

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

DATED: THIS THE 18<sup>th</sup> DAY OF October, 2005.

ORIGINAL APPLICATION NO. 436 OF 1998

HON'BLE MR. K.B.S. RAJAN, MEMBER-J  
HON'BLE MR. A.K. SINGH, MEMBER-A

Krishna Pal Singh, S/o Sri Rama Nand Singh, Sub Post  
Master, Khaga District Fatehpur R/o Tesahai Bujurg,  
P.S. Khaga, District Fatehpur..

.....Applicant

By Adv: Shri N. Kumar

V E R S U S

1. The Union of India through Supdt of Post  
Offices, Fatehpur Mandal, Fatehpur.
2. Tehsildar, Tehsil, Khaga, District Fatehpur.  
.....Respondents

By Adv: Shri A. Tripathi.

O R D E R

By K.B. S. Rajan, Member (J)

This case has a checkered history. This is the  
third of litigation and every time the question  
involved relates to jurisdiction of the Tribunal.

2. The impugned order in this OA has been passed  
under the Public Account Deposit Act, 1850 (12 of  
1950) invoking the provisions of Section 4 of the  
Act. Earlier by order dated 08.05.1998, this  
Tribunal had held, "it is hereby held that the case

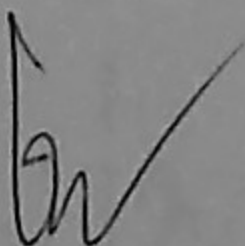
of the applicant is not covered by the work "service matters" and hence disposed of the OA as not maintainable. However, later on when a writ petition has been filed by the applicant, vide order dated 16-08-2002, in Civil Misc. Writ Petition No. 28618/1999, the Hon'ble High court of Judicature at Allahabad, has remanded the matter for consideration by the Tribunal.

3. The counsel for the respondents has submitted that with great respect the order passed by the Hon'ble High Court did not take into account the fact that the order impugned in this OA cannot fall within the ambit of the term, "service matters" as provided for in Section 2(q) of the A.T. Act, 1985 and as such, this Tribunal has no jurisdiction.

4. The counsel for the applicant has fairly stated that the order impugned order was passed under the provisions of "Public Account Defaults Act 1850 (Act No. 12 (4) of 1850).

5. The question for consideration is whether the impugned order falls within the provisions of Sec. 2(q) of the A.T. Act, 1985. For this purpose, the judgment of the Apex Court in the case of *Dr H. Mukherjee v. S.K. Bhargava*, (1996) 4 SCC 542, wherein the Apex Court has held as under:-

6. The expression "service matters" occurring both in Section 14 and Section 28 is defined in clause (q) of Section 3 in the following words:



" 'service matters', in relation to a person, means all matters relating, to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects—

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever."

7. The Tribunals under the Act are thus conferred with the exclusive jurisdiction, powers and authority exercisable immediately before the appointed day by all courts (except the Supreme Court) in relation to the matters set out in clauses (a), (b) and (c) of sub-section (1) of Section 14. The question is whether the present suit does fall under any of the said clauses. We do not think that it does. **The suit appears to be one based on alleged tortious acts of the defendant committed with a view to harass the plaintiff and cause him mental pain and injury. At this stage, it is not our province to say whether the allegations are true or false.** We have to take the plaint allegations as they stand. We also assume for the purpose of this appeal that such a suit does lie according to law since no contention to the contrary has been urged before us nor was urged before the civil court or the High Court. This is a pure action for damages for deliberately harassing the plaintiff by passing several vindictive and mala fide orders and proceedings and also by fabricating official records. Such a suit for damages is certainly not within the province of Section 14.

(Emphasis supplied)

6. In the case of *Union of India v. Rasila Ram*, (2001) 10 SCC 623, at page 623 the Apex Court has held as under:-

1. The aforesaid appeals are directed against the order of the Full Bench of the Central Administrative Tribunal in a batch of applications before it recording a finding that an order passed by the competent authority under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 for eviction would also come within the purview and jurisdiction of the

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Administrative Tribunal constituted under the Administrative Tribunals Act, 1985. The Tribunal by the impugned order has construed the expression "service matter" defined in Section 3(q) of the Administrative Tribunal Act and because of the expression "any other matter whatsoever" occurring in sub-clause (v) thereof, it has come to the conclusion that the eviction of unauthorized occupants from government quarters would tantamount to a service matter, and therefore the Tribunal retains jurisdiction over the same, in view of the overriding effect given to the Act by virtue of Section 33 of the said Act.

3. The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as "the Eviction Act") was enacted for eviction of unauthorized occupants from public premises. To attract the said provisions, it must be held that the premises was a public premises, as defined under the said Act, and the occupants must be held unauthorized occupants, as defined under the said Act. Once a government servant is held to be in occupation of a public premises as an unauthorised occupant within the meaning of the Eviction Act, and appropriate orders are passed thereunder, the remedy to such occupants lies, as provided under the said Act. **By no stretch of imagination the expression "any other matter" in Section 13(q)(v) of the Administrative Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In this view of the matter, the impugned assumption of jurisdiction by the Tribunal over an order passed by the competent authority under the Eviction Act must be held to be invalid and without jurisdiction. This order of the Tribunal accordingly stands set aside. The appeals are accordingly allowed.**  
(Emphasis supplied)

7. Director, Govt. of India v. General Secy.,  
Central Govt. Small-Scale Industries Organization  
Employees' Union, (1998) 5 SCC 630, at page 631 :

**1. These appeals have been filed against the judgment of the Division Bench of the Kerala High Court dated 25-11-1991 whereby Writ Appeal No. 532 of 1991 filed by the appellant has been dismissed as belated and the delay in the filing of the appeal has**

not been condoned by the order dated 3-3-1992 passed by the Central Administrative Tribunal, Ernakulam in RA No. 72 of 1991.

2. Briefly stated the facts are as follows:

An industrial dispute was referred for adjudication to the Industrial Tribunal at Quilon. The Industrial Tribunal gave its award on 12-12-1988. Feeling aggrieved by the said award, the appellant filed a writ petition (OP No. 2721 of 1989-Y) under Article 227 of the Constitution in the Kerala High Court. The said writ petition was dismissed by a learned Single Judge of the High Court by judgment dated 21-12-1989 on the ground that the writ petition was not maintainable in view of Section 28 of the Administrative Tribunals Act, 1985. Thereafter, the appellant filed an application (OA No. 94 of 1990) before the Central Administrative Tribunal, Ernakulam Bench. The respondent-workmen also filed an application (OA No. 403 of 1989) before the Central Administrative Tribunal. Both these applications were decided by the Central Administrative Tribunal by its judgment dated 31-8-1990. The appellant filed a special leave petition [SLP (C) No. 4946 of 1991] against the said judgment of the Central Administrative Tribunal which was dismissed as withdrawn by order dated 11-3-1991. Thereafter, the appellant, on 25-5-1991, filed Writ Appeal No. 532 of 1991 against the judgment of the learned Single Judge of the High Court of Kerala dated 21-2-1989. The said writ appeal was dismissed by the impugned judgment dated 25-11-1991. In the meanwhile, the appellant had filed a review petition (RA No. 72 of 1991) before the Central Administrative Tribunal for review of the judgment dated 31-8-1990. The said review petition was dismissed by the Central Administrative Tribunal by order dated 3-3-1992 on the ground of limitation as well as on merits.

3. We have heard Shri V.C. Mahajan, the learned Senior Counsel appearing for the appellant, in support of the appeals, and we have perused the order of the Division Bench of the Kerala High Court dated 25-11-1991 dismissing the writ appeal as well as the order dated 3-3-1992 passed by the Central Administrative Tribunal dismissing the review petition.

4. We will first take up the appeal which is directed against the order of the Central Administrative Tribunal dated 3-3-1992 dismissing the review petition. A perusal of the said order of the Central Administrative Tribunal shows that while observing that there was delay in the filing of the review petition, the Tribunal has proceeded on the basis that the Tribunal would have been inclined to condone the long delay but since the review petition is devoid of substance it did not feel inclined to do so. The Tribunal has considered the matter on merits as to the jurisdiction of the Tribunal to deal with the application under Section 19 of the Administrative Tribunals Act and has held that the Tribunal had jurisdiction to entertain the application against the award made by the Industrial Tribunal. **The said view of the Central Administrative Tribunal is not in consonance with the law laid down by this Court in Ajay D. Panalkar v. Pune Telecom Deptt. wherein it has been laid down that the Administrative Tribunal**

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**constituted under the Administrative Tribunals Act, 1985 has no jurisdiction to adjudicate upon the finding of the Industrial Tribunal.** In view of the said decision, the order dated 3-3-1992 passed by the Central Administrative Tribunal rejecting the review application cannot be upheld and the said review application must be allowed. The order dated 3-3-1992 passed by the Central Administrative Tribunal is, therefore, set aside, the delay in the filing of the review application is condoned and the said review application is allowed and the judgment of the Central Administrative Tribunal dated 31-8-1990 passed in OAs Nos. 403 of 1989 and 94 of 1990 is set aside.

(Emphasis supplied)

8. All the above decisions of the Apex Court would go to show that the Administrative Tribunal cannot sit on appeal against an order passed by any authority under any other provisions of Act. In the instant case, the order impugned has not been passed by the authority as the administrative authority in respect of any service matter. The same has been passed under the provisions of Public Account Deposit Act, 1850 (12 of 1950) invoking the provisions of Section 4 of the Act. The said section reads as under:-

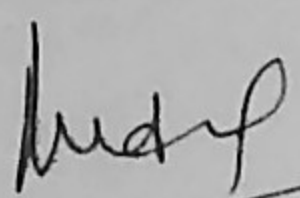
*"Prosecution of Accountants and sureties :- The person or persons at the head of the office to which any public accountant belongs may proceed against any such public Accountant and his sureties for any loss or defalcation in his accounts as if the amount thereof were an arrear of land revenue due to Government."*

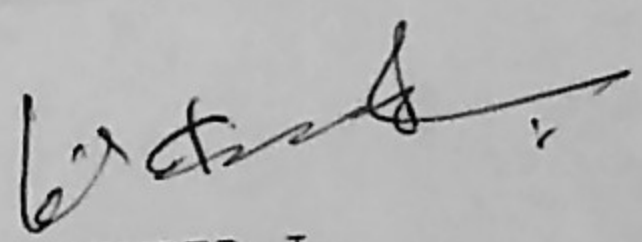
9. The above proves that though it is the Superintendent, Fatehpur Division, who had passed the order, the same had been passed not under any rules relating to Government service, but only treating the applicant as a defaulter under the

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provisions of the aforesaid Act. As such, the subject matter, with due respect to the order of the Hon'ble High Court, falls outside the ambit of the Administrative Tribunal. Hence, this impugned order cannot be agitated before the Tribunal.

10. The OA is therefore, dismissed as "Not maintainable". It is open to the applicant to approach the appropriate forum for his redressel. The interim order passed vide order dated 11-10-2002 is hereby vacated. Needless to mention that the applicant would have the benefit of the provisions of Sec. 5 read with Sec 12 of the Limitation Act, 1963. No costs.

  
MEMBER-A

  
MEMBER-J

GIRISH/-