

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A/350/385/2017

Reserved on 01.04.2019
Date of Order: 9.5.19.

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

Uday Chand Majumder, Son of Late Jagannath Majumder, aged about 53 years, working as P.A. Ex.PA/SBCO/Salkia/Howrah, residing at Village Kanchnali, P.O.-Boinchni, Dist.-Hooghly, Pin- 712134.

.....Applicant

Vrs.

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

.....Respondents

For the Applicant(s): Mr. A.Chakraborty, Counsel

For the Respondent(s): Mr. B.P.Manna, Counsel

ORDERBidisha Banerjee, Member (J):

The applicant, being aggrieved with imposition of a penalty of recovery to the tune of Rs. 7,19,880/- in 84 monthly instalments commencing from December, 2014, while serving as PA SBCO, Salkia under Howrah Sub-Division, has preferred this O.A. to seek the following relief:

"(i) Office order dated 07.12.2015 cannot be sustained in the eye of law and the same may be quashed.

(ii) Charge Memo No. F4/B-2/3/2012/Disc-II dated 09/07/2014 issued by the Sr. Superintendent of Post

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Offices cannot be sustained in the eye of law and therefore the same may be quashed.

(iii) Punishment order dated 11/12/2014 issued by the Senior Superintend Division vide memo no. F4/B-2/3/2012/Disc-II cannot be tenable in the law and therefore the same may be quashed.

(iv) Order dated 07.09.2015 issued vide memo no. PMG(SB)51/VIG) A-07/1/2015 issued by Director of Postal Services, South Bengal Region, Kolkata cannot be sustained in the eye of law and same may be quashed.

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

2. Briefly stated, the case of the applicant is that on 09.07.2014, 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 the SB withdrawal voucher (SB-7) dated 18.12.2010 for Rs. 61,023.00 of Howrah RS S.O. in respect of SB account no. 887323 where the signature of the Sub Postmaster, Howrah RS S.O. and the date stamp impression were wanting. It is further alleged that had he checked the said withdrawal voucher, being SB-7, properly and raised objection regarding irregularity and informed the same to Sr. Postmaster, Howrah H.O. and Sr. Superintendent of Post Offices, Howrah Division, Howrah-1, necessary enquiries could have been initiated much earlier and misappropriation of government money to the tune of Rs. 41,51,375.00 committed by Sri Bijoy Krishna Naskar, Ex-SPM, Howrah RS S.O. could have been averted. He was thus alleged to have acted in contravention of instruction as per clause (i) amended w.e.f. 01.04.1985 and also violated Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.

The applicant submitted a detailed representation on 24.11.2014. The Disciplinary Authority, being the Sr. Superintendent of Post Offices, after

considering applicant's representation, vide order dated 11.12.2014 imposed a penalty of recovery of Rs. 7,19,880/- Aggrieved, the applicant preferred an appeal dated 20.01.2015 under Rule 23 of CCS(CCA) Rules, 1965 to the Director of Postal Services, South Bengal Region. In pursuance of the order dated 25.08.2015 passed by this Tribunal in O.A. 1338/2015, filed by the applicant, by an order dated 03.09.2015 the said Appellate Authority considered and rejected the appeal, affirming the penalty imposed. Subsequently, the applicant moved this Tribunal in O.A. 1604/2015, which was disposed of "remanding the matter back to the Director, Postal Services, South Bengal Region, the Appellate Authority for reconsideration of the matter with proper application of mind in regard to the charges leveled, culpability of the present applicant, the decisions referred to hereinabove and the reasons as to why the applicant shall not be entitled to the benefit of the said decisions and pass a reasoned and speaking order within two months from the date of communication of this order and till such decision is communicated, the recovery, if not already started, shall remain stayed." Consequently, the Appellate Authority after reconsidering the matter reaffirmed its earlier decision and passed order dated 07.12.2015. Aggrieved thereby, the present O.A. has been filed.

3. Ld. Counsel for the applicant, at hearing, would cite 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 following decisions (i) **C.N.Harihara Nandanam Vrs Presidency Post Master, Madras and another**, reported in (1988) 8 ATC 673, (ii) by the Ahmedabad Bench of the Tribunal in **J.M.Makwana Vrs UOI and others** reported in 2002 (1) ATJ 283 and (iii) the decision of the Cuttack Bench of the Tribunal in O.A.No. 634 of 2009 [**Sukomal Bag Vrs UOI & Ors**] disposed of on 11.11.2010, 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 penalty orders were quashed by this Tribunal with direction to refund of the recovered amount.

4. Per contra, the Respondents would submit that the applicant being identified as subsidiary offender, was proceeded against under Rule 16 of the CCS(CCA) Rules and was rightly imposed the punishment of recovery of Rs. 7,19,880/-.

Respondents have disclosed that till the date of preparation of the reply punishment imposed for recovery of loss was as under:

"i) *Amount recovered from the Principal Offender* = Rs. 8,91,600/-

ii) *Amount to be recovered from Subsidiary Offenders* = Rs. 37,86,880/-

Total = Rs. 46,78,480/-

*Amount yet to be recovered = [(Rs. 41,51,375/- + Normal Interest
Rs. 6,36,548/- + Penal Interest Rs. 3,83,237/-) - Rs. 46,78,480/-] = Rs. 4,92,680/-."*

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 without fixing his responsibility and liability, the penalty of recovery was illegally imposed and, therefore, bad in law. He has further averred that he was never entrusted to check the SO SB voucher.

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

7. Strangely, I notice that for the alleged negligence in checking the SB withdrawal voucher of Rs. 61,023/-, the applicant has been penalized with a huge recovery of Rs. 7,19,880/- without even justifying the manner in which the Respondent authorities apportioned his liability in the commission of alleged fraud.

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8. In the present case the charges were factual and same were categorically denied by the applicant, yet no open enquiry was held.

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 an open enquiry, thereby disabling the applicant to 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 has alleged that acts of negligence, error 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.

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 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 him.

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.

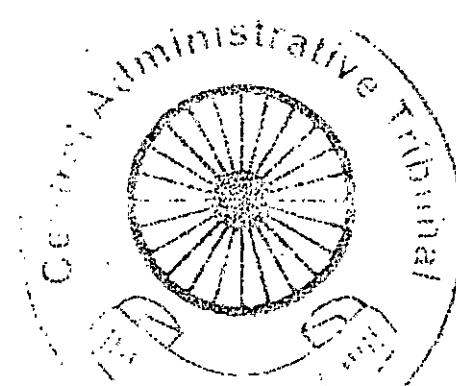
7. xxx xxx xxx. Merely because the department found that it was not possible to recover the amount from the main culprit, some other scapegoat cannot be found out and cannot be levied with the punishment of recovery of the loss. We are fortified in our conclusion by the judgment of the Madras Bench of this Tribunal in the case of C.N. Harihar Nandan 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. Having noted the true implications of the decisions cited by the applicant in the cases of **C.N.Harihara Nandan v/s 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 were 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 entire 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)



RK/PS