IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4293 of 2019

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1. The Union Of India and Ors through the D.G. Cum Secretary, Ministry of Communication and I.T., Department of Post, Dak Bhawan, New Delhi-110001
2. The Sr. Dy. Director General (PAF) O/o The D.G. Department of Posts (PA-Wing), Dak Bhawan, New Delhi.
3. The Chief Postmaster General, Bihar Circle, Patna.
4. The Director Accounts (Postal) Patna GPO Campus, Patna.

... ... Petitioner/s

Versus

Ram Kishor Singh, S/o Late Moti Lal Singh, resident of Mohalla- Aashochak, P.S.- Ram Krishna Nagar, District- Patna- 800027.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Verma, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-03-2019

Defects ignored.

Heard learned counsel for the petitioners and perused the impugned order of the Central Administrative Tribunal dated 12th of October, 2018.

The challenge raised to the order is on the ground that the respondent-petitioner was found guilty of negligence, as a result whereof, a pecuniary loss was caused to the petitioners' department and, hence, the punishment of recovery is justified.

The Tribunal has allowed the application of the respondent-petitioner holding that there is no basis for making the recovery inasmuch as neither did the charge indicate the loss which is said to have occurred, nor any charge was framed in relation thereto calling upon the respondent-petitioner to explain the loss.

Learned counsel for the petitioners contends that the charge as framed against the respondent-petitioner clearly indicates the outcome of the negligence of the respondent-petitioner and had the petitioner been diligent to the duties, the pilferage of the amount as referred to in the charges could have been prevented. It is, therefore, submitted that the conduct of the respondent-petitioner did result in pecuniary loss to the department which was reflected in the charge-sheet and, consequently, the conclusion drawn by the learned Tribunal is erroneous. Learned counsel has invited the attention of the Court to the relevant Rules applicable to urge that such recovery was permissible under the relevant provisions and, consequently, the exercise of power in imposing such a punishment of recovery does not suffer from any infirmity.

Having heard the learned counsel, it would be appropriate to reproduce the charge against the petitioners. The same is extracted hereinunder:

> "That the said Shri R.K. Singh, while working as AO ICO (SB) O/o the PMG Agra Region Agra during the period from 08.08.2011 to 01.11.2013 failed to carry out the ICO (SB) annual inspection of SB/SBCO branches of Lalitpur HO for the year 2012. Annual inspection of Lalitpur HO for the year 2012 was allotted to him and his tour programme was approved by the PMG Agra for the period 27.11.2012 to 30.11.2012 vide order dated 17.09.2012. This approval was also seen by him by putting his signature on 18.09.2012, but he deliberately did not carry out the inspection of Lalitpur HO. There were several irregularities running in SBCO Lalitpur HO i.e. non-maintenance of ledger Agreement sheet, 5% voucher checking by Supervisor, checking of withdrawals more than Rs. 5000.00 by PA, non-maintenance of SB-63 register properly, missing of warrant. He also did not take note that serious irregularities have been noticed by CBS team during the course of visit of Lalitpur HO. Besides, data entry module was running in each system of Lalitpur HO, while data entry module is absolutely restricted to be loaded only on one node available with Postmaster which led a huge fraud amounting to Rs. 3,07,74,350.00 has been occurred in SB accounts at Lalitpur HO by making back dated fraudulent data entry through data entry module in Sanchay Post. Had, said Shri R.K. Singh carried out the annual inspection for the year 2012 timely and submitted the inspection report, the huge fraud involving amount to the tune of Rs. 3,07,74,350/- occurred at Lalitpur HO would have come to light and detected earlier.
>
> Thus by aforesaid acts, said Shri R.K. Singh is

> alleged to have failed to follow the provision of Rule 136(a) of Postal Manual of SB Control, Pairing and Internal Check Organisation with regard to carry out inspection of Lalitpur HO and instruction contained in directorate's letter No. 113-11/2003-SB dated 06.09.2012 regarding access of data entry module and thereby, he failed to maintain his devotion to duty and acted in a manner which is unbecoming of a Govt. servant as required under the provision of Rule 3(1)(ii) and 3(1)(iii) CCS (Conduct) Rule, 1964."

A perusal of the aforesaid charge would indicate that the respondent-petitioner was stated to have not conducted any inspection of the Lalitpur Head Office. This, according to the charge, led to a huge fraud amounting to Rs. 3,07,74,350/- (Rupees Three Crore, Seven Lac, Seventyfour Thousand, Three Hundred and Fifty) being pilferaged from the Savings Bank Account of Lalitpur Head Office. The charge-sheet alleges that had the respondent-petitioner carried out the annual inspection timely and submitted his inspection report, this huge fraud could have been avoided and detected earlier. It is for this omission on his part that he was called upon to answer the charge of not having maintained his devotion to duty.

The charge was replied to by the respondent-petitioner, whereafter he was found to be negligent in his duty vide a order dated 7th of May, 2017.

While imposing the punishment, the disciplinary authority awarded the punishment of recovery of Rs. 1,53,872/- (Rupees One Lac, Fifty three Thousand, Eight Hundred and Seventy two) from the pay of the respondent-petitioner. The entire order of punishment nowhere discloses the basis of and the quantification of the amount which was sought to be recovered. This also did not specifically form part of the charge. Yet the disciplinary authority has passed a punishment order quantifying the amount for which we have not been able to find any basis either in the charge-sheet or in the impugned order.

An appeal was filed by the respondent-petitioner which has been dismissed by the Central Government on 1st of March, 2018 which also does not deal with this issue.

We are, therefore, unable to find any reason for the sustenance of the order of imposing penalty which can be recovered as per the petitioners themselves in terms of the relevant procedure as prescribed in Clauses 106 to 108 relating to punishment of recovery. The same is extracted hereinunder:

> "106. In the case of proceedings relating to recovery of pecuniary losses caused to the Government by negligence, or breach of orders by 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 such negligence or breach caused the loss.

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.

108. The maximum amount which may be recovered from a delinquent officer on account of the loss caused to the Department through his negligence should be 1/3rd of his pay spread over a period of 3 years. For this purpose, only the basic pay should be taken into account. In addition to the penalty of recovery, technically there is no bar to impose any other statutory penalty if the circumstances of the case justify it. The punishing authority should, however, bear in mind that when more than one penalty is imposed, one of which is recovery of pay of the whole or a part of the loss caused to Government, the net cumulative effect on the Government servant should not be of such severity so as to make impossible for him to bear the strain."

There is, therefore, no assessment at all or any calculation either indicated in the charge-sheet or even in the impugned order as to how the petitioners arrived at the conclusion of the said amount being a cause of loss to the petitioners due to the conduct of the respondent. Thus, the said imposition is not in conformity with the rules of the petitioners themselves.

For all the aforesaid reasons, we see no reason to interfere with the impugned order of the Tribunal which is hereby affirmed and the writ petition is dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Uma/-

AFR/NAFR	NAFR
CAV DATE	N/A
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