

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH

O.A/350/1016/2016

Reserved on 01.04.2019  
Date of Order: 9.5.19

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

Shri Prasenjit Mukherjee, Son of Shri Tapash Kumar Mukherjee, aged about 34 years, working as I.P.O./Guskara Sub-Division, Burdwan, residing at Sathya Bhawan, Charakdanga Road, Hat Khola More, P.O. Barasat, Dist. North 24 Parganas, Pin- 700124.

.....Applicant

Vrs.

- I) The Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi 1.
- II) The Chief Post Master General, South Bengal Region, Yogayog Bhawan, C.R.Avenue, Kolkata 700012.
- III) The Director, Postal, Service, South Bengal Region, Yogayog Bhawan, C.R.Avenue, Kolkata 700012.
- IV) Sr. Superintendent of Post Offices, Howrah Division, Kadamtala, Howrah-1.

.....Respondents

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

For the Respondent(s): Ms. P.Goswami, Counsel

O R D E RBidisha Banerjee, Member (J):

The applicant, a serving BA IPO/Guskura Sub-Division, is aggrieved with the penalty of recovery to the tune of Rs. 3,00,000/-, in 100 monthly instalments commencing from June, 2015. He has preferred this O.A. to seek the following relief:

*"(a) Memo No. F4/B-2/3/2012/Disc-VIII dated 28/01/2015 issued by the Sr. Superintendent of Post Offices, Howrah Division, Howrah cannot be tenable in the eye of law and as such the same may be quashed.*

(b) Memo No. F4/B-2/3/2012/Disc-VIII dated 15/06/2015 issued by the Sr. Superintendent of Post Offices, Howrah Division, Howrah imposing punishment of recovery of Rs. 3 lakh cannot be sustained in the eye of law and as such the same may be quashed.

(c) Order dated 03/09/2015 issued by the Postmaster General, South Bengal Region, cannot be sustained 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 already recovered from the salary of the applicant."

2. The case of the applicant, in nutshell, is that on 28.01.2015, he was asked to furnish his explanation against the memo proposing to take action against him under Rule 16 of CCS (CCA) Rules, 1965. The allegation against him is that he had failed to check withdrawal of an amount of Rs. 55,000/- and had he checked the said withdrawal voucher, being SB-7, properly and compared the signature of the depositor on the withdrawal voucher with the specimen available in SB-3 at Howrah Head Office and raised objection in receipt of the irregularity and informed the Sr. Postmaster, Howrah Head Office and Sr. Superintendent of Post Offices, Howrah Division, Howrah-1, necessary enquiries could have been initiated and a fraud which laid to misappropriation of government money to the tune of Rs. 41,51,375.00 could have been averted. He was thus alleged to have acted in contravention of Rule 38 of Post Office Savings Bank Manual Volume-I and also violated Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.

On 06.02.2015 the applicant sought for copies of some documents necessary for preparation of his defence but, without furnishing such documents, on 15.06.2015 the Disciplinary Authority, being the Sr. Superintendent of Post Offices, imposed a penalty of recovery of Rs. 3,00,000/- Aggrieved, the applicant preferred an appeal under Rule 23(ii) of CCS(CCA) Rules, 1965 to the Director of Postal Services, South Bengal Region, vide his appeal dated 26.06.2015. By an

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order dated 03.09.2015, the said Appellate Authority rejected the appeal and affirmed the penalty imposed. Aggrieved thereby, the present O.A. has been filed.

3. The applicant has cited the decisions rendered by this Tribunal in O.A. No. 1961/2010 on 03.06.2015 and O.A. 347/2014 on 03.06.2016 where, relying upon the decisions in **C.N.Harihara Nandanam Vrs Presidency Post Master, Madras and another**, reported in (1988) 8 ATC 673, **J.M.Makwana Vrs UOI and others** by the Ahmedabad Bench of the Tribunal reported in 2002 (1) ATJ 283 and the decision of the Cuttack Bench of the Tribunal in O.A.No. 634 of 2009 disposed of on 11.11.2010 in **Sukomal Bag Vrs UOI & Ors**, which was upheld by the Hon'ble High Court of Orissa vide order dated 22.8.2011 in WP(C) No. 4343 of 2011, recovery for contributory lapses/negligence was held to be illegal and the Tribunal quashed the penalty order and directed refund of the recovered amount.

4. Per contra, the Respondents have submitted that the applicant, upon being identified as subsidiary offender in the light of the observations made vide para 10 of the Circle Level Inquiry report dated 29.04.2014, was proceeded against under Rule 16 of the CCS(CCA) Rules and was rightly imposed the punishment of recovery of Rs. 3,00,000/- Respondents have further disclosed that till the date of preparation of the reply punishment imposed for recovery of loss was as under:

<i>"Name of Offender</i>	<i>Amount for recovery of loss</i>
<i>Sri Bijoy Krishna Naskar</i>	<i>Rs. 8,91,600/-</i>
<i>Sri Uday Chand Majumder</i>	<i>Rs. 7,19,880/-</i>
<i>Sri Ravi B.Hansdak</i>	<i>Rs. 7,20,000/-</i>
<i>Sri Sasanka Sekhar Chatterjee</i>	<i>Rs. 1,00,000/-</i>
<i>Sri Sochan Ram</i>	<i>Rs. 4,00,000/-</i>
<i>Sri Prasenjit Mukherjee (C.O.)</i>	<i><u>Rs. 3,00,000/-</u></i>
<i>Total</i>	<i>Rs. 31,31,480/-</i>

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*And, therefore, the amount which is yet to be recovered=*

*(41,51,375-31,31,480/-)= Rs. 10,19,895/-."*

5. To counter the allegations made in the reply, the applicant, in his rejoinder, would submit that he neither committed fraud nor was involved in the fraud committed by the incumbent Bijoy Krishna Naskar, SPM, Howrah RS SO and, therefore, having been identified as subsidiary offender but without fixing his responsibility and liability, the penalty of recovery was bad.

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

7. Strangely, I notice that for the alleged negligence in failing to detect non-accounting of withdrawal amount of Rs. 55,000/-, the applicant has been penalized with a huge recovery of Rs. 3,00,000/- without even justifying the manner in which the Respondent authorities apportioned his liability in the commission of alleged fraud. The manner in which he has been held responsible could neither be comprehended nor countenanced.

8. In **O.K.Bhardwaj Vs. UOI & Ors.** [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 him an open enquiry to enable him have his say.

9. 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, at hearing, has alleged 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 addressing the allegation assertively.

10. The Hon'ble Apex Court in **Zunjarao 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 term, which rendered the penalty of recovery an illegality as in absence of a direct connection with the fraud when there was no reasonable basis to proceed against her. Further, applicant has asserted that alleged lapse, if it is at all proved, is not such that the lapses on the part of this appellant caused the loss to the department as enjoined in Rule 106 of Postal Manual Vol-III, which reads as follows: *"the penalty of recovery can be imposed only when it is established that the Government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach caused the loss".* Thus, the punishment order is violative of Rule 106 abid. He has pleaded that extenuating circumstances under which the duties were performed by the official should be given due weightage as enjoined in Rule 107 of Postal Manual Vol-III. But, unfortunately, those were not given due weightage by the Disciplinary

Authority and findings were recoded in an artificial manner to impose the penalty of recovery.

11. 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.

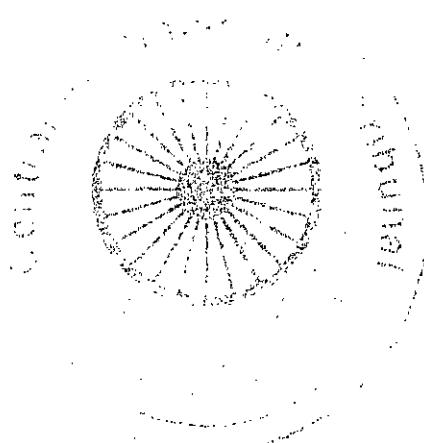
7. xxx xxx xxx. Merely because the department found that it was not possible to recover the amount from the main culprit, some other scapegoat cannot be found out and cannot be levied with the punishment of recovery of the loss. We are fortified in our conclusion by the judgment of the Madras Bench of this Tribunal in the case of C.N. Harihar Nandanam 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.

12. Further, I discern that citing various decisions of this Tribunal as referred to supra, applicant has asserted that penalty of recovery for contributory negligence is impermissible.

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13. Having noted the implications of the decisions cited by the applicant in the cases of **C.N.Harihara Nandan Vrs Presidency Post Master, Madras and another, J.M.Makwana Vrs UOI and others, Bikash Kanti Mishra Vs. UOI & Ors. and Sukomal Bag Vrs UOI & Ors.**, that the penalty orders of recovery were quashed when the Tribunal found that the applicants have been held guilty of contributory negligence, I am of the considered view that the present applicant, who has been similarly charged would deserve the same relief and, accordingly, I have no hesitation to quash the penalty order as well as Appellate Authority order and direct the Respondents to refund the recovered amount immediately and preferably within one month from the date of receipt of copy of this order. O.A. is, accordingly, disposed of awarding no costs.



(Bidisha Banerjee)  
Member(J)

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