

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(orders reserved on 15.7.2019)**

O.A.NO. 060/0791/2017 Date of order:- 13.8.2019.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. A.K.Bishnoi, Member (A).

Smt. Harvinder Kaur wife of Sh. Damanjit Singh, working as Postal Assistant, Taran Taran HO presently on deputation as Postal Assistant in Jandiala Guru SO in Amritsar Postal Division, Amritsar, Punjab

.....Applicant.

(By Advocate :- Mr. V.K.Sharma)

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communications & Information Technology, Department of Posts, Dak Bhawan, New Delhi.
2. Director Postal Services, Office of Postmaster General, Punjab West region, Sandesh Bhawan, Sector 17-E, Chandigarh-160017.
3. Senior Superintendent of Post Offices, Amritsar Division, Amritsar-143 001.

...Respondents

(By Advocate : Mr. V.K.Arya).

ORDER

Sanjeev Kaushik, Member (J):

Applicant Harvinder Kaur has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief(s):-

" a) Quash the order dated 19.5.2016(Annexure A-1) vide which the Disciplinary Authority has imposed the penalty of reduction of her pay by one stage from Rs.12520 + grade pay of Rs.2400 to Rs.12150 + grade pay of Rs.2400 in the pay band of Rs.5200-20200 + GP Rs.2400 for the period of two years w.e.f. 1.6.2016 and she will not earn increment of pay during the period of reduction

and it will not have effect of postponing future increments of pay and has also imposed penalty of recovery of loss of Rs.5,85,000/- ignoring the fact that such amount has already been deposited by the co-accused and he has also been let off by minor penalty of censure;

b) quash the order dated 28.2.2017(Annexure A-2) vide which the appeal filed by the applicant against the penalty aforesaid was rejected by the Director Postal Services, Chandigarh, without adhering to the real points raised by the applicant and order has been upheld on purely conjectures and surmises;

c) issue direction to the respondents to restore to her all the consequential benefits as if no penalty was imposed upon her with interest @ 12%;

d) restrain the respondents from effecting recovery from the pay of the applicant as the amount of Rs.5 lac has already been deposited by the APM Ajit Singh and as such there is no loss".

2. Facts of the case in brief are that the applicant joined the service of the respondent department as Postal Assistant on 13.12.2005 at Khanna HO under Ludhiana Muffassil division and she was posted at R.D.Counter. A memorandum dated 19.8.2013 (Annexure A-3) was issued to the applicant under Rule 14 of the CCS(CCA) Rules, 1965 on the allegation that she had misappropriated a sum of Rs.2,11,730/- in one RD account of Master Karamjit Singh, minor in connivance with Shri Arvind Kishiore, SAS Agent. The allegation was that a sum of Rs.200/- was altered to Rs.2000/- by using data entry in the system. Other two articles of charges were also of similar nature. Thus, a sum of Rs.5,85,809/- was misappropriated by the applicant. Applicant submitted her detailed reply by denying the charges levelled against her and thereafter an enquiry was initiated against her. Applicant has further stated that the Inquiry Officer submitted his enquiry report on 9.10.2015 (Annexure A-4) by holding that the charge levelled against the applicant is not proved. The applicant submitted a detailed representation dated 26.10.2015 by submitting therein that there is

no merit in the un-alleged findings that she disclosed negligently password of the computer to her APO. However, the Disciplinary Authority vide order dated 19.5.2016 (Annexure A-1) imposed the penalty of reduction of her pay by one stage from Rs.12520/- + grade pay of Rs.2400/- to Rs.12150/- + grade pay of Rs.2400/- in the pay band of Rs.5200-20200 + GP Rs.2400/- for a period of two years w.e.f. 1.6.2016 and she will not earn increment of pay during the period of reduction and it will not have effect of postponing future increments of pay and has also imposed penalty of recovery of loss to the tune of Rs.5,85,000/- by ignoring the fact that such amount has already been deposited by the co-accused and he has also been let off by minor penalty of censure.

3. Feeling dis-satisfied with the order dated 19.5.2016, the applicant preferred an appeal dated 28.6.2016 (Annexure A-5) before the Appellate Authority by mentioning therein that no charge was proved against her by the Inquiry Officer and there is negligence in disclosing pass word only. The applicant has also disclosed that the APM had also deposited a sum of Rs.five lakhs with the department. Even the appeal filed by the applicant was also rejected vide order dated 28.2.2017. Hence the present OA.

4. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement, wherein they have stated that the present OA is not maintainable as the applicant has not exhausted the remedy of filing revision petition. They have stated that the SPOs, Ludhiana (M) Division vide letter dated 10.6.2013 had intimated that a case of misappropriation has been

detected at Khanna HPO in respect of RD & SB accounts and during the course of enquiry, it was established that the applicant, the then PA Khanna HPO is primary offender in the said fraud case as she was held responsible for loss of Rs.10,71,029/- and penal interest on this amount calculated upto 30.4.2016 is Rs.2,89,981/- i.e. total amount comes to Rs.13,61,010/- in respect of six RD accounts standing at Khanna HPO. They have also stated that a sum of Rs.5,00,000/- has already been deposited by Shri Ajit Singh and the present applicant is held responsible for the loss of balance amount of Rs.8,61,010/- to the government ex.chequer and an FIR no.39 dated 4.3.2012 under Sections 406, 409, 420, 120-B IPC at Police Station city Khanna was also registered. The respondents have further averred that to recoup the loss caused to the government ex.chequer, the penalty of recovery of loss to the tune of Rs.5,85,000/- has been ordered to be made from the applicant in 117 instalments @ Rs.5,000/- per month from her pay. They have thus prayed for dismissal of the OA.

5. The applicant has filed a rejoinder by generally reiterating the averments made in the OA. She has submitted that the police has failed to put the challan till today in the court of law in FIR No.39 dated 4.3.2012 and the Hon'ble High Court has granted the bail to her on regular basis.

6. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

7. Learned counsel for the applicant has argued that on one hand the loss assessed by the applicant has been made good by deposit by APM who has been given punishment of censure only, but in the case of the applicant, punishment in reduction in pay has also been imposed. He further argued that the pleas raised by the applicant against the enquiry report and penalty order have not been touched, as such, the impugned orders are discriminatory, harsh and cannot sustain in the eyes of law.

8. On the other hand, the learned counsel for the respondents has argued what has been stated in the written statement.

9. We have gone through the record. There are large numbers of judgments on the issue by the Apex Court as well as by the several High Courts that define the scope of interference by the Courts/Tribunals in the matter of disciplinary enquiries. In most of these rulings, it was held that unless there is a substantial compromise made in the enquiries by the Inquiry Officer, grossly wrong appreciation of the evidence during the process of enquiry, the Tribunal should desist from interfering in such matters. Further, these judgments hold that intervention in such matters can take place only when the punishment awarded is excessively harsh and grossly disproportionate to the nature of misconduct. Here is a case where the charge is of financial mis-appropriation and this type of mis-appropriation of government money cannot be taken lightly. To say the least, these elements are found to be taking in this case.

10. We have considered the question whether the punishment imposed on applicant is excessive or disproportionate? We cannot overlook the fact that due to the mistake on the part of the applicant, as she had given her password to APM, government has suffered huge financial loss to the tune of Rs.13,61,010/- and the respondents had ordered a recovery of Rs.5,85,000/- from the applicant. It is undoubtedly true that mere negligence may not be an act of misconduct in some cases. But its blind application to all cases is not permissible. In the case of **Tara Chand Vyas Vs. Chairman & Disciplinary Authority and Others**, (JT 1997 (3) SC 500) the Hon'ble Court had held that the employees and officers of a bank are not merely trustees of society but owe duty to the society for effectuation of socio-economic empowerment. If they derelict in the performance of their duty it impinges upon the enforcement of the constitutional philosophy, object and the goal under the rule of law. The Supreme Court held:

" The banking business and services are vitally affected by catastrophic corruption. The disciplinary measure should, therefore, aim to eradicate the corrupt proclivity of conduct on the part of the employees/ officers in the public officers including those in banks. It would, therefore, be necessary to consider, from this perspective, the need for disciplinary actions to eradicate corruption to properly channelise the use of the public funds, the live wire for effectuation of socio-economic justice in order to achieve the constitutional goals set down in the Preamble and to see that the corrupt conduct of the officers does not degenerate the efficiency of service leading to denationalisation of the banking system..... Any conduct that damages, destroys, defeats or tends to defeat the said purposes resultantly defeats or tends to defeat the constitutional objectives which can be meted out with disciplinary action in accordance with rules lest rectitude in public service is lost and service becomes a means and source of unjust enrichment at the cost of the society."

Thus, applying the principle enunciated by the Supreme Court that lack of supervision on the part of the applicant is also to be characterized as an act of misconduct in this context inasmuch as this lack of supervision has resulted in the loss of lakhs of rupees of the Post Office and this tends to defeat and destroy the constitutional mandate leading to destruction of the Post Office system. In view of this, we feel that the punishment awarded to the applicant is neither excessive nor it is disproportionate. Even the Hon'ble Apex Court in the case of **Regional Manager, U.P.S.R.T.C. Etawah & Ors. Vs. Hoti Lal & Another** (2003(2) J.T. Page 27) where the State had suffered only a loss to the tune of Rs.16/- on account of the fact that conductor was carrying ticketless passengers and certain old and used tickets were found from his possession, the Hon'ble Court has held that " It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning. It would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trustworthiness is must and unexceptionable".

11. The Hon'ble Apex Court in the case of **S.R.Tewari versus Union of India** (2013(7) Scale Page 417) has reiterated that

The role of the court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

12. The scope of interference has been further clarified by the Hon'ble Apex Court in the case of **Union of India** versus **P.Gunasekaran** (2015 (2) S.C.C. Page 610) and going by the principles laid out in this judgment, this is a case where no justification is called for in interfering in the impugned orders passed by the respondents.

12. In view of the above discussion, we find that the present OA is found to be devoid of any merit. Accordingly, the OA is dismissed. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(A.K.BISHNOI)
MEMBER (A).

Dated:- 13.8.2019.

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