

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.15808 of 2017

Reserved on : January 14, 2019

Date of decision : March 07, 2019

Amrita

...Petitioner

Versus

Union of India and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. P.M. Kansal, Advocate for the petitioner.

Mr. Alok Kumar Jain, Sr. Panel Counsel for UOI.

HARINDER SINGH SIDHU, J.

This petition has been filed impugning the order dated 11.10.2013 of the Central Administrative Tribunal, Chandigarh Bench in O.A. No.296-PB-2012, whereby, the Original Application filed by petitioner has been dismissed. Also challenged is the order dated 22.11.2016 whereby her Review Application has been dismissed.

In the Original Application, the petitioner had challenged the order dated 16.4.2010 whereby a penalty of recovery of Rs.3,41,000/- was imposed against her.

The petitioner while working as Postal Assistant SBSO Jalandhar City was served with a charge-sheet under Rule 16 of the Central Civil Services (CCA Rules) 1965 charging her that she had failed to get verified the heavy withdrawals of PADINA Single handed sub office through area SDI, failed to get verified balance written in SB-7 with balance available in SBSO record, did not

compare the signature of depositor on withdrawal form with SB-3 held in SBSO resulting in Shri Chander Parkash Khurana, the then SPM Padhiana SO making fraudulent withdrawals amounting to Rs.13,66,790/-. The petitioner submitted her reply. Respondent No.3 – the Senior Superintendent of Post Offices, Jalandhar Division Jalandhar passed the order for recovery. She along with a number of other co-employees against whom similar orders had been passed challenged the said orders by filing separate Original Applications which have been dismissed by the impugned order.

The case of the petitioner before the Tribunal was that she was not directly responsible for the misappropriation of the alleged amount/ fraud, which was committed by late Shri Chander Parkash Khurana.

The respondents on the other hand contended that the misappropriation undoubtedly was made by Shri Chander Parkash Khurana. However, during enquiry the petitioner was identified as subsidiary offender as she had failed to carry out her duties which facilitated the fraudulent withdrawals. If proper checks and balances had been carried out, the fraud would not have taken place or at least could have been detected easily. As per D.G. P&T Order No.12 Below Rule 11 of CCS CCA Rules, 1965, if a Government servant is responsible for a particular act or breach of order or Rules and such negligence or breach causes loss to the Government, penalty of recovery can be imposed on such Government servant.

The learned Tribunal dismissed the Original Application relying on a decision of this Court in **CWP No.380 of 2012 Union of India and others vs.**

Central Administrative Tribunal and another decided on **30.10.2012** wherein this Court set aside the orders of the Central Administrative Tribunal in that case holding that no recovery could be made where the delinquent employee had not misappropriated the amount but was only negligent in performing his/her duties.

Learned counsel for the petitioner has contended that the judgment in CWP No.380 of 2012 was followed by this Court in another set of cases **CWP No.19235 of 2009 Union of India and others vs. Ms.Anu Bala and another** decided on **16.3.2013** where similar orders of the Tribunal setting aside the orders of the disciplinary authority directing recovery were quashed. The judgment in CWP No. 19325 of 2009 and connected cases was challenged in Civil Appeal No.29-33 of 2015 arising out of **SLP(C) Nos.7437-7441 of 2014 Anu Bala etc. vs. Union of India etc.** Hon'ble Supreme Court vide judgment and order dated 5.1.2015 set aside the orders of the High Court. Learned counsel argued that as the impugned order has been passed relying on the decision of this Court in CWP No.380 of 2012 which was followed in CWP No.19235 of 2009, which has been set aside by Hon'ble Supreme Court the impugned order cannot sustain.

Hon'ble Supreme Court while allowing the appeal had observed as under:

“Leave granted.

While rendering its determination in favour of the appellants before this Court, the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as ‘the Tribunal’) disposed of the claims raised by the appellants inter alia concluded

as under:

"10. From the pleadings of the parties as also the arguments advanced by counsel on both sides, it is manifestly clear that the so called misappropriation of amounts/fraud was committed by late Sh.Chander Parkash Khurana Sub Post Master, who is no more now and the pecuniary loss caused to the department was not on account of any act of omission or commission of the applicant, nor the applicant was, in any way a co-conspirator or associated with it. In none of these cases, the applicants have been charged with the allegation that they had themselves misappropriated the amount or their integrity was doubtful."

A perusal of the aforesaid finding reveals that not only the appellants before this Court, but all other applicants whose claims were simultaneously considered by the Tribunal, it was concluded that none of them had misappropriated the amount under reference, and none of them were co-conspirators in the misappropriation. In fact, the Tribunal arrived at the conclusion that it was manifestly clear from the record of this case that the appellants before this Court were not, in any way, involved in the misappropriation of the amount/fraud which was committed by late Sh.Chander Parkash Khurana, the then Sub Post master.

Our attention has been invited to the charge sheet which was

issued by the postal authorities to the appellants, a perusal thereof also leads to the clear inference, that no allegation of negligence was levelled against any of the appellants. It is in the above circumstances, that the appellants contest the determination rendered by the High Court, upholding the recovery from the appellants, on account of the negligence of the appellants.

We are satisfied, that as no negligence at the hands of the appellants was either alleged in the charge sheet or substantiated, it was not open for the respondents to seek any recovery from the appellants on the said basis. We, therefore, hereby set aside the impugned order passed by the High Court, directing recovery from the appellants on account of contributory negligence. Recovery, if any, already made shall be refunded to the appellants within four weeks of furnishing of a certified copy of this order. The appeals are allowed in the manner indicated above.”

The statement of imputation of charges in the case of the present petitioner Amrita are indential with that of Ms. Anu Bala in whose case the SLP was allowed.

The statement of imputation of charges in the case of the present petitioner are extracted below:

“Smt. Amrita while working as Postal Assistant SBSO Jalandhar City HO now PA Industrial Town SO from the year 2001 to 12th May, 2007 had failed to get verified the heavy withdrawals of

Padhiana Single Handed SO, through area S.D.I. She further failed to compare balance written in SB-7 with the balance available in SBSO record and also did not compare the signature of depositor on withdrawal form with the SB – 3 held in SBSO. Resulting Sh. Chander Parkash Khurana the then SPM Padhiana SO make fraudulent withdrawals from SB Accounts on the below noted dates. Thus Smt. Amrita has failed to discharge her duties properly and thus she is alleged to have violated the provisions of Rule 38 & 85 of Post Office Saving Bank Manual Volume-I.

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The said Smt. Amrita PA SBSO JL City HO now PA Ind. Town SO is thus failed to maintain devotion to duty and has acted in a manner of unbecoming of Govt. servant thereby violating provision of Rule 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964”

The statement of imputation of charges in the cases of Anu Bala are as under:

“Smt. Anu Bala while working as the then PA SBSO Jalandhar City HO now PA Jalandhar Cantt HO on 28.6.2006 and 29.7.2006 has failed to get verified the balance written in SB-7 with the balance available in SBSO record and also did not compare the signature of depositor on withdrawal form with the SB-3 held in the SBSO record. She further failed to compare the account numbers with the lot dt.26-6-2006 of Padhiana SO with the SB-7 (withdrawal form) resulting into misappropriation of money committed by the then SPM

Padhiana Sh.Chander Parkash Khurana from TD Accounts on the below noted dates. Thus Smt.Anu Bala has failed to discharge her duties properly and thereby she is alleged to have violated the provisions of Rule 44 & 48 of Post Office Saving Bank Manual Volume-I.

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The said Smt.Anu Bala the then PA SBSO JL City HO now PA Jalandhar Cantt. HO is thus failed to maintain devotion to duty and has acted in a manner of unbecoming of Govt. servant and failed to maintain absolute integrity and devotion to duty thereby violating the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.”

The charges in both the cases being identical, the same result has to follow.

Accordingly this petition is allowed. The order of the Tribunal is set aside. The penalty order dated 16.4.2010 is quashed. The amount, if any recovered, be refunded to the petitioner within two months.

(RAJIV SHARMA)

JUDGE

(HARINDER SINGH SIDHU)

JUDGE

March 07, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No