

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : GWALIOR

Original Application No.202/00807/2017

Gwalior, this Thursday, the 16th day of May, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

R.B.S. Tagore S/o Late Shri Bidharam Aged 55 years,
Occupation Service in Postal Department, R/o Kamera Wali Gali,
Uttampura, Morena-476001 M.P. **-Applicant**

(By Advocate—**Shri Alok Kumar Sharma**)

V e r s u s

1. Union of India through the Secretary,
Department of Post, Dak Bhawan, New Delhi-110 001.

2. Chief Post Master General, MP Circle,
Bhopal-462012 M.P.

3. Director of Postal Services, Indore Region,
Indore-452001 M.P.

4. Superintendent of Post, Chambal Dn.
Morena (M.P.) 476001

-Respondents

(By Advocate – **Shri Akshay Jain**)

(Date of reserving the order:06.02.2019))

ORDER

By Navin Tandon, AM:-

Being aggrieved by imposition of minor penalty of recovery
of Rs.2,88,000/-, the applicant has filed this Original Application.

2. The facts of the case as narrated by the applicant are as
under:-

2.1 He was working as Office Assistant in Staff Branch of Divisional Office during the period from 07.08.2008 to 30.01.2011.

2.2 The applicant has stated that one Shri C.L.Sharma, was going to retire on attaining the age of superannuation from the post of Sub Post Master, Nayi Zameen Post Office, Bhind and his post was going to be vacant. Shri Basant Singh Kushwah, the then Postal Assistant Head Post Office, Morena submitted an application for transfer on his own request and own expenses on 20.08.2010 in the Divisional Office. The applicant forwarded the file of transfer request of Shri Kushwah to the Officer-in-charge, Assistant Superintendent (Headquarters). The then Assistant Superintendent Mr.O.P.Chaturvedi did not mark any note and after putting his signature immediately forwarded the file for further action and orders to the then Superintendent of Post, Morena Shri S.P.S.Bhadoriya, who in turn issued the direct orders on the file to the effect that Shri Basant Singh Kushwah be posted to Nayi Zameen, Bhind Post Office and consequently transfer order of Shri Kushwah was issued.

2.3 A charge memo dated 23.07.2014 was served on the applicant under Rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The sole charge

against the applicant was that he did not present the service profile of Shri Basant Singh Kushwah while presenting the application of Shri Kushwah for transfer, whereas the service profile of Shri Kushwah was not good as during his service tenure he was punished 11 times for different irregularities. Said Shri Kushwah after his transfer to Nai Zameen Sub Post Office, committed financial embezzlement in connivance with Mr.Sant Kumar Sharma, Rural Postal Servant by creating fabricated and forged withdrawal forms from saving accounts and caused financial loss of government amount of Rs.1,30,21,960/- to the department.

2.4 The applicant submitted his explanation to the charge memo and denied the allegation leveled against him. The respondent No.4 vide impugned order dated 21.07.2015 (Annexure A-1) held that because of non maintaining the alertness by the applicant Shri Kushwah committed embezzlement of Rs.1,30,21,960/- and imposed penalty of recovery of Rs.2,88,000/- in 36 installments of Rs.8,000/- per month on the applicant.

2.5 The applicant submitted his appeal against the imposition of penalty of recover, which was rejected vide order dated 06.01.2016 (Annexure A-2). His revision-petition was also rejected vide order dated 28.02.2017 (Annexure A-3).

3. The applicant has, therefore, prayed for the following reliefs:

“8(1) That the action and orders impugned Annexure A-1 dated 21.07.2015, Annexure A-2 dated 06.01.2016 and Annexure A/3 dated 28.02.2017 may kindly be declared illegal and the same may kindly be quashed.

8(2) That respondents may kindly be directed to refund the entire recovered amount with interest at market rate.

8.(3) Any other suitable relief which this Hon'ble Tribunal deem fit and proper in the circumstances of the case may also be given to the applicant along with cost of this O.A.”.

4. On the other hand the respondents submitted that because of the applicant's failure in non-submission of service profile of said Shri Kukshwaha along with his application, by the applicant Shri Kushwah got posting with independent charge of Nai Zameen SO.

5. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

6. In support of his claim, the learned counsel for the applicant has placed reliance on the decision of this Tribunal in the matters of **Ram Bir Parashar Vs. Union of India and others** (Original Application No.202/00305/2015 decided by an order dated 11.05.2018 (Annexure A-11) whereby this Tribunal in similar circumstances has allowed said Original Application by quashing and setting aside the orders of recovery. In the said order this Tribunal had placed reliance on the earlier decision of this Tribunal in the matters of **Smt.Kalpna Shinde Vs. Union of India and**

others, (Original Application No.344 of 2003) & four other similar cases, decided by a common order dated 22.11.2004, whereby this Tribunal in similar circumstances has allowed those OAs by quashing and setting aside the orders of recover. The decision in the case of **Smt.Kalpana Shinde** (supra), was upheld by the Hon'ble High Court vide order dated 15.4.2008.

7. We have carefully gone through the aforesaid decision of this Tribunal in the matters of **Ram Bir Parashar** (supra).

Relevant paragraph of the said order read thus:-

“(7). Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

(7.1) We have also perused the decision of this Tribunal in the matters of **Smt.Kalpana Shinde** (supra), paragraph 9 of which read thus :

“(9). *In the instant case, the charges leveled against the applicants are that of their negligence in failing to detect the fraud perpetuated by other staff members of other post office in time. They are not charged that by any act of omission or commission or negligence or breach of orders by them, they had caused any pecuniary loss to the Govt. Another significant aspect is that they are not charged with having any intention to fraud the Govt. of the amount misappropriated by some third parties. The provisions of Rule 11 (iii) of the CCS (CCA) Rules are attracted only when any pecuniary loss caused to the Government by negligence or breach of orders is attributed directly to the employee concerned. In the instant case the applicants obviously were not directly responsible for the misappropriation of the amount and therefore, the recovery if any was to be made for the loss of the amount, ought to have been made from the person directly responsible for the misappropriation. It is*

also pertinent to note that no detailed inquiry has been made by the Disciplinary Authority in the whole case and merely on the surmise that the fraud could have been prevented. The applicants were not negligent in carrying out their duties he has held them guilty of charges leveled against them. He has not elaborated how the fraud could have been detected earlier and has not even cared to hold the detailed inquiry into the circumstances of the fraud perpetrated by the staff of Shabda Pratap Ashram, Gwalior Sub-Office. The applicants could have been held guilty of the charges leveled against them if due to any omission or commission on their part, the perpetuation of fraud by some body else would have been possible or they themselves had associated in perpetuating the fraud. The contention of the applicants suggests that they had been employed or given work in different periods to post the entries, etc., of the back dates. If they were required to post the entries of the back dates which were pending, it would mean that they could not have prevented the fraud as the fraud was already perpetuated when they started their work of posting the entries. No detailed inquiry has been held by the Disciplinary Authority in this question of posting of the entries by the relevant clerk.”

(7.2) We have also gone through the order dated 15.4.2008 passed by Hon’ble High Court in W.P.No.796 of 2005 in the matters of **Smt.Kalpana Shinde’s case** (supra), relevant extract of which read thus:

“(11)..... It is thus, not in dispute that the respondents were not enjoying regular posting of RDSOLC but were intermittently discharging the duties and, therefore, it was incumbent upon the competent authority to have first shown the nexus in respect of the misappropriation and the dereliction of the duties by the respondents. It is pertinent to note that that the respondents were not charged of an act of omission or commission or negligence or breach of orders the them, causing thereby pecuniary loss to the Government or that they were having any intention to commit fraud the Government revenues. Thus alleged loss cause to the petitioner/Union of India was not directly or indirectly attributed to the respondents”

*(7.3) In the instant case we find that the allegations against the applicant was that he was negligence in failing to detect the fraud perpetrated by his subordinate posted in another sub post office in time. The applicant is not charged that by any act of his omission or commission or negligence or breach of orders by which he had caused any pecuniary loss to the Government. There was no allegation against him that he was having any intention to fraud the Government of the amount misappropriated by some third parties. Thus, the applicant was not directly responsible for the misappropriation of the amount and therefore, the recovery if it was to be made for the loss of the amount, ought to have been made from the person directly responsible for the misappropriation. The same view has been held by this Tribunal in the matters of **Smt.Kalpana Shinde** (supra) which has been upheld by the Hon'ble High Court as mentioned hereinabove. In the matter of **Smt. Kalpana Shinde** (supra) the Tribunal had also relied on the following decisions in the matters of (i) **J.M. Trivedi Vs. Reserved Bank of India** 2004 (2) GLH 514; (ii) **S.K. Chaudhary Vs. Union of India and Ors** .in OA504/1996; (iii) **C.N. Harihar Nandan Vs. Presidency Post Master Madras** SPC 1988 (8) ATC 673 and (iv) **J.M. Makwana Vs. Union of India & Ors.** in OA750/98, before quashing and setting aside the impugned orders of recovery. Thus, the present case is fully covered by the decision in the matter of **Smt. Kalpana Shinde** (supra) and, therefore, the impugned order of recovery is liable to be set aside”.*

8. On perusal of the above order we find that in the said matter it has been held that since the employees concerned were not charged of an act of omission or commission or negligence or breach of orders, causing thereby pecuniary loss to the Government or that they were having any intention to commit fraud the Government revenues, the alleged loss caused to the Union of India

was not directly or indirectly attributed to the employees concerned.

9. In the instant case also we find that the only allegation leveled against the applicant was that he was not alert while submitting the transfer application of Shri Kushwah before the higher authorities. The applicant is not charged that by any act of his omission or commission or negligence or breach of orders by which he had caused any pecuniary loss to the Government. There was no allegation against him that he was having any intention to fraud the Government of the amount misappropriated by some third parties. Thus, the applicant was not directly responsible for the misappropriation of the amount and therefore, the recovery if it was to be made for the loss of the amount, ought to have been made from the person directly responsible for the misappropriation. The same view has been held by this Tribunal in the matters of **Ram Bir Parashar** (supra) and as well as in the matters of **Smt. Kalpana Shinde** (supra) which has been upheld by the Hon'ble High Court as mentioned hereinabove. Thus, the present case is fully covered by the decisions of this Tribunal in the matters of **Ram Bir Parashar** (supra) and **Smt. Kalpana Shinde** (supra) and, therefore, the impugned order of recovery is liable to be set aside.

10. In the result the Original Application is allowed. The orders impugned Annexure A-1 dated 21.07.2015, Annexure A-2 dated 06.01.2016 and Annexure A-3 dated 28.02.2017 are quashed and set aside. The respondents are directed to refund the entire recovered amount within a period of one month from the date of communication of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member
rkv

(Navin Tandon)
Administrative Member