(2025) 02 CAT CK 0806

In the Central Administrative Tribunal, Allahabad Bench, Allahabad

Case No : Original Application No. 395 Of 2018

Gopal Prasad Goyal, Now Dead Represented Through Lrs. & Ors.	APPELLANT
Vs	
Union Of India Through Secretary, Ministry Of Communication And Information Technology, Dak Bhawan, Sansad Marg, New Delhi & Ors.	RESPONDENT

Date of Decision : 24-02-2025

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Central Civil Services (Classification, Control & Appeal) Rules, 1965 — Rule 16, 29(1)(VI)
Central Civil Services (Conduct) Rules, 1964 — Rule 3, 3(1)(i), 3(1)(ii), 3(1)(iii), 11

Citation : (2025) 02 CAT CK 0806

Hon'ble Judges : Om Prakash VII, Member (J);Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : S.K. Kushwaha, Raj Pal Singh

Final Decision : Allowed

Judgement

Mohan Pyare, Member (A)

1. Present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

"i) The Hon'ble Tribunal may graciously be pleased to quash and set-aside the impugned chargesheet dated 23.06.2015, impugned punishment order dated 05.05.2016, impugned show cause notice dated 29.3.2017 and impugned appellate order dated 08.09.2017 with further direction to refund the recovered amount to the applicant which has already been recovered from the pay of the applicant with 18% compound interest.

ii) The Hon'ble Tribunal may further graciously be pleased to direct the respondent no.2 to take necessary action towards the higher authorities who are directly involved in the fraud case, but applicant has been made scape goat being the lower officials.

iii) To issue any order, direction or further orders which this Hon'ble Court may deem fit and proper in the present facts and circumstances of this case.

iv) Award costs in favour of applicant."

2. The facts of this case as narrated in the O.A. are that the applicant was initially appointed as U.D.C. (in S.B.C.O.) under the respondents. While working as Postal Assistant, S.B.C.O. at Agra, H.O., the applicant was deputed as member of a committee for authentication of Data for C.B.S., at Lalitpur H.O. The team was formed by the order of the Post Master General, Agra Region, Agra consisting of the applicant, Shri V.S. Yadav, P.A. S.B.C.O. Agra Fort H.O. (Incharge of the team), Shri S.C. Shakyawar, P.A. (S.B.C.O.) Orai H.O. and Shri R.B. Soni, P.A. P.B.C.O., Jhansi H.O. vide letter dated 30.05.2012. The team had submitted a report on 18.06.2012 observing that the Data Entry Module was found running on all counters which was stopped on objection of the authorised team and it was restricted on counters and other systems but it was let to remain only under the supervision of Post Master H.O. The team has also observed that records were not made available to the verification team, ledger cards were needed to verify the accounts. False Data entry was found in few accounts, huge differences were found in the balance amount of few pass books and Sanchay Schemes Accounts. Moreover, LOT (List of Transactions) details not matching with the Sanchay Post entries. In many of Saving Bank Accounts cases, the differences was more than Rs.50,000/-. On the basis of the said report, Shri R.K. Singh, A.O in the office of P.M.G. Agra Region, Agra, wrote a letter to the then respondent no.6 and directed him to provide the records to the C.B.S. team. Respondent no.4 also directed respondent no.6 to ensure the availability of the required documents to the C.B.S. team and existing SBCO staff of Lalitpur H.O. immediately vide order dated 26.06.2012. Thereafter the office of respondent no.3 issued a letter dated 06.07.2012 in which it was mentioned that as per order of the then respondent no.4, Members of the CBS Team had attended the office of respondent no.4, on 05.07.2012 for review of work. After review was done by respondent no.4, he ordered that all officials of the team, formed under the order of respondent no.3 return to their parent office with immediate effect and work of data authentication of Lalitpur H.O. was ordered to be continued by existing staff of SBCO Lalitpur H.O. till further orders. Then the Senior Superintendent of Post Offices, Jhansi had submitted Divisional Level Inquiry report of Lalitpur H.O. in Saving Bank fraud case to the Post Master General, Agra Region, Agra, on 12.01.2015 which shows that there was fraud committed by certain employees of the Lalitpur H.O. and total amount involved in the case was assessed as Rs. 3,07,74,350/-. In the report it has been stated that the said fraud case came into light on the receipt of public complaint from Shri Manoj Shivhare received in the P.M.G. office on 05.03.2014 and of Shri Vinod Kumar Jain dated 04.03.2014 and on the basis of the aforesaid complaint, further a team was formed headed by Shri N.L. Sharma, A.D.P.S. Agra Region,

Agra. One member of the team formed under the order dated 30.05.2012 i.e. Shri S.C. Shakyawar was served with the charge-sheet under Rule 16 of C.C.S. (C.C.A.) Rules, 1965 under the signature of respondent no.6. After joining at his parent Division, the applicant has also been served with the minor penalty charge-sheet dated 23.06.2015 levelling the same allegations as leveled against Shri S.C. Shakyawar vide memo dated 23.06.2015. The applicant submitted his defence reply dated 01.07.2015. The disciplinary authority rejected the defence points raised by the applicant and imposed the recovery of Rs. 1,00,000/- @ 5,000/- p.m. in 20 equal installments in an order dated 05.05.2016. The applicant had preferred an appeal against the punishment order dated 05.05.2016 to respondent no.4 on 17.06.2016 but no action was taken and in pursuance of the impugned punishment order dated 05.05.2016, recovery had been started. Respondent no.4 then issued a show cause notice dated 29.03.2017 for enhancement of punishment from recovery of Rs.1,00,000/- to 3,60,000/- @ 18,000/- p.m. in 20 installments. After receiving the said notice, the applicant moved a representation dated 25.04.2017 before respondent no.4 and stated that the charge sheet itself is incomplete and defective on the strength of the letter dated 12.05.1987. Meanwhile, the recovery of Rs.5000/- p.m was continuing. The appellate authority rejected the appeal of the applicant and an order dated 08.09.2017 was passed in pursuance of which recovery from the pay @ Rs.18,000/- was made effective from September, 2017. The same has been stayed by this Tribunal's order dated 17.05.2018.

3. We have heard learned counsel for the parties.

4. Submission of learned counsel for the applicant is that the letter dated 06.07.2012 itself shows that the authentication of data for C.B.S. Lalitpur H.O. was ordered by respondent no.3 by the authorized team but before completion of all authentication of data by the authorized team, lower authority than respondent no.3 i.e. the then Director Postal Services, Agra Region had stopped the authentication of data for CBS Lalitpur H.O. by the team formed under the order of a higher authority and it was continued by the existing local staff of SBCO Lalitpur who were themselves indulged in the serious and huge differences in the balance amount of pass books Sanchay S/W and S.B. accounts. The divisional level inquiry report dated 12.01.2015 itself shows that the inspection of the Lalitpur H.O. was done after the occurrence of the fraud by Senior Superintendent of Post Offices, Jhansi, in first half on 28.06.2012, second half on 21.12.2012 by Shri K.C. Yadav, Dy. S.P.Os, Jhansi and another first half on 27.06.2013 and second half on 26.12.2013 by Senior Superintendent of Post Offices, Jhansi. He states that all the members of the team were deputed for authentication of data for C.B.S. Lalitpur H.O. by the order of respondent no.3 but when the authorized team pointed out serious irregularities which was indicating towards the fraud and misappropriation of Government money by the persons posted at S.B.C.O. Lalitpur H.O., respondent no.4, the then Director Postal Services, Shri Umesh Verma had returned the team to their parent offices and allowed the persons to further misappropriate the amount smoothly. In the

charge sheet, the charges have been levelled against the applicant that if he had performed the duty as per order of the P.M.G. Agra region, Agra, then fraud to the tune of Rs.1,52,91,100/- would have come to light and further fraud of Rs. 1,54,83,250/- would have been avoided. He argues that it is nothing but a vague allegation as the applicant cannot be responsible for the fraud committed prior to the date of authentication of data and the forcible detraction and return of the team by the order of respondent no.4. He further argues that the disciplinary authority failed to explain as to how it has reached to the conclusion that the applicant had caused the loss to the Government of Rs.1,00,000/-. The applicant made a complaint to the Director General of Posts, New Delhi against non-initiation of any action against the officials who were directly involved in the aforesaid fraud case, however, he learnt that with the support of the higher authorities, the main culprit Shri Umesh Verma, the the D.P.S. Agra has been allowed to take voluntary retirement and now the applicant as well as the other lower officials are being penalised by imposing punishment of recoveries over them.

5. Learned counsel for the applicant next states that the conclusion of the disciplinary authority that the applicant did not mention any specific account and amount of fraud is wrong because the authorities concerned had not supplied the relevant records from which the balance of the accounts might be ascertained. The version of the disciplinary authority that if the applicant had performed duty in the true spirit, the amount of fraud would have been avoided. He had ignored the fact that the Senior Superintendent of Post Offices, Jhansi had himself made the inspection on 28.06.2012, 21.012.2012, 27.06.2013 and 26.12.2013 which shows that they themselves have failed to stop the fraud. It is further mentioned that after the submission of appeal on 17.06.2016, no decision was taken by the appellate authority but after lapse of more than 9 months, the impugned show cause notice was issued on 29.03.2017 which is illegal since although there is no time frame for taking decision on appeal or issuance of show cause notice for enhancement after receiving the appeal, yet, it cannot be used as unbridled power by stating that 'at any time' the appellate authority can issue the show cause notice after receiving the appeal. Similar interpretation of Rule 29(1) (VI) of the CCS (CCA) Rules, 1965, has been made by the Hon'ble CAT Ahmedabad Bench in the case of Vikrambhai M. Chaudhari vs. UOI & Ors and it had declared that the powers cannot be exercised if it has been granted to use as unbridled. DoPT had also issued the OM dated 15.05.1971 which deals with time limit for disposal of appeals but in the case of the applicant, it has been drastically violated, thus, the impugned show cause notice dated 29.03.2017 is non-est.

6. It has been averred by learned counsel for the applicant that the appellate authority has rejected the appeal of the applicant without application of mind and it has also ignored the fact that the applicant and team members were not involved in any way in the embezzlement case, even then the disciplinary authority had imposed the punishment of recovery and further appellate authority has enhanced the amount of recovery without considering the Para 106

and 107 of the Postal Manual Vol.III. It is further mentioned that Shri S.C. Shakyawar had challenged his punishment order and appellate order by filing O.A. No. 330/965 of 2016 which was partly allowed by the Hon'ble CAT Allahabad vide order dated 14.12.2017 wherein it has been observed that the punishment of recovery has been issued in violation of Para 106 and 107 of Postal Manual Vol.III. Thus, the applicant is also entitled for the same relief as granted to Shri S.C. Shakyawar being the member of the Team formed under the order of the Post Master General, Agra. Learned counsel for the applicant has further placed reliance on the following judgements of the Central Administrative Tribunal:

(i) O.A. No. 232/2022 (Dinesh Bachubhai Waghela vs. UOI & ors) along with connected matters decided by the Ahmedabad Bench of this Tribunal vide order dated 31.01.2025.

(ii) O.A. No. 290/2015 (Ram Ashray vs. UOI & ors) decided by the Allahabad Bench of this Tribunal vide order dated 24.08.2023.

(iii) O.A. No. 1537/2017 (Rama Shankar Yadav vs. UOI & ors) decided by the Allahabad Bench of this Tribunal vide order dated 11.11.2020.

(iv) O.A. No. 39/2015 (Ram Palat Ram vs. UOI & ors) decided by the Allahabad Bench of this Tribunal vide order dated 10.05.2022.

(v) O.A. No. 1545/2017 (Munna Lal vs. UOI & ors) along with O.A./1564/2017 (Radhey Shyam vs. UOI & ors) decided by the Allahabad Bench of this Tribunal vide order dated 10.08.2023.

7. Submission of learned counsel for the respondents is that that the Regional Office, Agra had directed vide letter dated 30.05.2012, that the aforesaid team officials will authenticate the data of Lalitpur Head Office w.ef. 04.06.2012. It was also directed that the team will verify the accounts balances, records, previous minus balance accounts and ensure data consistency to all accounts. In case any serious error/ discrepancy is found, the matter should be reported to the Post Master, Lalitpur Head Office/SSPOs, Jhansi/Regional Office, Agra for necessary action. Applicant visited Lalitpur Head Office with the above members of the team on 04.06.2012 and started the work of data authentication. The team remained at Lalitpur Head Office from 04.06.2012 to 03.07.2012. The team observed so many issues/irregularities etc. occurred at Lalitpur Head Office. But it was simply stated that false data entry was found in a few accounts and differences in many SB Accounts are more than Rs.50,000/-, but his team and he did not mention any specific account and amount of frauds etc. after concealing the facts. The applicant did not verify the balances of accounts, records and previous minus balance accounts and failed to ensure data consistency in all accounts. Due to this the fraudulent withdrawals of the amount on the dates noted against each in the following SB Accounts standing at Lalitpur Head Office occurred/committed before 03.07.2012 by way of making fraudulent entry of deposits through Data Entry modules could not be detected. That had the applicant performed the work assigned to him as per directions of Regional

Office, Agra vide letter dated 30.05.2012, in true spirit, the fraud to the tune of Rs. 1,52,91,100/- in the above SB Accounts occurred/committed before 03.07.2012, would have been came to light then and further fraud to the tune of Rs.1,54,83,250/- would have been avoided at Lalitpur Head Office. Thus applicant had not followed the instructions of Regional Office, Agra's letter dated 30.05.2012. Therefore, he is also responsible for the fraud to the tune of Rs.3,07,74,350/-occurred at Lalitpur Head Office and his act of negligence though isolated tends to cause serious consequences. The act and conduct of the applicant was so grossly immoral and he did not remain faithful to the department. Thus the applicant did not follow the instructions contained in GOI Decision 23 of Rule 3 of CCS (Conduct) Rules 1964. By doing so, the applicant failed to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming of a Government servant and thereby infringed the provisions of Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rules 1964. The CBS team informed very formal information to the respondent No.4 and failed to intimate any particular account in which embezzlement was committed and specific amount of embezzlement. But after passing one month time at Lalitpur the CBS team as well as the applicant failed to report even a single account and specific amount of embezzlement. The team as well as the applicant concealed the fact knowingly and simply passed time. It is also not admitted that the records were not provided to the team as well as to the applicant for verification of the authentication data of Lalitpur Head Post Office and balance of accounts, then the team as well as applicant informed vide letter dated 18.06.2012 to the respondent No.4 that during the data verification process of Passbook, ledger entries and data in Sanchay Post Software wrong and mismatching entries were found. Without providing an examination of records, how it is possible to assert and inform above irregularities by them. This is very clear that sufficient records were provided to the team as well as to the applicant. But all of them including the applicant failed to report any particular account in which embezzlement committed and any specific amount of embezzlement also.

8. Learned counsel for the respondents next argues that after careful examination of the case, the applicant was awarded the penalty of the recovery of Rs.1,00,000/-(Rupees one lac only) from his pay and allowances in 20 installments of Rs.5,000/- per month vide memo dated 05.05.2016 issued by respondent No.5. The applicant had preferred an appeal dated 17.06.2016 to the respondent No.4 against the above penalty. It was proposed by appellate authority vide memo dated 29.03.2017 to enhance the punishment of the applicant from recovery of Rs.1,00,000/- to that of recovery of Rs.3,60,000/-. The applicant had submitted his defence representation dated 25.04.2017 in this regard. Thereafter, appellate authority vide memo dated 08.09.2017, enhanced the penalty of recovery of Rs.1,00,000/- in 20 installments of Rs.5,000/- each from his pay imposed on the applicant by the disciplinary authority to that of recovery of Rs.3,60,000/- at the rate of Rs. 18,000/- per month in 20 equal monthly installments of the pecuniary loss of the department. The amount

recovered if any as per punishment order dated 05.05.2016 was directed to be adjusted suitably. The applicant was provided with the opportunity to submit his defense, if any, against the aforesaid punishment enhancement notice. The aforesaid memo dated 29.03.2017 was delivered to applicant on 13.04.2017, through SPOs Mainpuri. After that the applicant submitted his defense representation dated 25.04.2017, which was received on 08.05.2017 through SPOS, Mainpuri. After careful examination the penalty was enhanced. Therefore, all actions taken by the respondents are in conformity with various rules and instructions issued in this regard. It is next contended that the Hon'ble Supreme Court of India in the case of CBI Vs. Jagit Singh reported in (2013) 3 SCC 686, has held that cases of financial frauds shall not be quashed on the ground of compromise as it is a social wrong and it has immense social impact.

9. Learned counsel for the applicant has reiterated his arguments in his rejoinder.

10. We have considered the rival contentions of learned counsel for the parties and perused the entire documents on record.

11. Recovery order has been passed against the applicant to the tune of Rs.100000/- vide order dated 05.05.2016 which has been enhanced to Rs.3,60,000/- vide order dated 08.09.2017. The applicant has been charged with negligence and it has been alleged that the applicant did not verify the balances of accounts, records and previous minus balance accounts and failed to ensure data consistency in all accounts, due to this the fraudulent withdrawals of the amount on the dates noted against each in the following SB Accounts standing at Lalitpur Head Office occurred/committed before 03.07.2012 by way of making fraudulent entry of deposits through Data Entry modules which could not be detected and had the applicant performed the work assigned to him as per directions of Regional Office, Agra vide letter dated 30.05.2012, in true spirit, the fraud to the tune of Rs. 1,52,91,100/- in the above SB Accounts occurred/ committed before 03.07.2012, would have come to light then and further fraud to the tune of Rs.1,54,83,250/-would have been avoided at Lalitpur Head Office. Thus, the respondents have stated that the applicant is also responsible for the fraud to the tune of Rs.3,07,74,350/- occurred at Lalitpur Head Office and his act of negligence though isolated tends to cause serious consequences.

12. The applicant was a member of a committee for authentication of Data for C.B.S., at Lalitpur H.O. The applicant, as a member of the team, has also been penalised for the alleged lapses on the part of the team holding that had the team performed its duty properly, the fraud would have been detected and could have been avoided. Apparently, the team had submitted its report regarding the irregularities observed by it at the concerned place about which the respondents should have made further inspections to avoid any further fraud but instead the team and the applicant as one of its members has been blamed for the pecuniary loss on the ground that they did not provide the specific details and that had they performed their duty as assigned, the loss could have been averted. The allegations are ostensibly vague. The applicant has neither directly been involved

in any misappropriation nor has he benefited from it. These are conjectures about the possibility of what the applicant could have done to avert a future event but there is no concrete logic behind holding the applicant responsible for causing the loss of a particular amount of money to the department which can be justifiably recovered from his pay.

13. For examining the legality of the recovery order passed against the applicant, it would be appropriate to refer to para 106 and 107 of the Postal Manual, Volume-III which is as under:

"Imposition of the penalty of recovery

106. In the case of proceeding 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.

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."

14. Note 23 (a) of Rule 11 of the CCS (CCA) Rules, 1965 deals with the general conditions of procedure to be adopted in case of imposition of penalty for recovery which is as under:

"23. Imposition of the penalty of recovery:- (a) General conditions- 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."

15. Applying the ratio provided in para 106 and 107 of the Postal Manual, Volume-III and Note 23 (a) of Rule 11 of the CCS (CCA) Rules, 1965 as quoted above in para 13 and 14 above to the case of the applicant as discussed in para 12 above, the recovery order passed against the applicant is bad in the eyes of law. The argument of the applicant that it is nothing but a vague allegation as the applicant cannot be held responsible for the fraud committed prior to the date of authentication of data and the forcible detraction and return of the team by the order of respondent no.4 is noteworthy. Also, Shri S.C. Shakyawar, a co-member of the Team formed under the order of the Post Master General, Agra had challenged his punishment order and appellate order by filing O.A. No. 330/965 of 2016 which was partly allowed by this Tribunal vide order dated 14.12.2017 wherein it has been observed that the punishment of recovery has

been issued in violation of Para 106 and 107 of Postal Manual Vol.III. The case of the applicant as a member of the same team is also similar. He is also similarly situated to the applicants of the original applications decided by various benches of this Tribunal (enlisted in para 6 above) in which the recovery orders have been quashed and it has been held that penalty of recovery cannot be imposed unless 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. The case law cited by learned counsel for the respondents mentioned in para 8 of this order does not have any bearing on the present case. Thus, the balance of convenience lies in favour of the applicant and the impugned charge sheet dated 23.06.2015, the impugned punishment order dated 05.05.2016, impugned show cause notice dated 29.03.2017 and impugned appellate order dated 08.09.2017 are liable to be quashed.

16. Accordingly, the O.A. is allowed and the impugned orders dated 23.06.2015, 05.05.2016, 29.03.2017 and 08.09.2017 are hereby set aside with the direction to the respondents to refund the amount which has already been recovered from the pay of the deceased applicant along with 6% simple interest per annum to his legal heirs/applicants within a period of three months from the date of receipt of a certified copy of this order.

17. The stay order stands merged with this order and all associated M.A.s also stand disposed of. No costs.

