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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION No. 357/2013
with
ORIGINAL APPLICATION No. 358/2013
with
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with
ORIGINAL APPLICATION No. 367/2013
with
ORIGINAL APPLICATION No. 368/2013

Date Of Decision: 10th April, 2019.

**CORAM: R. VIJAYKUMAR, MEMBER (A).
RAVINDER KAUR, MEMBER (J).**

ORIGINAL APPLICATION No. 357/2013:

Smt. Rajeshari Sharadchandra Dharmadhikari,
(Accountant), General Post Office, Pune-01,
(R/at: 817, Guruwar Peth, Pune-411 042.

ORIGINAL APPLICATION No. 358/2013:

Smt. Manasi Nitin Atre,
Postal Assistant, Pune City Head Office,
Pune- 411 002.
(R/at: 2/517 Sun City, Sinhagad Road,
Pune- 411 051.

ORIGINAL APPLICATION No. 359/2013:

Smt. Kunda Anand Nargundkar,
Assistant Postmaster, Pune City Head Post Office,
Pune- 411 002.
(R/at: 1868, Sadashiv Peth, Bhikardar Maruti
Road,
Pune- 411 030.

ORIGINAL APPLICATION No. 367/2013:

Smt. Geeta Ravindra Jindam,
Postal Assistant, Pune City H.O.,
Pune- 411 002.
(R/at: 335 Shukrawar Peth, Suyog Chambers,
Flat No.9, Pune- 411 002.

ORIGINAL APPLICATION No. 368/2013:

Sudhakar Madhukar Deshpande,
(Assistant Post Master Accounts(Retd.),
Pune City, Post Office, Pune.
(R/at: Flat No. 12, Raghunandan Apartments,
Seema Sagar Society, Sukhsagar Nagar,
Pune- 411 046.

...Applicants

(By Advocate Shri S P Saxena in all the OAs)

Versus

1. The Union of India, through
The Secretary, Dept. of Post, Dak Bhawan,
Ministry of Communication and I.T.,
Sansad Marg, New Delhi- 110 001.
2. The Chief Post Master General,
Maharashtra Circle, G.P.O., Mumbai- 400 001.
3. The Director of Postal Services,
Pune Region, O/o Post Master General,
Pune- 411 001.
4. The Sr. Supdt. Of Post Offices(West
Division), Lokmanya Nagar, Pune- 411 030.

...Respondents in all the OAs.

(By Advocate Shri V S Masurkar in all the OAs)

Reserved on : 07.03.2019

Pronounced on : 10.04.2019.

ORDER

PER:- R. VIJAYKUMAR, MEMBER (A).

These are five applications filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following identical reliefs, as with applicant in OA No. 357/2013 except in regard to the amounts proposed to be recovered, as follows:

- "a) to allow the original application,
 b) to call for the relevant records and proceedings from the Respondents, and to hold and declare that the Applicant is not required to pay the amount of Rs. 1,81,108,60/-,
 c) to quash and set aside the impugned orders dated 26.11.2012, 02.02.2012, 22.11.2010 passed by the Respondents No. 2,3 and 4 respectively,
 d) to direct the Respondents to refund back the amount of Rs. 1,81, 756/- which has actually been recovered from the Applicant, although he was informed of Rs. 1,81,108.60/- in the letter issued by the Respondents,
 e) to pass any other order which may be just and equitable in the facts and circumstances of the case,
 f) to award the cost of application."

2. This is a group of five OAs filed by five employees of the respondents who were at the point of time relevant to this issue posted at Pune Head Office of the respondents. Brief details of their present designation, initial appointment and appeal/revision petition date and recovery amount ordered are tabled below:

| OA No. | Present Designation | Initial Appointment | Appeal/Revision Petition | Recovery Amount |
|--------------|----------------------|---------------------|--------------------------|-----------------|
| 357/201 3 | Accountant | Postal Assistant | 06.12.10/24.03.12 | Rs. 1,81,756/- |
| 358/201 3 | Postal Assistant | Postal Assistant | 06.12.10/24.04.12 | Rs. 1,21,386/- |
| 359/201 3 | Assistant Postmaster | Postal Assistant | 06.12.10/24.04.12 | Rs. 1,21,386/- |
| 367/201 3 | Postal Assistant | Postal Assistant | 04.12.10/24.04.12 | Rs. 1,21,386/- |
| 368/201 3 | Assistant Postmaster | Postman | 06.12.10/21.03.12 | Rs. 1,81,756/- |

3. Following the Vth Pay Commission, which took effect from 01.01.1996, Postmen had been recommended two additional increments in the pay scale of Rs. 2750-4400/- to give them an initial start of Rs. 2890/- following the Vth Pay Commission recommendations and further orders of the Ministry of Finance and the Department of Posts on 09.10.1997. This was intended for the period from 01.01.1996 to 09.10.1997 and in the orders of the Pay Commission, it has been specified that in respect of officials who are still in service, in order to avoid any delay in disbursement of arrears, the requirement of pre-check of pay fixation was dispensed but with the following conditions:

"For this purpose, an undertaking may also be obtained in writing from every employee at the time of disbursement of the arrear/pay and allowances for October, 1997 to the effect that any excess payment that may be found to have been made as a result of incorrect fixation of pay in the revised scales will be refunded by him to Government either by adjustment against future payment or otherwise. A specimen form of the undertaking is also enclosed (Annexe-II)."

4. Subsequently, a requirement was

placed on the Drawing and Disbursing Officers that they should inform their employees and also obtain an undertaking from each of them prior to disbursement and following the disbursement, the papers would be available for post-check since a copy was required to be pasted in the service book of the concerned employee.

5. Subsequently, on 03.07.1998, further directions were issued revising the pay scales of Postmen and Mail Guards as Rs. 3050-75-3950-80-4590(S-5). A clarification was also issued on 10.06.1999 that no additional increments were to be granted in the new pay scale which would take effect from 10.10.1997. However, the applicants who were working together in this Office drew up the pay fixation and disbursed the arrears without obtaining an undertaking as prescribed in the orders of the respondents and of the Ministry of Finance. Therefore, when the respondents ordered recovery of the excess payments in their letter No.1-21/99-

PAP dt. 13.08.1999, the All India Postal Employees' Union, Postmen and Group-D etc. approached the Principal Bench of this Tribunal in OA No. 283/2003 and orders were passed on 13.09.2004 directing the respondents to verify if those applicants had submitted an undertaking as prescribed the the Ministry of Finance and if they had actually executed an undertaking, the respondents would be entitled to effect recovery and in the circumstance that no undertaking had been taken from the concerned employee, he would be entitled to full refund of any recoveries made.

6. It is in these circumstances that the respondents determined that the five employees in this batch of OAs had failed to obtain an undertaking before disbursement and therefore, by virtue of their violation of the instructions, they had caused loss to the exchequer and were liable for recovery of the amount.

7. On this basis, Charge Memo was issued

to the applicants in this batch of cases on 13.05.2010 under Rule 16 of the CCA(CCA) Rules, 1965 to which they replied on different dates in June 2010 and in which they had also sought an enquiry under Rule 16(1)(A). In these replies, they had also asked for documents relevant to their case. The respondents replied in a letter which is nearly identical in all the cases stating reasons as below:-

"Your request for supplying of copies that were not cited in the Charge sheet cannot be acceded to for simple reason that they are not related to the allegations made in the charge sheet.

2) Your further request for holding of Inquiry as per Rule Number 16(1) (A) of CCS (CCA) Rules 1965 in the case could not be acceded, due to following reasons,

i) It is premature to ask for the same without submitting your representation and its consideration by the Disciplinary Authority.

Viii) There are no documents to be identified as in the case of a Rule 14 case.

ix) The allegations are based on clear and unambiguous documents.

iv) There is no case of receiving the money and not crediting into the Government account viz

misappropriation /fraud, where elaborate enquiry is required as in the case of a Rule - 14.

v) There are no witnesses to be examined as in the case of a Rule 14.

You may submit your representation by 23.07.2010 failing which the case will be taken to next stage."

8. The applicants again filed representations around 20.07.2010 and in the case of applicant in OA No. 357/2013, he also filed a further representation on 05.08.2010. Orders were passed by the Disciplinary Authority on 22.11.2010 after which the applicants filed an appeal on 06.12.2010 on which orders were passed by the Appellate Authority on 01.02.2012. Further, revision was also filed which was disposed of on 26.11.2012.

9. The main submissions of the applicants are that it was the duty of the superior authority to obtain the signature of the applicants who were working in that office and engaged in this work, in token of having noted the contents of the instructions issued by the Senior Postmaster, Pune City

Head Office but this was not done. Further, they plead that it is the duty of the Disbursing Officers to ensure that they obtain undertaking from the staff before payment of dues but even this depended on whether the orders were properly circulated to the Disbursing Officers. They also plead that between the years 1997/1999 and initiation of charge by issue of charge memo in May 2010, there was a considerable delay in initiating disciplinary action.

10. The applicants have also argued that their request for conducting an enquiry was also not done. Further, recovery of excess amounts paid had already been made from Postmen and Mail Guards after receipt of instructions in 1999 and therefore, there was no loss. Again, the respondents had not given details of how the applicants share of the total loss of Rs.1,81,106.60/- was computed. The applicants concede knowledge of the method adopted for sharing the loss between the various officials but question

the rationale of fixing 20% & 40% and so on between the various categories of officials. They have also argued that the applicants who had processed the payments for various beneficiaries had not been impleaded before the Principal Bench of this Tribunal in the case filed by the Union and therefore, they cannot be proceeded against by virtue of the orders of the Tribunal in that case.

11. The applicants have filed copies of the payment fixation orders which shows their approval or initials in token of approval by the applicants in those orders and their participation thereof.

12. The respondents have stated that the applicants had a duty to obtain the undertaking before approving the pay fixation and disbursing the arrears in view of the instructions given to them. The orders were also very clear that the disbursement was being made without pre-check in respect of these officials and hence the need for an undertaking. They have also stated that all

opportunities were given after issue of charge memo for filing a reply. They deny any flaw in the procedures or in the rejection for conduct of enquiry in the disciplinary proceedings. They state that the Senior Post Master, Pune City Head Office had issued instructions for obtaining options and the requisite undertaking from all concerned, prior to disbursement but the applicants had not obeyed these orders. Therefore, since they had disobeyed the instructions, they had to bear the consequences. They state that the Principal Bench of the Tribunal only accepted the submission of the Postmen and their Union whereby those who had not given an undertaking were excluded for the purpose of recovery. Thereafter, orders were passed by the Ministry directing recovery from the officials in various branches who had failed to abide by the instructions and obtain undertaking from the concerned employees from whom recovery was barred for this reason.

They reiterate that all the documents cited in the charge-sheet were supplied to the applicant and no prejudice was caused to them in the proceedings.

13. The respondents state that the applicants who were working in the Accounts Division handling this issue of disbursement of arrears neither obtained the undertakings nor did they issue specific instructions to the Sub Postmaster (SPM) etc, to obtain such undertakings before effecting disbursements although there were specific instructions from the Senior Postmaster to this effect. They also confirm that no undertakings were obtained in respect of disbursements made in the jurisdiction of relevance. On the claim that there was no revenue loss, the respondents deny this and state that if the applicant had obtained an undertaking from any employee, they were at liberty to produce such details so that they could be verified but this has not been done till now and resulted in loss to the Government as

specified in the orders. The applicants were working in very responsible capacities and therefore, they cannot escape their responsibility.

14. On the aspect of delay in filing a charge-sheet, they state that the Postmen Union had approached the Principal Bench in 2003 and an interim order had been passed on 12.03.2004 staying recovery. Finally, the Principal Bench of this Tribunal decided the matter on 13.09.2004 after which the Ministry in letter dt. 25.11.2004 ordered recovery of excess amounts paid to ineligible employees from those who had filed undertakings. It was only at that time that the fact that no undertakings had been obtained came to notice. Thereafter, the All India Postal Employees' Union etc. had filed OAs in 2007 including before this Bench and the OAs were disposed of on 30.11.2010 after which action was initiated without delay. The applicant has been supplied with all necessary documents and no prejudice has been caused

but even after receiving various documents, the applicants failed to submit their representation.

15. The respondents hold the applicants responsible by virtue of their contributory negligence since they were part of the same office in which the Head of the Office was the Drawing and Disbursing Officer and it is obvious that he was relying on his subordinates for the purpose of pay fixation and for actual disbursement after he had approved the payments as proposed by the Accounts team through the Sub Postmaster. It was on this basis that the total amount of loss was shared by a reasonable formula between the various delinquent officials.

16. We have heard the learned counsels for the applicant and respondents and carefully considered the facts and circumstances, law points and rival contentions in the case.

17. There is no dispute over the fact that there was over payment to the

beneficiary staff involved in this matter. The only issue for determination is to whether the applicants had a responsibility for obtaining and for verifying that an undertaking had been obtained before disbursement. A perusal of the orders of the respondents for pay fixation and disbursement does not indicate if there is a duty fixed on the staff engaged in finalizing the pay fixation statements for obtaining such an undertaking. If these staff were themselves responsible for making the pay fixation proposals and after it had received the approval of the Senior Postmaster, if the same staff were engaged in disbursement, there would be concomitant responsibility to obtain a relevant undertaking prior to disbursement. If the disbursement was being done at another branch or by another set of staff, the pay fixation staff cannot be held responsible for not obtaining an undertaking.

18. The applicants have also made the argument that they were not served a copy of

the Vth Pay Commission orders and their signatures were not obtained in token of their having seen the orders by which it was mentioned that an undertaking had to be taken. Therefore, they argue that they cannot be held responsible. As pointed out by respondents, the applicants made the pay fixation based on the instructions of the Vth Pay Commission and it is therefore, obvious that they were fully in knowledge of the orders and they had carried out the pay fixation with reference to those orders. It is also apparent from the details of the case that there is no discrepancy in terms of their having followed the original orders of the Pay Commission although there was evidently some misunderstanding in terms of the period for which these advance increments were to be given and the purpose of those advances increments. The only issue was with reference to the procedure of obtaining an undertaking and this forms part of the entire logic in the orders of the Pay Commission for

which instructions had been issued by the Ministry of Finance in F.No.50(2)/97/IC-I dated 14.10.1997 and had been communicated through the Heads of Offices to the pay fixation officials by the Department of Posts.

19. However, when we peruse the orders of the Disciplinary Authority, we are unable to determine if the applicant in question in each of these five OAs had actually been given the responsibility for disbursement. As explained above, this responsibility had to be executed at the time of disbursement when the concerned staff came to receive the payment. It is also possible for the staff including pay fixation staff to obtain the undertaking in advance but that is subject to the availability of evidence that the Head of Office asked them to obtain such an undertaking in advance and to carry out the pay fixation only for those persons who had provided the undertaking as required.

20. The learned counsel for the

applicants has referred to the orders of the Jabalpur Bench of this Tribunal in OA No. 1095 and 1096 of 2010 dt. 10.01.2014 in an identical case where the Accountant is held to not be responsible for obtaining the undertaking which was a responsibility assigned to the DDO, the Drawing and Disbursing Officer. Those orders note as below:-

10. Thus, it was the bounden duties of the concerned Drawing and Disbursing Officer to ensure that the undertakings were given by the concerned employees before actual payments of arrears were made to them as per recommendations of the 5th CPC. The respondents have not brought on record any office order issued by the DDO to the applicants that they should obtain undertakings from the employees concerned before extending the benefit of pay fixation. There is nothing on record to show that the applicants were in any way involved in making actual payments to ineligible postmen, except that they had undertaken the task of pay fixation and prepared the statement on the basis of such pay fixation. Undertaking could have been obtained at the time of actual disbursement. It is not the case of the respondents that the applicants were performing the duties of Drawing and Disbursing Officer at the relevant time when arrears were paid to the ineligible employees.

The Jabalpur Bench quashed the orders in the disciplinary proceedings on this basis.

21. On the aspect of whether an enquiry had to be held or not, the respondents have given a detailed reply to the applicant that the issue in question was on the disobedience of the applicants to obtain such an undertaking. Therefore, the whole charge depended on the absence of an undertaking. The remaining documents are not in dispute and are well within the cognizance of the applicants and whatever was necessary for the purpose of providing their explanation has, evidently been provided to them. Instead, the applicants kept asking for documents instead of furnishing a full and proper explanation as their defense. In the circumstances, we are unable to support the contention of the applicants that an enquiry was necessary for the kind of disciplinary proceedings that had been set in motion by the respondents and consequent punishment imposed.

22. While setting aside the orders in the disciplinary proceedings, the respondents are

directed to identify the role of the applicants in these cases in actual disbursement of the arrears to the various employees or, if there were other branch offices where such disbursements were made, the persons who are responsible for obtaining such an undertaking prior to disbursement. Having determined these aspects, the respondents would be at liberty to take appropriate disciplinary action against the delinquents as determined.

23. In the circumstances, this OA is allowed without any order as to costs.

24. The applicants have urged that all the amounts have already been recovered from them. However, it is important to ascertain their responsibility in regard to disbursement and it is also important to fix a time frame within which the respondents carry out this task as described above. Therefore, the respondents are directed to identify the delinquent officers who had been engaged in disbursement within eight weeks of

receipt of a certified copy of these orders and based on this identification, to refund the amounts already recovered from those applicants who are not implicated as a result of this enquiry. For such applicants who are considered not involved, repayments if any shall be made within four weeks thereafter with interest @ 6% from the date of recovery up to date of payment.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar) |
Member (A)

Ram.

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2/11/14

