

(7)

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.**

Original Application NO. 215 of 2005

Allahabad this the 16th day of December 2005

Hon'ble Mr. K.B.S. Rajan, Member-J

H.S. Rawat S/o Budh Ram
R/o 111 Naven Kunj West A.G.R.J.U.N. Nagar Agar.

.....Applicant.

(By Advocate : Sri A.K. Srivastava)

Versus.

1. Union of India through its SCC. Ministry of Communication Dy. Director General (P.& T) New Delhi.
2. Post Master General, Agra.
3. Senior Superintendent of Post Offices, Agra.
4. District Magistrate Civil Court.

.....Respondents.

(By Advocate : Sri Saumitra Singh)

O R D E R

The case of the applicant is as under:-

(a) The applicant was posted as Postal Asstt. At Fort H.O. Agra and the applicant was in charge of the K.V.P. which were in custody of the applicant and some how the said KVP were lost from the custody of the applicant.

(b) The Post Master G.P.O Agra lodged F.I.R. in case Crime No.137 of 1996 against the applicant and one Har Govind Singh.

(c) The applicant was placed under suspension.

(d) Again yet another F.I.R case Crime No.365/96 under section 409 I.P.C

(e) Departmental chargesheet against the applicant was served upon the applicant.

(f) Opposite party NO.3 passed impugned order directing the District Magistrate, Agra for recovery of Rs.2,61,805/-from the applicant.

(g) The Opposite party NO.3 wrongly and illegally passed impugned order dated 5.11.2004 during pendency of the Criminal Case and departmental disciplinary proceedings against the applicant.

2. Per contra, the respondents contend as under:-

(i) A case of re-discharge of NSC's/KVP's at Idgah Colony, Post Office, Agra, which have already been discharged in due course, has come into light in the month of February 1996.

(ii) After detailed enquiry, the re-discharge of NSC's/KVP's for Rs.514270/- was detected and 40 NSC's/KVP's were re-discharges at Idgah Colony PO, Agra for total amount worth Rs.5,96,270/- by Shri Har Govind, the then officiating SPM, in connivance with Sri K.K. Yadav, Shri H.S. Rawat, the applicant and Sri R.C. Tiwari who were working as KSCs/KVPs discharge counter PA Agra HO and Sri R.P. Pathak and Sri R.S. Umrao, APM NSCs/KVPs discharge counter, Agra H.O.

(iii) Sri H.S. Rawat, the applicant was proceeded under Rule 14 of CCS (CCA) Rules, 1965 vide memo dated 17.02.2000 and departmental enquiry is in progress.

(iv) The District Magistrate, Agra was requested to recover the defrauded amount from Shri K.K. Yadav, Sri Har Govind, Sri H.S. Rawat, Sri R.C. Tiwari in equal shares i.e. Rs.2,61,805/- with penal interest @ 18%

under PAD Act, 1850 vide SSPOs, Agra letter No.F-5/2/95-96/Ch-III dated 05.11.2004 to make good the loss sustained to the department.

3. Arguments were heard and pleadings perused.
4. The matter thus is essentially one coming under PAD and not under Disciplinary Proceeding. It has been held in the case of Kishore Kumar Yadav (O.A. No.1599/04, decided on 5.8.2005) as under:-

"(a) It is seen that impugned annexure A-1 is a letter written by Senior Superintendent of Post Offices, Agra Division, Agra to the District Magistrate for recovering the amount from applicant under the PAD Act. This issue had already come for adjudication before the Lucknow Bench of the Tribunal in the case of Madan Lal Mishra Vs. Superintendent of Post Offices but after referring to the various contentions raised by both the parties, it was held in the above said case that since recovery proceedings have been initiated under section 4 of PAD Act, this Tribunal has no jurisdiction to dealt with the said cases. While coming to the said conclusion Lucknow Bench had relied upon on the order dated 24.09.1996 given in O.A. No.471/1996 in the case of Raj Ram Saroj Vs. Union of India and Ors. Wherein it was held as under:-

"Under the Revenue Recovery Act, the recovery is being made as arrears of land revenue. The learned counsel for the applicant submitted that recovery as arrears of land revenue cannot be effected unless the department comes to a conclusive finding that loss has been caused to the Government of the said amount. This submission is wholly untenable. The applicant does not dispute that he is a public accountant within the meaning of term as defined under section 3 of the Public Accountant Default Act. He further in



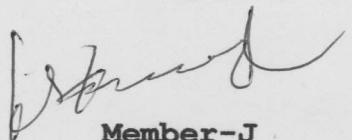
the O.A. does not deny entrustment of the amount to him in that capacity, which are government accounts. In the O.A., also he has not indicated anything to show how he accounts for the loss of the said amount which are entrusted to him. That being so, there was clear case of recovery as arrears of land revenue. Since the recovery is being effected under the provisions of PAD Act and the Revenue Recovery Act, in our considered opinion, it cannot be said to be a service matter cognizable before this Tribunal".

(b) The judgment dated 24.09.1996 was challenged in the Hon'ble Supreme Court in S.L.P. NO.1505/1997 but Hon'ble Supreme Court also upheld the order passed by the Tribunal by observing as follows:-

"In the impugned judgment the Central Administrative Tribunal has observed that the matter of recovery that is being effected against the petitioner under the provisions of the Public Accountant Default Act and the Revenue Recovery Act and it cannot be said to be a service matter cognizable before the Tribunal. We do not find any infirmity in the said view of the Tribunal. It would be open to the applicant to seek redress in an appropriate forum. The special leave petition is, therefore, dismissed".

(c) Since the position is clear and upheld right up to Supreme Court of India that in matters of recovery under PAD Act, this Tribunal has no jurisdiction to entertain the petition. The O.A. is dismissed for want of jurisdiction. However, applicant is given liberty to seek the redressal of their grievances in appropriate forum. No costs".

5. In view of the above, the O.A. is dismissed. However, applicant is given liberty to seek the redressal of their grievances in appropriate forum. No costs.


Member-J