

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 23rd day of July 2001.

Original Application no. 853 of 2001.

Hon'ble Mr. S.K.I. Naqvi, Judicial Member

Hon'ble Maj Gen K.K. Srivastava, Administrative Member

Surendra Nath Srivastava,
S/o Hirday Narain Lal Srivastava,
R/o vill. Mahkucha, Post Shankerganj (Maharajganj),
Distt. Jaunpur.

... Applicant

C/A Shri RN Singh

Versus

1. Union of India through Secretary Ministry
of Communication, New Delhi.

2. Chief Post Master. General UP at Lucknow.

3. Superintendent of Post Offices,
Distt. Jaunpur.

... Respondents

C/Rs Sri RC Joshi

O R D E R

Hon'ble Mr. S.K.I. Naqvi, Member-J.

As per applicant's case, while posted as Branch Post Master (BPM), at Shankergarh (Maharajganj), Jaunpur, he has been placed under suspension for alleged embezzlement of Rs. 48,840/- and the First Information Report has been lodged with the police under section 409 IPC

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The matter is under investigation their. The department has also instituted inquiry against the applicant for this alleged embezzlement which is still pending and as per applicant the liability is yet to be fixed, but departmental authority has issued recovery certificate addressed to the Collector who has proceeded to recover the amount as per recovery certificate. The main contention from the side of the applicant is that the process for recovery is quite premature as the recovery certificate has been issued before liability is fixed and it will amount undue hardship and harassment against the established principle of law and, therefore, he has come up seeking relief to the effect that the recovery certificate dated 17.4.2001 be quashed.

2. Sri GR Gupta proxy to Sri RCC Joshi has opposed the prayer and raised the question of jurisdiction.

3. Taking into consideration and the pleadings from the side of the applicant and the submission made from either side and also on going through the applicable legal position and the provision under "THE REVENUE RECOVERY ACT 1890" we are of the view that section 4 of the Act, comes in the way of remedy sought for here and the legal position theiron. Section 4 of the Act runs as under :-

"4. Remedy available to person denying liability to pay amount recovered under last foregoing section:- (1) When proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in a certificate that person may if he denies his liability to pay the amount or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute

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a suit for the repayment of the amount or the part thereof so paid.

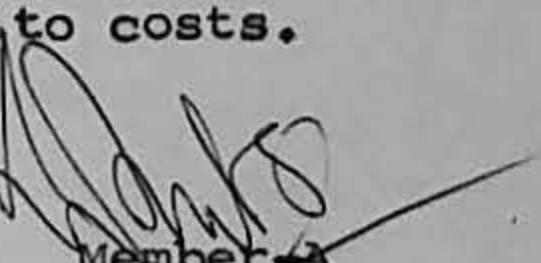
(2) A suit under sub-section (1) must be instituted in a Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate and the suit shall be determined in accordance with the law in force at the place where the arrear accrued or the liability for the payment of the sum arose.

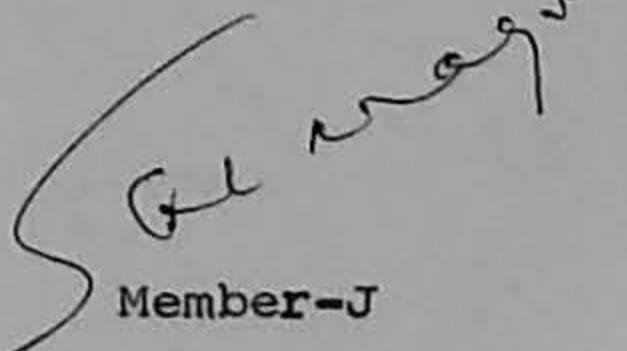
(3) In the suit the plaintiff may, notwithstanding in the last foregoing section, but subject to the law in force at the place aforesaid give evidence with respect to any matter stated in the certificate.

(4) This section shall apply if under this Act as in force as part of the law of "Pakistan or Burma or under any other similar Act forming part of the law of "Pakistan or Burma. proceedings are taken against a person in Pakistan or Burma. as the case may be. for the recovery of an amount stated in a certificate made by a Collector in "any State to which this Act extends"."

4. The bare perusal of the above provision goes to indicate that such matter are cognizable by Civil Court and not by service Tribunals. After issue of the certificate it becomes a matter between the applicant and the revenue authority and, therefore, does not involve the ^{Service} ~~certificate~~ conditions. The OA is dismissed in limine as above. The applicant may seek remedy before appropriate forum.

5. No order as to costs.


Member-A


Member-J

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