

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD

(This the 08th Day of **October** 2021)

Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)
Hon'ble Mr. Tarun Shridhar, Member (Administrative)

Original Application No. 330/00872 of 2016

Rajeev Kumar Saxena aged about 46 years, S/o Late O.P Saxena, Postal Assistant, Amroha H.O R/o 51 Krishna Vihar, Jwala Nagar, Rampur

-----Applicant

By Advocates: Shri S.K. Kushwaha

Versus

1. Union of India through Secretary, Ministry of Communication Govt. of India, Dak Bhawan, New Delhi.
2. Chief Post Master General, UP Circle Lucknow.
3. Post Master General, Bareilly Region, Bareilly.
4. Director Postal Services, in the office of Post Master General Bareilly Region, Bareilly.
5. Senior Superintendent of Post Offices, Moradabad Division, Moradabad.

.....Respondents

By Advocate : Shri Praveen Shukla

O R D E R

Delivered by Hon'ble Mr. Tarun Shridhar, Member (A)

The applicant, who has been working in the Post Office, Rampur, assails the disciplinary proceedings initiated against him under Rule 14 of CCA (CCS) Rules and seeks the following reliefs through the instant OA: -

- "(i) *The Hon'ble Tribunal may graciously be pleased to set aside the memo of charge sheet dated 26.08.2011 and continuance of inquiry proceedings in pursuance of the charge memo dated 26.8.2011 being charges leveled are vague, unspecific, false and against the law; and*
- (ii) *The Hon'ble Tribunal may graciously be pleased to quash the memo of charge sheet dated 26.08.2011 till the finalization of the criminal case, registered before District Court Rampur.*
- (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 disciplinary proceedings have been initiated against him on account of alleged embezzlement of an amount of Rs.14727573/-. Out of this an amount of Rs. 4584966/- is attributed to the applicant's acts of commission and omission. In accordance with the Disciplinary Rules a memorandum of charges has been issued to him and he prays that this memorandum and the resultant disciplinary proceedings i.e. the enquiry be quashed.

3. The applicant had also sought an interim relief of staying the proceedings till the disposal of the Original Application. This relief was granted to him and the disciplinary proceedings have since been stayed. It is pertinent to mention here that the memorandum of charges was issued to the applicant in the year 2011 preciously on 26.11.2011. Prior to this, an FIR was lodged in this matter of embezzlement wherein the applicant is also an accused along with 2 others. Sanction for prosecution has also been accorded in the case of the applicant.

4. Learned counsel for the applicant argues that the chargesheet issued against the applicant violates Rule 69 of Postal Manual Vol-3 which provides that it is necessary and desirable that disciplinary authorities before initiating proceedings against an employee verify the facts from the original records. He points out that the chargesheet contains identical charges/allegations as are contained in the criminal matter and in case this chargesheet is taken to its logical conclusion, serious prejudice will be caused to the applicant in the criminal case as this memorandum of charges is totally based upon the facts which have emerged in the police investigation. According to the learned counsel for the applicant, a catena of judgments have held that both the criminal proceedings and disciplinary proceedings cannot go simultaneously unless they rely upon different set of allegations.

5. Learned counsel for the applicant quotes from the DOPT OM No. 11012/6/2007-Estt-A which states that if the charge in the criminal case is of a grave nature and involves complicated questions of law and facts it would desirable to stay the departmental proceedings till the conclusion of the criminal case. He also relies upon Circular dated 01.07.2018 of the Central Vigilance Commission, which advises that the competent authority must invariably reevaluate whether the departmental proceedings are to be initiated or continued when simultaneous criminal proceedings are going on. Learned counsel places reliance upon the orders of the Principal Bench of this Tribunal in OA Nos. 1876 of 2008 and 2393 of 2010 which have held that no parallel disciplinary

proceedings would be held on the same set of charges and evidence on which criminal proceeding was already going on without the disciplinary authority first taking a conscious decision as to the question whether the charges and evidence are of similar nature. Besides the aforesaid arguments, the learned counsel also points out loopholes in the chargesheet and contends that it has been issued without application of mind.

6. Learned counsel for the respondents, on the other hand, vehemently argues that charge against the applicant is of a grave nature and involves swindling of public funds. He goes on to argue that the applicant as the Cashier/Treasurer, was custodian of the public money and his act of misappropriating it and allowing it to be misappropriated cannot be condoned as it would amount to compromising public probity. He points out that the applicant was placed under suspension prior to issuance of the chargesheet and the applicant has been provided all the documents as also some additional documents, which the applicant had sought for. He goes on to inform that the applicant has already made a representation to this effect which has been duly considered by the disciplinary authority and hence the condition that in criminal proceedings, the disciplinary authority should first take a view whether departmental proceedings are go on, has been fully complied with. There is no express bar, he goes on to argue, that both the proceedings cannot proceed simultaneously specially when the competent authority after due application of mind has taken into consideration all facts and circumstances. Learned counsel also finds support in this plea of his by referring to the following case laws: -

- (i) *State of Rajasthan Vs. B.K. Meena and others – 1996, 6, SCC 417.*
- (ii) *Capt. M. Pal Antony Vs. Bharat Gold Mines – 1993, 3, SCC 679.*
- (iii) *Kendriya Vidyalay Sansthan and others Vs. T., Srinivas – 2004, 4, SCALE 467.*
- (iv) *NOIDA Entrepreneurs Association Vs. NOIDA – JT 2007, 2, SC 620.*

7. During the course of the proceedings, he points out that the applicant had aired a grievance that relevant documents have not been supplied to him so that he could defend himself and points out that his grievance has also been settled. Learned counsel points out that the applicant despite being involved in serious misconduct involving embezzlement of public funds, has been manipulating the legal process to escape the consequences of his action. He draws attention to the multiple affidavits filed in the instant petition.

8. We have heard learned counsel for the parties at length. We have also carefully gone through the written submissions placed before us by both the learned counsel. We have carefully examined the voluminous set of documents on file. We are not in agreement with the argument of the learned counsel for the applicant that the impugned memorandum of charges and the subsequent enquiry i.e. to say that the entire departmental proceedings should be quashed merely on the ground that simultaneous criminal proceedings in the matter are also under way. We are also not inclined to accept the arguments of the learned counsel for the applicant that any law or the judgment of the Hon'ble Apex Court

or other Court would put on express bar on holding disciplinary proceedings which contain charges/allegations which are also subject to criminal proceedings. No doubt certain conditions have been set forth in various pronouncements for the two parallel proceedings, these conditions are adequately met in the instant case as the disciplinary authority has considered the representation of the applicant to this effect. The charges against the applicant are of a such grave nature as cannot be overlooked. Moreover in the matter of misappropriation of public funds, we need to be cautious while providing any legal protection. Further enquiry into the charges is yet to be held and no penalty has been imposed upon the applicant, therefore, this OA appears to be a result of the applicant's apprehension that he will be subjected to some severe penalty. But we cannot be swayed by applicant's presumption/apprehension.

9. In view of the position detailed above, we are of the view that:-

- (a) the gravity of the charges do not allow the legal protection which the applicant has been enjoying since long by way of the interim relief granted to him as far as 5 years back;
- (b) there is no legal impediment in holding disciplinary proceedings while criminal proceedings may be going on even though the charges are identical;
- (c) no adverse order has been passed against the applicant so far and it could not be in the interest of justice that we restrain the respondents from conducting the

enquiry into the charges which are of an extremely serious nature.

10. In the light of this discussion, the present Original Application is dismissed. Interim relief enjoyed by the applicant so far also gets vacated. No order as to costs.

(TARUN SHRIDHAR)
Member (A)

(JUSTICE VIJAY LAKSHMI)
Member (J)

Manish/-