IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.895 OF 2011

Bhimrao s/o Iranna Kongalwar,
Age 49 years, Occ. Postal Assistant
Parli Vaijnath, R/o Anil Sadan
Raut's Wada, Modi Nagar,
At Post Ambajogai, District Beed ... PETITIONER

VERSUS

1) Union of India,
through the Secretary to the
Government of India,
Ministry of Communication,
(Department of Posts),
New Delhi - 110 001

2) The Chief Postmaster General,
Maharashtra Circle,
G.P.O., Mumbai - 400 001

3) The Director of Postal Services,
Aurangabad Region,
Aurangabad

4) The Superintendent of Post Offices,
Beed Division,
Beed - 431 122 ... RESPONDENTS

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Shri Y.D. Deshmukh, Advocate holding for
Shri H.A. Joshi, Advocate for petitioner
Mrs. Dipali Jape (Ansingkar), Advocate for respondent No.1.

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CORAM: ANOOP V. MOHTA AND
SUNIL K. KOTWAL, JJ.

Date of reserving judgment : 6th July, 2017

Date of pronouncing judgment: 19th July 2017

JUDGMENT (PER SUNIL K. KOTWAL, J.) :

1. By filing this Writ Petition, the order passed by the Central Administrative Tribunal (CAT) in Appeal No.320/2007, dated 26/2/2010, confirming the recovery of Rs.1,08,000/- from the petitioner, is challenged. Respondent No.1 is Union of India, Respondent No.2 is Chief Postmaster General, Maharashtra Circle and respondent No.3 is Director of Postal Services, Aurangabad Region. Respondent No.4 is Superintendent of Post Offices, Beed Division.

2. Facts leading to institution of this petition are that, the petitioner used to work as Treasurer at Sub Post Office, Kaij, District Beed. On 13/4/2004, at the time of closing hours of the office, petitioner had kept cash of Rs.2,74,050/- in the office safe at Sub Post Office, Kaij. On 15/4/2004, when the Post Office was opened, it was found that, some unknown miscreant committed theft of the above said cash of Rs.2,74,050/- from the safe. Therefore, report was lodged to Police Station and Crime No.65/2004 was registered. The suspected miscreants were arrested. However, on 22/7/2004, the respondent No.4 issued memo to the petitioner, proposing to take action against him under Rule 16 of the Central Civil Services Rules, 1965 (hereinafter referred to as "CCS Rules"). In response to that

memo, petitioner submitted representation and explained the circumstances in which the cash came to be retained in Post Office that after closing of account of Post Office at closing forenoon hours, it was not possible to receive cash from the counter individually and to remit the cash to the Bank before 13:00 Hrs. on that day. However, the explanation submitted by petitioner was not accepted and on 26/8/2004, the respondent No.4 ordered that amount of Rs.1,08,000/- should be recovered from the pay of petitioner into 60 equal installments of Rs.1800/- per month with immediate effect. That order was challenged by the petitioner by filing Appeal, which was dismissed on 14/12/2004 by respondent No.3. The revision petition filed by the petitioner came to be rejected on 11.10.2005 by respondent No.2. Therefore, petitioner preferred Appeal before the CAT, Bench Mumbai, which was dismissed on 26/2/2010. That order is challenged in this Writ Petition.

3. The respondents opposed the petition on the ground that, as per the rules, the authorised minimum balance that is to be kept at Post Office concerned was Rs.20,000/- only. The SPOs, Beed Division, Beed, by his order No.GE-10/Cash/ Balance/2003, dated 31/10/2003 had asked all the SPMs not to retain the cash balance in respect of any liability. The petitioner being Treasurer, was bound to follow the directions and ensure

that only the minimum balance of Rs.20,000/- ought to have been kept in the Post Office. As the petitioner had acted in an irresponsible way, thereby the Postal Department has sustained loss of Rs.2,74,050/-, the disciplinary action had rightly been taken place.

4. We have to examine the correctness of the order passed by learned Member of the CAT through very narrow scope of the enquiry. In view of the law laid down by the Apex Court in **Principal Secretary of Government of Andhra Pradesh and another Vs. M. Adinarayan** reported in **(AIR 2004 SC 579)**, the Administrative Tribunal cannot sit as Court of appeal over decision based on the finding of disciplinary proceedings. Judicial review cannot extend to examination of correctness of the charges, as it is not an appeal but only a review of the matter in which decision was made. In **Sayyed Rahmuddin Vs. Director General, CSIR and others,** reported in **(2001(9) SCC 575)**, the Apex held that the conclusion or the findings of fact arising in any disciplinary enquiry, can be interfered with only when there are no material for the said conclusion or that the conclusion cannot be that of a reasonable man. In **Damopanha Sagar, Rural Regional Bank and another Vs. Mannalal Jain** reported in **(AIR 2005 SCW 95)**, the Hon'ble Supreme Court held that scope of judicial review is limited and Court could not

interfere with administrative decision unless it was illogical or it was shocking to the conscience of the Court.

5. Learned Advocate for the petitioner raised legal objection that, without holding regular departmental enquiry under CCS Rules, the respondent imposed the minor penalty of recovery of Rs.1,08,000/-. He has drawn our attention to Rule 16 of CCS Rules which reads as under :

> "16. **Procedure for imposing minor penalties:-**
>
> (1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government Servant any of the penalties specified in clauses (i) to Iiv) of Rule 11 shall be made except after --
>
> (a) informing the Government Servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him unreasonable opportunity of making such representation as he may wish to make against the proposal;
>
> (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
>
> (c) taking the representation, if any, submitted by the Government Servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
>
> (d) recording a finding on each imputation of misconduct or misbehaviour; and
>
> (e) consulting the Commission where such consultation is necessary.
>
> (1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the

> Government Servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government Servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government Servant any such penalty.
>
> (2) . . . .
> . . . ."

6. A bare glance at Rule 16 makes it clear that, discretion lies with disciplinary authority either to hold regular departmental enquiry by recording statements of witnesses etc. or to impose minor penalty of recovery of loss sustained by the Government after giving reasonable opportunity of making representation to the Government servant, after service of written proposal to take action against him together with imputation of misconduct or misbehaviour on which it is proposed to be taken. Thus, we do not find any substance in the preliminary objection raised by learned Advocate for the petitioner.

7. The next submission of learned Advocate for the petitioner is that, on 13/4/2004, the petitioner kept the cash of Rs.2,74,050/- in the safe of the office even after office hours because on 15/4/2004, that amount was necessary for making payment to the customers in the early morning hours i.e. before

opening of the Bank. He submitted that, though Department had issued directions to all Sub-Postmasters to retain only minimum authorised cash, even then the Sub-Postmaster can retain cash in the office than permitted limit if such cash is required to fulfill the liabilities of the Department.

8. In the case at hand, undisputedly the petitioner was Treasurer at Kaij Sub Post Office, where the incident of theft took place during the night of 13/4/2004 or 14/4/2004, when the cash was kept in the safe of the office. In that incident, cash amount of Rs.2,74,050/- was stolen by the miscreants. The matter was reported to the Police Station and during investigation, some suspects were arrested. Respondent No.4 served memo dated 26/8/2004 to the petitioner and sought his explanation. The explanation submitted by petitioner was not accepted and order was passed to recover amount of Rs.1,08,000/- from the pay of the petitioner in 60 installments. Learned Advocate for respondent No.1 has drawn our attention to the Memo No.GB-10/AB/Kaij/2001, dated 9/2/2002, which reflects that the authorised balance of Kaij Sub Post Office was fixed as follows :-

Cash Minimum	:	Rs.20,000/-
Cash Maximum	:	Rs.30,000/-
Postage Stamps	:	Rs.40,000/-
Revenue Stamps	:	Rs.20,000/-

9. The SPOs, Beed, vide letter No.CE/10/Cash Balances/ 03, dated 31/10/2003, directed all Sub-Postmasters to retain only minimum authorised cash in balance irrespective of liabilities. Learned Advocate for the petitioner wrongly interpreted the words "irrespective of liabilities" and according to him, in addition to minimum cash of Rs.20,000/-, Sub-Postmaster is also authorised to retain additional cash which is required for payment of other liabilities of the Department. However, such interpretation is absolutely wrong. "Irrespective of liabilities" means whatever liabilities of the Department may be, the Sub-Postmaster cannot retain cash in the office more than Rs.20,000/-.

10. Thus, obviously, the petitioner was duty bound to deposit the additional cash to Bank after retaining only permitted amount of Rs.20,000/- in the safe. Had the petitioner obeyed the directions of the superiors, the loss of Rs.2,74,050/- to the Department due to theft would have been avoided. Thus, obviously, due to the negligence on the part of petitioner in performing his duties as Treasurer, the Postal Department sustained total loss of Rs.2,74,050/-.

11. The next objection of learned Advocate for the petitioner is that, the penalty imposed by the Department is disproportionate. Our attention was drawn towards Rules 106

and 107 of Posts and Telegraphs Manual Vol. III, which read as under :

> "106. In the case of proceedings relating to recovery of pecuniary losses caused to the Government by negligence, or breach of orders of a Government servant, the penalty of recovery can be imposed only when it is established that the Government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that negligence or breach caused the loss.
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> 107. In a case of loss caused to the Government, the competent disciplinary authority should correctly assess in a realistic manner the contributory negligence on the part of an officer and while determining any omission or lapses on the part of an officer, the bearing of such lapses on the loss considered and the extenuating circumstances in which the duties were performed by the officer shall be given due weight."

12. In the case at hand, it is established that, on account of negligence on the part of petitioner and Sub-Postmaster, the Department sustained loss of Rs.2,74,050/- and, therefore, in view of above referred two Rules, the recovery of only Rs.1,08,000/- from the petitioner is justified considering the total loss sustained by the Department.

13. Coming to the judgment and order passed by the learned Member of Central Administrative Tribunal, we are fully satisfied that no ground is made out by petitioner to interfere that order. The administrative decision taken by respondents is not illogical or shocking to the conscious of the Court. It follows

that, this petition being devoid of merits, deserves to be rejected. Accordingly, we pass the following order :

ORDER

Writ Petition is rejected. Rule is discharged. No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(ANOOP V. MOHTA)
JUDGE

fmp/