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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No. 210/00107/2015

Dated this Friday, the 26th day of July, 2019

CORAM: DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)
RAVINDER KAUR, MEMBER (JUDICIAL)

Sunil Kisan Kirve, Aged about 37 years,
 Residing at Flat No.13B, 10/2 Vishwadham, Ram

Tirupatinagar, Warje, Pune 411 058.
 & Presently employed as Office Assistant in
 Office of Sr. Superintendent of Post Offices,

Pune City West Division, Pune 411 030. . . . **Applicant**
 (By Advocate Shri P.J. Prasadrao)

VERSUS

1. The Union of India, through The Secretary, Ministry of Communication & IT, Dak Bhavan, Parliament Street, New Delhi – 110 011.
2. The Chief Postmaster General, Maharashtra Circle, Mumbai GPO Building, W.H. Marg, 2nd Floor, Fort, Mumbai 400 001.
3. The Postmaster General, Pune Region, Finance Road, Pune 411 001.
4. The Sr. Superintendent of Post Offices, Pune City West Division, Lokmanyanagar, Pune 411 030.
5. The Superintendent of Post Offices, Pune Moffusil Division, Swargate Chowk, Pune 411 042. . . . **Respondents**
 (By Advocate Shri V.B. Joshi)

Order reserved on 22.04.2019

Order delivered on 26.07.2019

ORDER

Per: Dr. Bhagwan Sahai, Member (Administrative)

The OA has been filed by Shri Sunil Kisan Kirve, working at the time of filing of the OA as Office Assistant in the office

of Senior Superintendent of Post Offices, Pune City, West Division, Pune and in this OA, he seeks quashing and setting aside of impugned order dated 05.02.2015 imposing on him a penalty of recovery of Rs.2,54,316/- from his pay and to direct the respondents not to recover this amount as he claims to have no direct involvement in the alleged loss which is sub-judice and property of Shri V.K.Nikam had been attached. He has also sought direction to the respondents not to commence the recovery of first instalment from his pay of February, 2015 till decision on the OA. After admitting this present OA on 05.03.2015, the interim relief sought by the applicant i.e. stay on recovery from the applicant was granted by this Tribunal which has continued till now. He has also sought cost of this application.

2. *Summarized facts :-*

2(a). The applicant has stated in his OA that he joined as Postal Assistant (Clerical Cadre) in the year 2000 at Rajgurunagar Sub Post Office and has been posted thereafter at various Post Offices. He is not a qualified Inspector as he has not passed the

examination prescribed for the post of Inspector. During vacancy he was temporarily assigned the duty of officiating Sub Divisional Inspector (Postal), Saswad by the respondent No.5 vide order of 26.06.2008 first then up to 04.08.2009. He was reverted as Postal Assistant on 05.08.2009.

2(b). The applicant further submits that while he was on temporary duty as above, he was ordered to inspect the Post Offices under that Sub Division but without any training to him.

2(c). The applicant inspected Korhale Budruk Branch Post Office on 28.11.2008 (Annex A-3) and submitted his report on the same day. Vadgaon Nimbalkar Post Office is also the Accounts Office looking after ledger accounts of Korhale Budruk Branch Office but the Recurring Deposit Accounts ledger had not been updated from 2004. This fact was known to the respondents.

2(d). He was deputed to Vadgaon Nimbalkar Post Office for inspection on 11.12.2008 and during that inspection he had taken objection that the Recurring Deposit Accounts had not been updated in the ledgers

(mentioned in paragraph No.22 of inspection report dated 27.01.2009 (Annex A-4). This fact was brought to the notice of the respondent No.5. Because of this reason, the discontinued Recurring Deposit Accounts could not be verified.

2(e). The applicant has also stated that he pointed out the discrepancies in his report dated 31.12.2008 (Annex A-5) at Vadgaon Nimbalkar Post Office about non-completion of Recurring Deposit Ledger Account postings and non-preparation by SPM of the list of Savings Bank Accounts which had not been received for posting of interest. Although his letter of 31.12.2008 is on record of the respondent No.5, it has been wrongly denied.

2(f). In his report dated 30.03.2009 (Annex A-6), the applicant informed the respondent No.5 that upon detecting certain errors, he has started 100% verification of the Korhale Budruk Branch Post Office as a result of which fraud was detected and he cannot be implicated as negligent for any loss caused to the Department of Posts.

2(g). The applicant claims that he was

instrumental in taking action to attach property of Shri V.K.Nikam, Gramin Dak Sewak, Branch Postmaster, Korhale Budruk Branch Post Office as he was directly involved in embezzlement of money of the Account Holders. Immediately after detection of the fraud, he lodged complaint with Deputy Registrar of Land Registration, Baramati dated 17.04.2009 (Annex A-7) and copies of which were also sent to Collector, Pune and other related officers to prevent sale of his land and house property.

2(h). The applicant has further mentioned that there were fraudulent transactions and embezzlement in accounts of the Korhale Budruk Branch Post Office which were detected during his visit and based on which he filed "FIR" No.53/2009 on 15.05.2009 (copy Annex at A-8). The fraud was commenced during the year 2000 and at a belated juncture the applicant cannot be held responsible for it so as to impose penalty of recovery from his pay and allowances.

2(i). In the charge-memo issued by the respondent No.5 to Smt. M.V.Dhumal, the Sub Postmaster Vadgaon Nimbalkar Post Office

dated 22.03.2011 (Annex A-9) confirmed that the present applicant has detected lapses in that Post Office. The charge-memo also stated that Smt. M.V.Dhumal, had not prepared the list of Savings Bank Accounts not received from the Branch Office for interest postings. These facts clearly show that there was no possibility of the applicant to link Discontinued Recurring Deposit Accounts and Savings Bank Accounts. Thereafter the respondent No.5 issued a letter to the applicant on 28.03.2011 (Annex A-10) directing him to credit 5% share of the loss caused to the Department of Posts as part of his responsibility. But this was wrong as he was not even remotely connected with the fraud.

2(j). In his representation dated 02.05.2011 (Annex A-11), he explained not to insist on the recovery of 5% share of the amount of fraud committed as he was not negligent, he was only the person who detected the fraud although temporarily posted as Sub Divisional Inspector (Postal) and the matter related to the fraud was already subjudice, pending before the Civil

and Criminal Courts against the actual offender Shri V.K.Nikam whose property had been attached for loss caused to the Department. However, the respondent No.5 told him that in case he failed to deposit the 5% share of the amount of the fraud, disciplinary action would be taken against him.

2(k). Subsequently, the respondent No.5 increased the share of the applicant's responsibility from 5% to 20% of the amount of the fraud without mentioning any reason and directed him to credit a sum of Rs.2,54,316/- vide his letter dated 30.03.2013 (Annex A-12), otherwise disciplinary action would be taken against him. The same ground was again pleaded by the applicant in his representation dated 12.04.2013 (Annex A-14) for not recovering any amount from him as he was on temporary posting and property of the offender Shri V.K.Nikam had been attached as per the Court Attachment Order dated 28.01.2011 (Annex A-13).

2(l). Then the applicant was issued charge-memo dated 23.12.2013 (Annex A-15)

for minor penalty under Rule 16 of CCS (CCA) Rules, 1965 by respondent No.4 i.e. Senior Superintendent of Posts Offices, Pune City, West Division, alleging that he had not checked the Postal Savings Bank Accounts, Recurring Deposit Accounts, and Rural Postal Life Insurance Policy Accounts thereby not complying with the inspection questionnaire prescribed by the Directorate of Posts for inspection of Post Offices.

2 (m). The applicant submitted his written statement on 22.05.2014 (Annex A-16) explaining that he had not committed any misconduct, had no direct link with the fraud committed by Shri V.K.Nikam, Branch Postmaster, Korhale Budruk Branch Post Office and he had also completed the inspection bringing out all the defects on which the Respondents failed to take proper action in time. While the fraud was commenced during the year 2000, he inspected the Branch Post Office on 28.11.2008 and he filed an FIR No.53 dated 15.05.2009 against Shri V.K.Nikam. Therefore, he cannot be a complainant as well as the target of misconduct in the same matter to recover

from him amount of the loss suffered by the respondents department.

2(n). By the impugned order dated 05.02.2015, the respondent No.4 asked the applicant to deposit Rs.2,54,316/- in 35 equal instalments of Rs.7,065/- per month as his share of the loss caused to the Department of Posts due to lapses on his part.

2(o). The applicant further claims that the respondents have already charged Shri V.K.Nikam, Branch Postmaster, Korphale Budruk in Civil and Criminal cases for the loss and have attached his property of Rs.70,00,000/- to recover out of it the alleged loss of Rs.29,13,401/- plus interest thereon totalling to Rs.36,88,668.03. When the matter of the loss is already subjudice, the respondents cannot charge the applicant for the amount of that loss, which is not attributable to him and when the embezzlement was detected by him and thereafter on behalf of the respondents, he also filed the police case. Therefore, the penalty imposed on him is ultra-vires and is required to be set aside. Hence the O.A.

has been filed.

3. Contentions of the parties :-

The applicant and his counsel contend that :-

3(a). the impugned order dated 05.02.2015 is erroneous and bad in law as the applicant had no direct nexus with the alleged loss caused to the respondents, he had detected the fraud during his visit there on 30.03.2009 and therefore, he cannot be charged for the loss. There is no direct link between the misconduct on the part of the applicant vis-a-vis the pecuniary loss sought to be recovered, no cause and effect relationship between his misconduct and pecuniary loss caused by a third party. So the penalty of recovery cannot be imposed on the applicant;

3(b). as per the Rule 11(iv) of CCS (CCA) Rules, 1965, recovery from pay of an employee of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders can be made. Although the present applicant was only on temporary posting as Sub-Divisional Inspector (Postal) and deputed

for visit to the Branch / Post Office without any training, even then he detected the fraud and lodged a Police case about it. Therefore, he cannot be declared as negligent and targeted for the fraud. The fraud had commenced from the year 2000 whereas the applicant inspected the branch post office in November, 2008, so he cannot be blamed for negligence at belated stage;

3(c). the applicant was not provided with list of discontinued Recurring Deposit Accounts and therefore, no responsibility can be fixed on him for their non-checking;

3(d). the respondents have failed to appreciate the fact that the fraud was detected by the applicant himself and recovery cannot be imposed on him when the matter is already subjudice;

3(e). the Account Holders have already been paid the amount allegedly misappropriated by Shri V.K.Nikam, Gramin Dak Sewak, Branch Postmaster, Korhale Budruk and his property has already been attached by the Court of Civil Judge, Senior Division, Baramati to satisfy the decree which may be passed in the Special Civil

Suit No.87/2010. Therefore, the present order of recovery from the applicant is erroneous and it needs to be set aside as it attracts the doctrine of unjust enrichment on the part of the Department;

3(f). the applicant was involved only in conducting the inspection and brought out the lapses, therefore, he cannot be charged for the lapses in the name of inspection;

3(g). in the inspection report, he had pointed out the lapses but the respondents failed to take timely action for which no recovery can be made from the applicant. There is basic system failure in accounting for the Savings Bank Accounts, and Recurring Deposit Accounts between the Branch Post Office and its Accounts Office with the Vadgaon Nimbalkar Post Office;

3(h). before awarding the penalty, the applicant was not heard in person to defend his case and therefore, principles of natural justice have been violated;

3(i). since the respondents initiated action to implement the penalty of recovery from the applicant, that order had reached finality and therefore, the issue of

subsequent appeal as contended by the respondents is not as per the principles of natural justice. In the written statement submitted by the applicant, he had explained that during his visit to Korhale Budruk Branch Post Office, he himself detected the fraud and intimated the modus-operandi to higher authority and, therefore, the details given in the paragraph No.2 of the reply of the respondents dated 24.04.2015 are highly extraneous and uncalled for;

3(j). it is legitimate expectation from the exemplary employer to reward the detector of fraud, as attachment of the property of Shri Nikam of double the amount of fraud has been done by taking appropriate action with the help of the Collector, Pune and also by filing the FIR and intimation of action for filing Special Recovery Suit to make good the loss out of the attached property. Although the applicant was holding the post of Postal Assistant, yet he detected the fraud while working in the officiating capacity as Sub-Divisional Inspector (Postal), Saswad Sub-Division without proper training and assistant;

3(k). since genesis of the fraud was from 14.07.2000 i.e. even before recruitment of the applicant, the fraud is attributable to system failure and the Branch Postmaster has no superior working at Korphale Budruk and therefore, the applicant cannot be blamed for the fraud detected by him;

3(l). as the Tribunal granted interim stay to the recovery on 05.03.2015, the issue of filing an appeal against the impugned order is non-est. Since the applicant had not been given adhoc promotion and pay scale, the contention of the respondents that he was liable for lapses in duty is denied. Since the respondents have already admitted that the applicant was instrumental in taking action to attach the property of Shri Nikam and also actively participated in preliminary investigation of the fraud, the credit for it goes to the applicant and unworthy blame cannot be put on him;

3(m). in fact for this detection of the fraud by the applicant, he has to be awarded and not penalised as he had taken over the charge of officiating Sub-Divisional Inspector (Postal) during the month of June,

2008 and detected the fraud by visiting the Branch Post Office on 30.03.2009 i.e. within a period of nine months. Therefore, the submission of the respondents should be rejected and the OA should be allowed.

In their reply, response to the rejoinder of the applicant and during hearing of the case on 22.04.2019, the respondents and their counsel contend that -

3(n). the misappropriation of amounts of Savings Bank Accounts, Recurring Deposit Accounts and Rural Postal Life Insurance Policy Accounts during the period from 14.07.2000 to 30.03.2009 amounting to Rs.29,13,401/- by Shri V.K.Nikam, Gramin Dak Sewak Branch Postmaster, Korhale Budruk, Branch Post Office, was detected on 30.03.2009. The total amount of loss caused to the Government is of Rs.36,88,668.03/- including normal and penal interest, out of which only Rs.54,031/- were recovered from Shri V.K.Nikam till the time of filing of reply by the respondents on 23.04.2015;

3(o). in the Savings Bank Accounts, Shri Nikam accepted the initial amounts of

deposit from the depositors, opened Savings Bank Accounts as per the rules and he accepted subsequent amounts of deposits with passbooks, made entries in the passbooks and impressed office stamp and date with his signatures, but he did not credit the amount into Government account. He also made payment of subsequent withdrawals from his pocket to the extent the amount was demanded by the depositors against the amount deposited by them, without accounting for the amounts of withdrawal in the accounts but made entries in the passbooks, so as to prevent detection of the fraud.

In some cases, he also promised the depositors to give more interest on the amounts deposited by them and also made the entries of such excess interest in the Savings Bank Passbooks in his own handwriting, without actually sending the passbooks to the accounts office for adding interest. In case of Rural Postal Life Insurance Policy Accounts, misappropriation was committed in the amounts of RPLI premium. For the deposits in RPLI Policy with the premium receipt books, he made

entries in the P.R. Books and impressed office stamp with dates with his signatures, but the amounts were not credited to the Government Account. In one policy, he also deposited the amount twice for more than 12 months at a time. Although as per the rules, the policy lapses in case of six months default and it needs to be revived. However, the said deposits were accepted by the Branch Postmaster by overlooking the rules and did not accounted for them;

3(p). the present applicant was working as officiating Sub Divisional Inspector (Postal), Saswad Sub Division, under Pune Moffisil Division, Pune from 27.06.2008 to 04.08.2009. He had carried out the Annual Inspection of the Korhale Budruk Branch Post Office (having account with Vadgaon Nimbalkar Sub Post Office) on 28.11.2008 for the year 2008. As per the standard questionnaire prescribed by the Directorate for the inspection of Branch Post Offices, the Inspecting Authority has to record his observations of the inspection with reference to Questions Nos.16(A), 16(B), 18(2) and 23 as follows:-

Question No.16(a) :- Examine the balances in four Savings Bank passbooks which had not been sent by the Branch Post Master for entry of annual interest and where heavy deposits / withdrawals have taken place with reference to Branch Post Office Savings Bank Journal. Similarly, the Inspecting Officer has to verify the balances in two passbooks in each category of Recurring Deposits or TD accounts and two discontinued RD Accounts. He has to issue notices on SD-46 to the depositors of the accounts whose passbooks could not be collected and report particulars to Account Office / Head Office for enabling it to watch their receipt in Account Office / Head Office.

Question No.16(B) :- The Inspecting Authority has to check as to whether the Branch Postmaster has collected the Savings Bank Passbooks not presented for transaction by 30th June of the year and sent to Account Office. If not, direct the Branch Postmaster to do so immediately.

Question No.18(2) :- The Inspecting Authority has also to check the entries in at least five premium receipt books with

reference to RPLI Register, Receipt Books and Branch Office Account to ensure that the amount of premium collected has correctly been accounted for by the Branch Postmaster.

In case of non-availability of the Premium Receipt Books, to the extent issue notices to the insured persons with reference to entries in RPLI register to confirm correctness of RPLI Premium credited.

Question No.23 :- The Inspecting Authority is to check whether visits of Mail Overseer to the Branch Post Office are regular, note the dates of last four visits and whether he had checked / verified accounts / other transactions as prescribed for him and whether he had noted the results of such checks in order book of the Branch Office;

3(q). however, the present applicant did not carry out the inspection as per the standard questionnaire and committed the following lapses :-

(i). he failed to verify two discontinued Recurring Deposits Accounts as prescribed in Inspection Questionnaire;

(ii). he failed to detect that the Branch Postmaster, Korhale Budruk Branch Post

Office had not collected all the Savings Bank Passbooks and had not sent them to Accounts Office for addition of annual interest;

(iii). he verified only three Rural Postal Life Insurance Premium Receipt Books against the mandatory required number of five premium receipts books;

(iv). he failed to point out to Superintendent of Post Offices that the Account Office had not prepared the list of Savings Bank Accounts not received from Branch Office for adding interest;

(v). in para 7 of the Inspection Report of Korhale Budruk Branch Post Office for the year 2008, the present applicant mentioned that the Mail Overseer had visited the Branch Post Office only once on 02.05.2008 and his explanation was sought. However, the present applicant failed to obtain compliance of his own observations and also failed to ensure subsequent visits of Mail Overseers to the Korhale Budruk Branch Post Office upto detection of fraud i.e. upto 30.03.2009.

3(r). These lapses on the part of the

present applicant have a direct link with the loss sustained by the Department. Had he attempted properly the questions No.16(A), 16(B), 18(2) and 23 of the standard inspection Questionnaire for Branch Post Offices prescribed by the Directorate, the lapses committed by the Sub Post Master, Korhale Budruk Sub Office such as not preparing the list of Savings Bank Accounts of Korhale Budruk Branch Office for which the passbooks had not been received for addition of interest and Branch Postmaster Korhale Budruk Branch Office had not collected all the Savings Bank Passbooks and sent them to Accounts Office for addition of interest could have been noticed immediately;

3(s). also had the present applicant collected the passbooks of only two discontinued Recurring Deposit Accounts and verified with relevant office record of Korhale Budruk Branch Office, the fraud committed in those Recurring Deposit Accounts by the Branch Postmaster, had been noticed and the fraud could have been detected at the time of that inspection

itself in November, 2008. But because of these lapses on the part of the applicant for not carrying out the proper inspection of the Korhale Budruk Branch Post Office, a share of responsibility has been fixed on him i.e. for 20% of the total amount of loss in the Savings Bank Accounts and Recurring Deposits Accounts and 50% of outstanding loss in RPLI accounts, including normal and penal interest during the years of his working as Sub-Divisional Inspector (Postal). The amount of share on the part of the applicant is of Rs.2,54,316/-;

3(t). thereafter, the applicant was given an opportunity to credit amount of the share of his responsibility for the loss suffered by the Government but when he did not do so. Hence the Disciplinary Proceedings under Rule 16 of CCS (CCA) Rules, 1965 had to be initiated against him. After serving the charge-sheet on him, he was allowed to inspect the documents requested by him and on receipt of his representation and verification of the documents, the punishment order for recovery was issued against him on 05.02.2015, which has been

challenged in the present OA;

3(u). the applicant has not availed of all the statutory remedies available to him in the form of filing an appeal and revision petition against the order of the disciplinary authority and instead has directly approached this Tribunal, which is against the principles of law. Therefore, the OA deserves to be rejected.

The contention of the applicant that he had no direct link with the loss and not even remotely connected with the fraud is not correct and it is just an afterthought. Because of the serious lapses on the part of the applicant in not carrying out the inspection of Korhale Budruk Branch Post Office on 28.11.2008 as detailed in paragraph no.3(y) above, these lapses on his part have direct link with the loss suffered by the Department.

If he had carried out the annual inspection of the Korhale Budruk Branch Post Office (having account office with Vadgaon Nimbalkar Post Office) and the fraud committed by Shri V.K.Nikam, Branch Post Master would have been detected in November,

2008 itself. So these lapses on the part of the applicant further facilitated continuation of the fraud till 30.03.2009;

3(v). the applicant was engaged for the said post as per his own willingness and was also paid remuneration accordingly and therefore, his duties and responsibilities during that period were the same as those of the regular Sub Divisional Inspector (Postal) and also he was not appointed temporarily or on adhoc basis. So he continued to the work on that post till the regular Inspector joined;

3(w). with reference to contention of the applicant that he was instrumental in taking action to attach the property of main offender Shri Nikam and by virtue of holding the charge of officiating Sub Divisional Inspector (Postal), Saswad Sub Division he himself carried out the preliminary investigation in the fraud case, it is submitted that he was duty bound to lodge the complaint with the Police but at the same time, he was identified as subsidiary offender on the basis of serious lapses noticed on his part while carrying out the

Annual Inspection. The applicant was held responsible not for the entire loss suffered by the Department;

3(x). for the lapses pointed out by the applicant has on the part of Sub Postmaster of Korhale Budruk Branch Post Office and Vadgaon Nimbalkar Post Office, the share of responsibility for the loss was fixed on the part of concerned Smt. M.V.Dhumal and she was asked to credit amount of the loss on 22.03.2011. But this does not mean that the present applicant was not responsible for the lapses on his part which are of different nature. The applicant has attempted to point out the lapses on the part of others and tried to shift the responsibility on others by hiding his own lapses just to divert the attention from his own lapses;

3(y). the contention of the applicant in paragraph No.4.20 of the OA that only Shri Nikam was responsible for the fraud / embezzlement amounting to Rs.36,58,668/- about which police case had been lodged, the respondents have themselves made all efforts to recover the loss suffered by the

Government by initiating action against the main offender Shri Nikam but that does not prevent the Department from initiating action to recover part of the loss from others such as the applicant who were also responsible for facilitating the fraud / embezzlement and not preventing and detecting it in time;

3(z). the recovery for the share of loss for which the applicant is responsible was imposed for his contributory negligence which led to non-detection in time and further continuation of the fraud. The detection of the fraud committed by Shri Nikam was at the end of March, 2009 i.e. it was subsequent to the inspection carried out by the present applicant in November, 2008, when he did not do the inspection properly;

3(za). the applicant has also tried to benefit from these two case laws. The decision of this Tribunal in **P.M.Mulay Vs. The Commissioner, K.V.S. & Ors. (Bombay), 2012 (2) (CAT) 173**, in which the Tribunal noted that after receipt of the inquiry report, the Disciplinary Authority referred the matter to the CVC which opined that the

inquiry should be done *de novo*. Based on other details of the case, the Tribunal was of an opinion that the concerned authority had acted contrary to the statutorily prescribed procedure of departmental proceedings and the parameters mentioned in the case of **State Bank of Patiala Vs. S.K.Sharma, (1996) 3 SCC 364** that the decision to order *de novo* inquiry was bad in law and also the penalty imposed based thereon was vitiated. Therefore, the OA was allowed. However, the facts of the present case are not identical to those in that OA and no fresh disciplinary proceeding was conducted in the present case based on the opinion / advice of the Vigilance authorities.

The other case law relied upon by the applicant is **Shobhagya Chand Rawal Vs. Ministry of Communications & Ors decided on 11.01.2019 in OA No.290/00464/2016**, by which the order passed by the respondents was set aside and they were directed to refund the amount already recovered from the applicant within a stipulated time. However, the facts of the present case do not seem to be

identical to those in that OA too.

4. Analysis and conclusions :-

We have perused the OA memo, its Annexes and rejoinder filed by the applicant, reply as well as original case record filed by the respondents and the arguments advanced before us by both sides on 22.04.2019. From the study of the case record and careful consideration of the rival contentions, our findings are as follows :-

4(a). The main contention of the applicant is that everything wrong has been done by others he is not responsible for anything wrong and he should be rewarded as he was the one who detected the fraud committed by Shri V.K. Nikam, GDSBPM, Korhale Budruk.

But he has not denied his negligence and failure to follow the standard questionnaire of the Department to carry out the full inspection of the Branch Post Office Korhale Budruk in November, 2008. In this regard his plea of not having undergone training before posting as Sub-Divisional Inspector (Postal) is also of no substance because for the inspection there is a prescribed available standard questionnaire

listing simple questions and the inspecting officer/person is simply to follow it. To carry out only the full inspection as per the prescribed questionnaire, he did not require any special training, it simply require sincere application of mind by him.

4(b). It is an admitted fact in the case that the present applicant has challenged the order of the Disciplinary Authority dated 02.05.2015 without availing of the other statutory remedies of appeal and revision petition available to him under the relevant Rules i.e. Rule 16 of the CCS (CCA) Rules, 1965. This is in contravention of stipulation under Section 20 of Administrative Tribunals Act, 1985. The explanation submitted by the applicant in this regard is devoid of substance that the respondents had commenced the recovery from him and therefore, there was no need for him to avail of those statutorily prescribed remedies of filing an appeal and revision petition against the order of the Disciplinary Authority. This is a very spacious and unjustified plea of the applicant. In fact on this ground, the OA

should have been disposed of by the Tribunal directing the applicant to first avail of the statutorily available remedy. However, the OA was admitted on the first date of appearance of the applicant's counsel and interim relief was also granted against the recovery.

4(c). The contention of the respondents in their submission that the applicant has simply attempted to shift the blame for his own lapses on others is true. The applicant has submitted no satisfactory explanation as to why he did not carry out the inspection of the Korhale Budruk Branch Post Office as per the standard inspection questionnaire prescribed by the Directorate of Posts. It is also true that the applicant did not carry out the annual inspection for the year 2008 of the Korhale Budruk Branch Post Office strictly in accordance with the standard inspection questionnaire. He conducted only a superficial, incomplete inspection and termed it as satisfactory. This was a very serious lapse and negligence on his part for which responsibility has to be fixed by the

respondents.

4(d). The contention raised by the applicant that there is no cause and effect relationship between the loss suffered by the Department and his misconduct. This is false. As per Rule 11(iii) of CCS (CCA) Rules, 1965, recovery from pay of the whole or part of the pecuniary loss caused by him to the Government by negligence or breach of orders is one of the minor penalties which may be imposed on a Government servant. (The applicant in Para 5(d) of his O.A. has wrongly mentioned this as Rule 11(iv).

It is not in dispute that the Department of Posts suffered pecuniary loss of more than Rs.29 lakh. Therefore, the reasonably worked out share of the applicant for this loss can certainly be recovered from him in the form of minor penalty which the Department has done in this case.

4(e). Another contention of the applicant that the concerned account holders have already been paid their dues and property of Shri Nikam has been attached, hence there is no need for any recovery from him is also not acceptable. Since the Department had to

pay the due amounts to the concerned account holders (interest on Savings Bank Accounts, interest on recurring deposit accounts and payment under the Rural Postal Insurance Policies), the Department has to make good the loss suffered by it in discharging obligations of those subscribers. Also from Shri Nikam so far an amount of only Rs.54,000.31 has been recovered as against the worked out loss of about Rs.37 lakhs. From the attached property how much amount will finally get recovered and when is not known yet as this issue is likely to involve prolonged litigation. Therefore, fixation of responsibility on the applicant for a part share of the loss is justified.

4(f). The next contention of the applicant that the fraud at the Branch Post Office Korhale Budruk had started in 2000 and he was posted there as Sub-Divisional Inspector (Postal) on 26.06.2008, he cannot be held responsible for the loss suffered by the Department is also of no consequence. As submitted by the respondents, they have not held the applicant responsible for committing the fraud, they have held him

responsible for not carrying out the inspection of that Branch Post Office thoroughly as per the standard inspection questionnaire in November, 2008 because of which detection of the fraud got delayed upto 30.03.2009.

4(g). Based on his inspection of the Korhale Budruk Branch Post Office on 28.11.2008, we also note that in his report on 28.01.2009 at point No.27 the applicant himself had mentioned that the inspection was satisfactory except some mistakes noticed on the part of the Branch Postmaster. This is in direct conflict with his claim that it was he who detected the fraud / embezzlement in that Branch Post Office.

4(h). Lodging of the Police case and other action taken by the applicant for attachment of the property of Shri V.K.Nikam are a result of subsequent detection of the embezzlement / fraud at the end of March, 2009. Since he was duty bound to take the above action as per the instructions of the respondents, this cannot absolve him of his lapses committed in carrying out the annual

inspection of Korhale Budruk Branch Post Office in November, 2008. Because of this as contended by the respondents, the fraud / embezzlement committed by Shri V.K.Nikam could not be detected in time and it got facilitated up to 30.03.2009. As a result, the applicant cannot claim himself to be not liable at all for disciplinary action against him because of his serious lapses and failure in timely detection of the fraud / embezzlement at the Korhale Budruk Branch Post Office at the time of his first annual inspection in November, 2008.

4(i). The apportionment of the loss suffered by the respondent department on the part of the applicant after conducting the disciplinary proceedings is a judgmental assessment made by the Disciplinary Authority. We cannot question his judgment about the share of the applicant in the loss and about quantum of punishment. In our view, the punishment imposed as recovery on the applicant is not grossly disproportionate to share of his responsibility. During the disciplinary proceedings, the respondents have provided

reasonable opportunity to the applicant to defend himself, also the inspection of the relevant documents was allowed to him and after considering his written submissions only and based on certain norms to work out share of the applicant in the loss caused to the Department, the order of recovery was issued by the Disciplinary Authority. We do not find any infirmity in it.

As is clear from the discussion above, we find that the present O.A. is totally devoid of merit. It deserves dismissal.

5. Decision :

The O.A. is dismissed. No costs.

(*Ravinder Kaur*)
Member (Judicial)

(*Dr. Bhagwan Sahai*)
Member (Administrative)

kmg/H.*

29/7/19

