raised by the applicant, would defend the punishment meted out to the applicant by the Disciplinary Authority as just and proper. Strangely enough, in support, he would cite the same decision as rendered in **O.A. 1064/2009 and J.M.Makwana.**

6. The Respondents have averred as under:

(i) Considering the gravity of the offence and its resultant impact, the Disciplinary Authority had the discretion to consider whether a case merits major penalty proceedings or minor penalty proceedings.

(ii) There was no denial of reasonable opportunity as time was offered for submission of defence representation.

(iii) Grounds elicited by the applicant are incorrect, baseless, irrelevant, motivated and not tenable in the eyes of law.

(iv) There being no flaw in the charge sheet, the procedure adopted in imposition of punishment after observing all the formalities prescribed under rules, issuance of speaking order by the Appellate Authority and awarding penalty commensurate with the nature of the lapses that contributed to a major fraud in the Postal Department, the Original Application is devoid of any merit.

7. While applicant has pleaded that when the charge is of neglect and lack of proper attention, the ratio of J.M.Makwana (supra) squarely applies to her case and she deserves the same relief.

Per contra, the Ld. Counsel for the Respondents while placing the case of **J.M.Makwana Vs. UOI & Ors.**, as discussed (supra), would pin point the factual difference in the said matter vis-a-vis the present matter and submitted that while the applicant was not directly held responsible for the commission in the fraud in Makwana's case, in the present case he has been held directly responsible for the fraud due to her negligence. Therefore, the applicant has failed to establish that the said judgment was applicable to his case on all fours.

8. Further, Ld. Counsel for the Respondents, at hearing, urged that the entire proceedings have been conducted in accordance with the scrupulous observation of Rule 11 of CCS(CCA) Rules. Applicant's case was not fortified by the decision of Inspector Prem Chand where the Hon'ble Apex Court found that the orders by the Disciplinary Authority as well as Appellate Authority have been passed without conducting fair and impartial inquiry.

9. Ld. Counsel for the applicant, at that juncture, would vociferously submit that negligence cannot be termed as a misconduct as negligence can be without ill

motive whereas ill motive was mandatorily to be found while attributing a conduct as a misconduct. Even error of judgment cannot be termed as a misconduct.

10. Ld. Counsels were heard and materials on record were perused.

11. Being a part of the Disciplinary Authority's order, the indictment against the applicant stands already extracted supra. The orders and materials on record would reveal the following infirmities in the process of conducting an inquiry:

- (1) The applicant has urged and rightly so that the documents, as prayed for by her, were not supplied and no reasons have been furnished for such non-supply or explanation offered why such documents were not found relevant.
- (2) The applicant had asked for the open inquiry under Rule 16, which provides for "holding an inquiry in the manner laid down in sub-rules (3) to (24) of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary". Further, the DoP&T O.M. dated 28.10.1985 stipulates as follows:

"Rule 16(1-A) of the CCS-(CCA) Rules, 1965, provides for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed, Rule 16(1) ibid leaves it to the discretion of Disciplinary Authority to decide whether an inquiry should be held or not. The implication of this rule is that, on receipt of representation of Government servant concerned on the imputations of misconduct or misbehaviour communicated to him, the Disciplinary Authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In a case where a delinquent Government servant has asked for inspection of certain documents and cross examination of the prosecution witnesses, the Disciplinary Authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the Disciplinary Authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily

without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice.

[G.I., Dept. of Per. & Trg., O.M.No. 11012/18/85-Estt.(A), dated the 28th October, 1985.]

Yet, the authorities have refrained from explaining why such opportunity was not afforded to the applicant. On both the counts they have violated principles of natural justice and fair play.

12. With regard to the contention that upon denial of the charges that are factual in nature an enquiry was imperative, in **O.K.Bhardwaj case [2002 SCC (L&S) 188]**, the Hon'ble Apex Court has ruled as under:

"even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with".

The Respondents have evidently and irrefutably denied an open enquiry without justifying their denial.

13. In **Inspector Prem Chand Vs. Govt. of N.C.T. of Delhi & Ors.**, the Hon'ble Apex Court noted that in Stroud's Judicial Dictionary definition of "Misconduct" is as follows:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."

The applicant has alleged vide written notes of submission that acts of negligence, errors of judgment or innocent mistake without an established finding on ill motive do not constitute a misconduct. The Respondents have refrained from refuting the allegation assertively.

14. The Hon'ble Apex Court in **Zunjarrao Bhikaji Nagarkar Vs. Union of India & Ors.** [1999 (7) SCC 409] also held as under:

"Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer."

The applicant has alleged that the charge of negligence was a vague and indefinite one which rendered the penalty an illegality as in absence of a direct connection with the fraud there was no reasonable basis to proceed against her.

15. In **J.M.Makwana Vs. UOI & Ors.** when the Tribunal found that the applicant was not charged with misappropriating any amount nor was it alleged that his integrity was doubtful or there was any allegation against the applicant that he was a co-conspirator in a misappropriation of amount by the Sub-Postmaster, the only ground on which the punishment of recovery as well as withholding of increment was imposed was that he had not followed certain procedure prescribed by rules and being negligent in not observing such procedure has facilitated the Sub-Postmaster in misappropriating the amount, the Tribunal held as under:

6. Even on factual aspects we are unable to accept the justification of the applicant being held guilty of the charges leveled against him. The applicant could have been held guilty if his vigilance in posting the SB Account No. 25178, 24978 in the error book would have prevented the commission of the fraud. It is interesting to note that the disciplinary authority i.e, the Superintendent of Post office, Banaskanthain his order has observed that if the applicant had acted as per the rules and followed the instructions of the department while working as SB Postal Assistant at Chappi, the fraud could have been detected earlier and the department could have been saved from the loss of Rs. 94,551/- only. He has not elaborated how the fraud could have been detected earlier but his remarks clearly suggest that the applicant could not have prevented the fraud as the fraud was already committed by somebody else. Once the fraud was committed whether it is detected earlier or later on, could not have saved the department from the loss of Rs. 94,551/-. Under the circumstances, reasoning of the disciplinary authority is clearly erroneous. It is unreasonable to hold the applicant

guilty of the charges leveled against him. If the applicant by due diligence could not have prevented the fraud from being perpetuated by somebody else then the question of his early or later detection pales into insignificant. The applicant could have been held guilty of the charges leveled against him, if due to any omission or commission on his part, the perpetuation of fraud by somebody else would have been possible or he himself was associated in perpetuating the fraud. In the instant case, the fraud was already commissioned by the Sub Postmaster of Chappi and the applicant is held guilty of being negligent in not detecting the same earlier. It is significant that he is not held guilty for not preventing the same. We have therefore no hesitation in concluding that the whole order of the disciplinary authority as well as of the appellate authority is based on misconception of the term negligence and in utter disregard to the provisions of Rule 13 (3) of the CCS (CCA) Rules. It appears that the disciplinary authority and the appellate authority believe that whenever some fraud has taken place in the department and there is loss of revenue, somebody should be held guilty for the loss caused to the department. It is not kept in mind by the disciplinary authority as well as the appellate authority that the rule providing for imposing penalty i.e., Rule 11(3) of CCS (CCA) Rules clearly lays down that the recovery can be imposed from the pay of the Govt. Servant if the pecuniary loss is caused by him to the Govt. by the negligence or the breach of the orders. We fail to understand how the penalty of recovery of Rs. 9000/- could have been imposed by the disciplinary authority on the applicant and confirmed by the appellate officer when the charges leveled against the applicant is not that, he by his act of negligence caused any pecuniary loss to the Govt. The charge leveled against the applicant was that by his negligence in not posting the entries of passbooks in the error book, the fraud was not detected earlier. There is no charge that due to his negligence any pecuniary loss was caused to the Govt. We have therefore no hesitation in concluding that the impugned order of the disciplinary authority as well as appellate authority is not only perverse and illegal but also lacks bonafide.

7. xxx xxx xxx. Merely because the department found that it was not possible to recover the amount from the main culprit, some other scapegoat cannot be found out and cannot be levied with the punishment of recovery of the loss. We are fortified in our conclusion by the judgment of the Madras Bench of this Tribunal in the case of C.N. Harihar Nandanani v. Presidency Post Master, Madras SPO (supra).
 xxx xxx xxx. The same view is taken by us in the case of S.K. Chaudhary v. UOI and Ors. in O.A. 504/96 decided on dated 26th March, 2001. In the conclusion therefore we allow this O.A and quash and set aside the impugned order of withholding of one increment as well as order of the recovery of Rs. 9000/- issued by the S.P. Banaskantha Palanpur on dated 20th July, 98 and confirmed by the appellate officer and direct

the respondents to refund to the applicant any amount if recovered from the salary of the applicant by way of recovery on account of this order within 3 months of the receipt of the copy of this order, failing which the same will have to be refunded with running interest at the rate of 12% per annum. No order is passed as to costs.

16. I note that while replying to the charge memo dated 07.04.2014 on 30.05.2014, as contained in Annexure-A/2 to the O.A., the applicant had categorically prayed and requested holding inquiry under Rule 16 of CCS(CCA) Rules and in accordance with the DoP&T O.M. dated 28.10.1985 (enumerated supra) and to allow him reasonable opportunity for the sake of natural justice. He had also sought for supply of the following documents to put up his defence effectively. The list being as under:

"A) Particulars of relevant documents are to be examined/ inspected:-

- (1) Copies of computer training orders of Sri B. Murmu during last three years.
- (2) List of B.Os under Tapsia S.O inspected on 14/2/14 & 15/2/14 and by whom.
- (3) Copies of B.O daily A/c w.e.f. 22/5/12.
- (4) IR, VR of Tapsia S.O along with all B.Os in A/c with Tapsia for the year 2012-2013.
- (5) Copy of B.O slips w.e.f 22/5/14 – 15/2/14.
- (6) Copies of S.O daily A/c w.e.f 22/5/12.
- (7) Copy of S.O A/c book of Tapsia.
- (8) Copy of error book of S.O sub A/c PA of Jhargram H.O.
- (9) Copy of IOP Jhargram letter No. A1/Tapsia S.O/2013 dtd at Jhargram 14/8/13 regarding non remittance of cash to Beliaberah B.O. from Tapsia S.O addressed to Sr. Supdt. of P.Os Midnapore Division and APM mail treasury of Jhargram H.O.
- (10) Copy of S.O finance Register.
- (11) Memo of authorised cash balance of Tapsia SO as well as all B.Os under Tapsia S.Os.
- (12) Copy of S.O A/c of Tapsia S.O w.e.f May – 12 to Jan – 14.
- (13) Copy of APM mail treasury Jhargram letter No – H1/Mails Jhargram 1/8/13 addressed to IOP Jhargram.
- (14) Copy of mail treasury Jhargram letter No. – H1/mail treasury dtd 10/2/14 addressed to SDIP Jhargram Sub Division.
- (15) Details of leave A/c of B. Murmu.

- (16) Copy of Service Book of Sri B. Murmu.
- (17) ECB memo w.e.f 20/5/11 to 15/2/14. Remarks of SSPOs for retaining excess cash.
- (18) Reason for non completion of annual inspection of Tapsia S.O by IOP Jhargram during the year 2013.
- (19) Police investigation report in connection with FIR against B. Murmu.
- (20) How did the Tapsia fraud case come to light at the initial stage?
- (21) The report of APM-mail treasury JRR letter No-H1/mail treasury/dtd 10/2/14 suspecting fraud at Tapsia.
- (22) Results of inquiry report on the basis of APM's letter dtd 10/2/14.
- (23) Action taken for recovery of Govt. loss from B. Murmu by the competent authority.
- (24) B.O transit figure at the time of verification by IOP Jhargram preceeding seven days in August – 13.
- (25) Action taken against Mr. R. Halder IOP Jhargram for non completion of annual inspection during the year 2013."

He had also prayed for examination of the following witnesses listed infra.

- "(1) Sri Bhagabt Murmu SPM. Tapsia S.O.
- (2) Sri Monishi Guha Neogi P.M. Jhargram H.O.
- (3) Sri Rahul Halder IOP Jhargram Sub Division.
- (4) Sri Pravanjan Das GDS BPM, K. Khupi
- (5) Sri Anup Dhal GDSBPM – Laupara.
- (6) Sri Salil Mahapatra GDS BPM Jahanpur B.O
- (7) Sri Bani Pada Raut GDS BPM K. Salboni.
- (8) Sri Arindam Shaw GDS BPM Ambi B.O.
- (9) Sri Sanjib Satpathi GDS BPM Petbindi B.O.
- (10) Sri Sukumar Shit O/S(M) JRR Sub Div.
- (11) Sri Satya Ranjan Mahata O/S(M) KGP Sub Div.
- (12) Sri Pankaj Samanta IOP Garhbeta.
- (13) Sri Sujan Kumar Shit APM mail/Trg JRR H.O."

Strangely enough, Respondent authorities without affording any opportunity of hearing in a Rule 16 proceeding, without giving their reasons for such denial,

without furnishing or giving inspection of all the documents as were prayed for except the documents at serial nos. 1, 2, 3, 7 (MDW of Jhargram H.O. dated 21.03.2006), 8, 9 (B.O. daily A/c of Tapsia S.O. from 01.12.2013 to 15.02.2014), 11 (S.O. Daily A/c of Tapsia S.O. from 01.01.2014 to 15.02.2014), 16, 23, 25 and without disclosing why the other documents were not relevant, despite a written request on 05.05.2014 to detail the reasons of irrelevancy and without permitting the witnesses to be examined, threatened the applicant on 15.05.2014 that in absence of her written representation within three days, the matter would be decided *ex parte*. Although, the applicant made prayer on 21.05.2014 to allow her three days' suitable off or 10 days' time covering one Sunday for preparation of written note of defence, *ex parte* order was passed on 29.05.2014 without even rejecting such prayer. In my considered opinion, while doing so, the authority has contravened and violated all norms of propriety, principles of natural justice and fair play and the mandate of O.K. Bhardwaj (*supra*), which made it imperative for them to hold an open inquiry, once the delinquent officer specifically asked for the same.

17. In such view of the matter as I am of the considered opinion that the penalty order as well as Appellate Authority order cannot be allowed to sustain. The orders are, therefore, quashed with liberty to the Respondents to act in accordance with the law. The recovery, already made, is directed to be refunded within two months from the date of receipt of copy of this order. No costs.


(Bidisha Banerjee)
Member(J)

RK/PS