

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P. No. 21668 of 2018

ORDER:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

This writ petition is filed challenging the order dated 22.11.2017 in O.A.No. 1091 of 2013 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, whereby the Tribunal held that penalty of recovery of loss cannot be imposed on a Government servant for his failure or negligence in adhering to procedures/instructions, which might have resulted in the committal of fraud by a third party.

The learned counsel for the petitioners submits that it is specifically stated in the Charge that the respondent has contributed to the fraud committed by Sri K.Ramakotaiah, Ex-SPSM, for the amounts noted against each account, and thereby, failed to maintain devotion to duty as required by him under Rule-3(1)(ii) of CCS (Conduct) Rules, 1964.

Admittedly, there is no charge against the respondent that due to his misconduct, the petitioner-Department has caused pecuniary loss. To this effect, the learned Tribunal has framed an issue whether such negligence which allegedly led to committal of fraud by the main offender can be a ground for imposition of the penalty of recovery of loss from

the respondent. The learned Tribunal has referred to the order dated 22.11.2004 in O.A.No. 344 of 2003 and batch, wherein it is observed that the applicants therein had approached the Jabalpur Bench of the Central Administrative Tribunal challenging the orders of the disciplinary authority and the appellate authority imposing the penalty of recovery on the ground that they were negligent in not detecting the frauds committed by the staff of the Shabda Pratap Ashram, Gwalior Sub-Office. The charges leveled against the applicants therein pertain to violation of Postal Savings Bank Volume-I and Rule 3(1)ii) and (iii) of the CCS (Conduct) Rules, 1964. After considering the question as to whether violation of non-statutory rule by an employee can invite a penalty of recovery under Rule 11 of the CCS (CCA) Rules, 1965, the Tribunal held as follows:

“10. In somewhat similar cases of failing to detect the fraud by the employee of a Bank, the High Court of Gujarat has observed that this cannot be considered to be a negligence punishment of the recovery of the amount. In the case of J.M.Trivedi vs. Reserve Bank of India reported in 2004(2) GLH 514 referring to the Reserve Bank of India's circular and the intention of the applicant in not perpetuating the fraud, the High Court has observed as under:-

“When the intention of the appellant was considered by the Board and was not doubted by the Board, then the question of negligence does not arise. No specific period has been specified for reporting to the controlling authority in any circular. Circular dated August 24, 1981 is not applicable to the case of the appellant. It was relating to

some fraud/suspected fraud which is required to be reported to the Reserve Bank of India. Therefore, non-reporting by the appellant has been considered as negligence on the part of the appellant. If there is any procedural irregularity, same cannot be termed as 'negligence' if such negligence is not having any connection with intention. In this case, considering his contention, the Board gave benefit of doubt. Therefore, negligence is not connected with intention".

11. We find that in the case of S.K.Chaudhury vs. Union of India and Ors. in O.A.No. 504 of 1996 decided on 26.03.2001, the Ahmedabad Bench of CAT, while dealing with similar case of fraud having been perpetuated by somebody else and the applicant therein being held responsible for negligence in not detecting the same has observed as under:-

"The reasoning of the disciplinary authority proceeds on the ground that if the applicant had carried out these duties, no fraud would have been committed but this is a mere surmise, as even after carrying out these duties the Sub-Post Master being in possession of the cash was in a position to misappropriate the amount. Further more, such negligence even if there is one, cannot be a cause for punishing the applicant with the recovery of loss sustained by the department. The applicant obviously was not directly responsible for the misappropriation of this 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 merely because the department found that it was not possible to recover the amount from the main culprit some other scapegoat cannot be found out and cannot be levied with the punishment of recovery of the loss".

12. Again in the case of C.N.Harihar Nandan v. Presidency Post Master, Madras SPO, reported in a similar situation, observed that the employee was sought to be made responsible for the pecuniary loss caused to the Govt., on the ground that he was negligent in performing his duty. He was also tried to be made technically responsible due to the non-compliance of the

instructions by not getting every sixth transaction entry properly verified. Quashing the recovery order, the Madras Bench has observed that the applicant was not directly responsible for causing any pecuniary loss to the Govt.

13. Again in the case of J.M.Makwana v. Union of India & Others, in O.A.No. 750/98 decided on 04.09.2001 by the Ahmedabad Bench of this Tribunal, same question of holding somebody else liable for the fraud perpetrated by somebody else was involved. Quashing and setting aside the order of the recovery passed by the Disciplinary Authority therein, the Tribunal has observed as under:-

“We have no hesitation in concluding that the whole order of the disciplinary authority as well as of the appellate authority is based on misconception of the term negligence and in utter disregard to the provisions of Rule 11(3) of the CCS (CCA) Rules. It appears that the disciplinary authority and the appellate authority believe that whenever some fraud has taken place in the department and there is loss of revenue, somebody should be held guilty for the loss caused to the department. It is not kept in mind by the disciplinary authority as well as the appellate authority that the rule providing for imposing penalty i.e. Rule 11 (3) of CCS (CCA) Rules clearly lays down that the recovery can be imposed from the pay of the Govt. Servant if the pecuniary loss is caused by him to the Govt. by the negligence or the breach of the orders. We fail to understand how the penalty of recovery of Rs.9000/- could have been imposed by the disciplinary authority on the applicant and confirmed by the appellate authority, when the charges leveled against the applicant is not that, he by his act of negligence caused any pecuniary loss to the Govt. The charge levelled against the applicant was that by his negligence in not posting the entries of passbooks in the error book, the fraud was not detected earlier.”

The Tribunal had further gone to observe that even if for a moment, we believe that applicant was negligent in not posting the entries of the passbooks in the error book, then also this negligence was not such that it would be a cause for punishing the

applicant with recovery of loss sustained by the department as well as withholding of one increment. The applicant obviously is not directly responsible for the misappropriation of this amount, and therefore, the recovery if any was to be made for the loss of the amount ought to have been from the person directly responsible for the misappropriation.

14. We are in complete agreement with the ratio laid down by the above judgments. The order passed by the Disciplinary Authority and upheld by the Appellate Authority imposing punishment of recovery of the applicants is not in accordance with the provisions of Rule 11(3) of CCS (CCA) and therefore cannot be sustained. The order can easily be said to be illegal and as such, deserves to be quashed and set aside in all the cases.”

In addition to the above, the aforesaid ratio has also been followed by the Tribunal in the order dated 22.03.2017 passed in O.A.No. 1145 of 2015.

In view of the settled position of law, the finding of the Tribunal that a penalty of recovery of loss cannot be imposed on a Government servant for his failure or negligence in adhering to procedures/instructions, which might have resulted in the committal of fraud by a third party, is perfectly justified and the petitioners are not justified in imposing penalty of recovery on the respondent. We note, insofar as the other punishment is concerned, the Tribunal has not interfered with the same.

In the light of the settled legal position and the facts recorded above, we find no ground to interfere with the impugned order passed by the Tribunal.

The writ petition is devoid of merit and the same is accordingly dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

27.06.2018

ABHINAND KUMAR SHAVILI, J

bcj

