

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

CP/020/00108/2018 in OA/020/1084/2018

Date of CAV: 25.09.2020

Date of Pronouncement:06.10.2020



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

K. Adinarayana S/o Late K.Ramanna,
Aged about 43 years,
Occ : Assistant Superintendent of Post Offices,
Madanapalle Sub Division, Madanapalle,
Chittoor District.

...Applicant

(By Advocate: Dr. A. Raghu Kumar)

Vs.

1. Union of India rep by Secretary,
Ministry of Communications and IT,
Department of Posts, New Delhi.
2. The Assistant Director General,
SGP, Personnel Division,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi.
3. K.Balasubramanian,
Chief Postmaster General,
Andhra Pradesh Circle, Vijayawada.
4. T.M.Sreelatha,
Postmaster General,
Kurnool Region, Kurnool.

....Respondents

(Respondents 1 & 2 are not necessary parties)

(By Advocate : Mrs.K. Bharathi, Addl. CGSC)

ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

2. The C.P is filed in regard to non implementation of the interim order of the Tribunal in OA 1084/2018.



3. The interim order of the Tribunal in OA 1084/2018 issued on 8.11.2018, reads as under:

“ Having gone through the DOPT OM dated 2.11.2012, we are of the view that as the fact finding inquiry is only in the nature of investigation and no charge sheet so far has been issued to the applicant, vigilance clearance cannot be denied to him. Therefore, the respondents are directed to give vigilance clearance to the applicant for the purpose of promotion. ”

4. Applicant prays for punishing the respondents for committing an act of contempt in not implementing the interim order.

5. Respondents in their reply statement filed in the CP contend that consequent to Smt. Shaik Shaheena, GDS MC/MD, Peddapalem BO, a/w. Mulakalacheruvu SO preferring a complaint dated 31.3.2018 against the applicant in the OA for threatening/ harassing her, the concerned police authorities have filed a charge sheet before the competent court and it was registered as CC No. 39/2018 on 21.5.2018 under Section No. 354-A(1)(2), 506 read with 34 of IPC on the file of the court of Hon'ble Judicial Magistrate of First Class, Thamballepale and the case is being adjudicated.

Besides, in regard to complaint of sexual harassment by Smt. S.Shaheena, GDS /MD against the applicant, it was inquired into by the Internal Complaints Committee constituted by R-3 and based on

the recommendations of the Committee, a Rule 14 charge sheet was issued to the applicant on 10.01.2019. Further, the applicant was also issued a Rule 16 Charge sheet for unauthorized absence on 24.9.2018, which is pending. In view of Criminal Case and charge sheets pending, the vigilance clearance was not given as per DOPT letter dated 21.6.2013.



6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute in short is about non issue of vigilance clearance by the respondents despite orders of the Tribunal on 8.11.2018 to grant it, on the basis that no charge sheet was pending against the applicant.

II. As seen from the facts stated above, applicant is being tried in the Criminal Case vide CC No. 39/2018 registered on 21.5.2018 by the competent court. Besides, two charge sheets are pending against the applicant and that, based on the DOPT OM dated 21.6.2013 vigilance clearance was not given, is the spinal contention of the respondents. The Ld. Counsel for the applicant argued that the DOPT OM of 2013 is not applicable and that the case of the applicant is fully covered by DOPT OM dtd. 2.11.2012 as well as by the judgment of the Hon'ble Principal Bench of this Tribunal in a similar issue.

III. We have gone through the judgment of the Hon'ble Principal bench in OA 1309/2013 dated 22.7.2015 referred to and

found it to be irrelevant, since the applicant in the cited case *albeit* had no disciplinary case pending was denied vigilance clearance, whereas in the case on hand, there was a Rule 16 Charge sheet pending against the applicant issued on 24.09.2018. This fact was suppressed by the applicant in the OA, which was filed on 05.11.2018. Therefore, he has not come with clean hands.



IV. Focusing attention on The DOPT dated 2.11. 2012 cited by the applicant, it stipulates the following conditions to deny vigilance clearance:

- i. Government servants under suspension
- ii. Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- iii. Government servants in respect of whom prosecution for a criminal charge is pending.

The Rule 16 charge memo was issue to the applicant on 24.09.2018, before the issue of the interim order by the Tribunal on 8.11.2018. This fact was not brought out in the OA filed on 05.11.2018. Hence, the Tribunal, being unaware of the pending Rule 16 charge memo, has issued the interim order in question. The Tribunal based its interim order on the fact that the fact finding inquiry is only investigative in nature and that no charge sheet was issued. Important aspect to note is that the Tribunal did mention that, in the absence of any charge sheet, withholding the vigilance clearance is incorrect. However, the applicant, being fully aware of the Rule 16



charge memo issued to him on 24.9.2018, should have brought it to the notice of the Tribunal. In the background of true facts not being presented by the applicant, the Tribunal issued the interim order based on facts presented by the applicant. Any judicial order obtained by misrepresentation/ suppressing facts is invalid. Indeed, it presents the applicant in poor light and in fact, exposes him to disciplinary action for deviant conduct as a Govt. Servant. In this regard, we find it apt to cite the observation of the Hon'ble Supreme Court in ***Meghamala v G. Narasimha Reddy (2010) 8 SCC 383*** at para 28, as under:

“ Fraud/Misrepresentation:

28. It is settled proposition in law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. Fraud avoids all judicial acts ecclesiastical or temporal. (vide S.P. Chengalvaraya Naidu (dead) by L.Rs v Jagannath (dead) by L.Rs & ors AIR 1994 SC 853). In Lazars Estate v Besalya 1956 All. E.R 349, the court observed without equivocation that “ No judgment of a Court , no order of Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.”

Hence, in view of the above observation, the interim order of this Tribunal dated 8.11.2018 cannot be allowed to stand. Even as per DOPT Memo dt. 2.11.2012 heavily banked upon by the applicant, the vigilance clearance cannot be given in view of the Rule 16 Charge Memo being pending at the time of filing of the OA. The latest OM of DOPT dated 21.6.2013 referred to by the respondents further elaborated the instructions on the subject.

V. Therefore, in view of the aforesaid circumstances, CP filed has no legs to stand and hence, is closed. Consequently, the interim order dt. 08.11.2018 passed in OA 1084/2018 stands vacated.

No order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/