

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00773/2020

Date of CAV : 22.02.2021

Date of Pronouncement : 22.03.2021



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

Mr. Syed Baleshahe
S/o Late SC Jani Saheb, Aged 60 years,
Ex-Sub Post Master, District Court T.S.O.
And appointed Postal Assistant, Avanigadda, H.O.
Department of Posts,
R/o D.No.4/2, Machilipatnam.

...Applicant

(By Advocate : Mr. K. Sudhaker Reddy)

Vs.

Union of India, Rep by its
Mr.B.V.N.Suresh,
The Superintendent Post Offices,
Machilipatnam Division,
Machilipatnam – 521001.

....Respondents

(By Advocate : Mr. Pavan Maitreya, Proxy counsel for
Mr.R.V. Mallikarjuna Rao, Sr. PC for CG)

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

Through Video Conferencing:

2. The OA is filed with a prayer to quash and set aside the impugned removal order dt. 29.10.2020.



3. Brief facts of the case are that the applicant, who belongs to the Postal Assistant cadre, while working as Sub Post Master, District Court Post office, Machilipatnam applied for medical leave on 13.11.2013 and instead of granting leave, applicant was transferred and a reliever was directed to be posted to relieve him. On 14.11.2013, when the applicant was closing the daily account, the ASP (Hq) (Assistant Supdt. of Post Offices) entered the office and threatened the applicant to hand over charge. In the meanwhile, the night guard of the District Court asked the applicant to close the Post Office, but the ASP and IP (Inspector Posts) refused to come out of the office and hence, applicant sought police protection. On the intervention of the police, ASP and IP came out of the Post Office. Thereafter, due to ill health, applicant could not attend duty on 16.11.2013 (15.11.2013 being a holiday) and sought medical leave for 10 days. Applicant informed the Regional Office to collect the keys from his custody. However, on 16.11.2013, the SPO with ASP (Hq) broke open the lock of the Post office and the cash chest containing cash, certificates, stamps etc. Applicant lodged a police complaint to the police and an FIR bearing No.233/2013 was filed on 26.11.2013. As a consequence of the above happenings, the applicant was suspended on 16.11.2013 and was issued a Rule 14 charge sheet on 2.1.2014. When the charge sheet was

challenged in OA 458 of 2014, the same was set aside by the Tribunal on 6.1.2016. Thereafter, respondents instead of revoking the suspension and reinstating the applicant, issued a fresh charge sheet on 28.4.2016 while continuing the suspension. Contesting the fresh charge sheet, OA 747 of 2016 was filed where in as an interim measure it was directed on 25.7.2016 not to take any final decision based on the inquiry report without the leave of the Tribunal. The said OA is pending adjudication. However, respondents went ahead and removed the applicant from service on 29.10.2020. Aggrieved the OA is filed.



4. The contentions of the applicant are that the charges framed are vague and false. The charge sheet was issued to harass the applicant. Though the Tribunal suspended the charge sheet dt.02.01.2014 vide order dated 29.4.2014 in OA 458/2014, respondents have not revoked the suspension. As per the final order of the Tribunal dated 6.1.2016 in OA 458/2014, the disciplinary authority has to delete the vague charges and proceed with the remaining charges. Instead of doing so, the charge sheet dated 2.1.2014 was cancelled on 28.4.2016 and on the same date, a fresh charge sheet was issued. I.O & P.O were appointed to conduct inquiry afresh from the preliminary stage on the same charges for which there is no provision in the CCS (CCA) Rules. Applicant was removed from service violating the interim order of the Tribunal issued on 25.7.2016 in OA 747/2016. Action of the respondents is arbitrary, illegal and violative of Articles 14 & 21 of the Constitution. The respondents are liable to be prosecuted for Contempt of the Courts Act, 1971. The Supdt. of Post offices harassed the applicant.



5. Respondents in their reply statement state that the applicant belongs to the PA cadre and when he was working as Sub Post Master (SPM) District Court Post Sub Post Office many complaints were received from the advocates, District Judge, and members of the public about the poor postal services rendered by the post office. Women Postal agents alleged that the applicant is demanding gratification to accept the deposits mobilized by them. Consequently an inquiry was ordered to be conducted by the ASP (HQ) and when the enquiry officer gave notice to enquire on 13.11.2013, applicant applied medical leave from 13.11.2013 till 16.11.2013 to evade the inquiry. On receipt of applicant's leave application dated 14.11.2013 (FN), a reliever was sent to relieve the applicant the same day but the reliever was sent back by the applicant and he continued to be on duty during the period from 14.11.2013 till 16.11.2013 for which he has applied for medical leave. Reliever reported the incident to the concerned authority. The applicant was transferred in the interest of service to Avanigadda as Postal Assistant, keeping the complaints in view and also based on his transfer request made vide letter dated 4.1.2013, where in applicant stated that he is not physically fit to hold independent charge. At 16.30 hrs on 14.11.2013 when the reliever went to relieve the applicant in the presence of the Inspector Posts (IP) of the concerned division and the ASP (HQ), applicant called the police claiming that outsiders intruded into the Post Office and are obstructing him from doing his work. However, on knowing that the ASP and IP were officers from the Postal Dept, Police personnel left advising the applicant to follow the orders of the superiors. Applicant promised to hand over charge on the next working day ie 16.11.2013 since it was too late to do so on 14.11.2013 but on the stated date, applicant did



not turn up. Respondents searched for him at his residence as well as at the Hospital from where the MC was taken, but they could not find him. Considering the fact that customers were waiting for the Post office to be opened and that the daily account of 14.11.2013 was not sent acknowledging the remittance made by the Head Post Office, the locks of the Post office were broke open in the presence of public members, Bar Association office bearers by doing panchnama and commenced the operations of the post office from the afternoon of 16.11.2013. In view of the foregoing, applicant was placed under suspension on 16.11.2013. Thereafter, applicant filed OA 1399 of 2013 challenging the transfer which was dismissed on 11.7.2014 and in regard to suspension it was quashed by the Tribunal vide directions in OA 1535/2013 with further directions to reinstate the applicant by posting him at Avanigadda or any other place on 11.7.2014. RA No.22/2014 filed by the Department was also dismissed. Thereafter, WP No. 33612/2014 was filed by the Department before the Hon'ble High Court along with WPMP No.42043/2014 seeking interim suspension of the order of this Tribunal dt. 11.07.2014 in OA No.1535/2013. The Hon'ble High Court was pleased to grant interim stay as prayed for, vide order dt. 11.11.2014. The said WP is pending and as the matter has become subjudice, the applicant was continued to be kept under suspension and the same has been reviewed from time to time. While the inquiry was being conducted pursuant to the charge sheet dt. 2.1.2014, applicant filed OA 458 of 2014 suppressing the above facts and the Tribunal suspended the charge sheet dated 2.1.2014 by passing an interim order on 29.4.2014. Consequently, Rule 14 inquiry was stalled since February 2014. Two MAs viz., MA 141 of 2015 for vacating the interim



stay in OA 458/2014 and MA 965/2014 to expedite hearing, were filed. MAs were disposed by allowing the OA wherein the Rule 14 charges sheet was set aside granting liberty to proceed after deleting the charges for which there is no basis. Hence, charge sheet dated 2.1.2014 was cancelled on 28.4.2016 and a fresh charge sheet was issued on the same date by deleting the charges as directed by the Tribunal. Applicant filed OA 747/2016 challenging the fresh charge sheet and an interim order was passed wherein respondents were directed to proceed with the inquiry but the final decision is subject to leave of the Tribunal. Reply is filed and the OA is pending adjudication. I.O was appointed and when the inquiry was in progress, applicant filed bias petitions against the I.O which were rejected by the disciplinary authority and the Appellate Authority. For rejection of the bias petition, OA 592/2017 was filed and the reply statement has been filed. This OA is pending adjudication. Applicant has not been attending inquiry on medical grounds by producing Medical certificate and causing obstacles in conducting the inquiry. When another OA 860/2015 was filed, directions were issued by the Tribunal on 11.1.2018 to enhance subsistence allowance and complete the inquiry within 3 months ie by 4.5.2018. Applicant was directed to cooperate and if not respondents can conduct ex parte inquiry. Applicant did not attend the inquiry and tried to delay it, by producing medical certificate issued by the doctor of Guntur District Hospital instead of Krishna District Hospital. For second medical opinion when the applicant was directed to appear before the medical board, applicant did not comply claiming that the MC was issued by District Hospital, Guntur and not by District Hospital Krishna District. The inquiry was thus conducted ex-parte by examining 10 prosecution witnesses in



order to comply with the order of the Tribunal in OA 860/2015. As the applicant was not cooperating and to meet the procedural requirements of the inquiry, MA in OA 860/2015 for extension of time to complete the inquiry was filed which was dismissed. Applicant sought permission to leave Headquarters for medical treatment on 6.4.2018 which was refused on 18.4.2018 keeping in view the orders of the Tribunal to complete the inquiry in the given time. Aggrieved OA 392/2018 was filed wherein an interim order was issued on 24.04.2018 directing to stay the inquiry for 8 weeks and posted the matter on 11.6.2018 for filing the reply statement. Reply statement was filed on 04.07.2018 and the interim order was extended on 11.06.2018 till the next date of hearing. When the said OA was listed on 31.07.2018, IO was not extended. Bias petition was moved by the applicant to conduct the inquiry from the stage of examination of PW, which was rejected by the disciplinary authority and on appeal the appellate authority ordered to conduct re-inquiry from the stage of examining PWs. Consequently, Disciplinary authority changed the I.O due to the bias moved by the applicant and directed re-inquiry from the stage of examination of PWs. Thereafter applicant was avoiding the inquiry by submitting Medical Certificates and the I.O refused to entertain the medical certificate in order to complete the inquiry as directed by the Tribunal. Applicant was informed that if he did not attend, exparte inquiry would be conducted. A series of bias petitions were filed to delay the inquiry and therefore exparte inquiry was conducted. 17 defence witnesses were listed to be examined but only 3 who turned up were examined and rest did not attend even after notices were delivered to them. However, applicant appeared on 23.6.2020 for general questioning by the I.O and this stage was

completed. The I.O submitted his report on 21.8.2020 which was received by the applicant on 26.8.2020 and he submitted his defense on 17.9.2020. Considering the I.O report and the reply of the applicant, the Disciplinary authority imposed the penalty of removal from service on 29.10.2020. The other contention that the Superintendent of Post Offices harassed the applicant is false because, the entire episode is of the making of the applicant. The complaint of the District Judge, Krishna against the adamant behavior of the applicant on 13.9.2013 is a pointer in this direction.



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

7. I. The dispute is about imposing the penalty of removing the applicant from service on 29.10.2020. The applicant is a Postal Assistant and is competent to discharge the responsibilities of a Sub Post Master, as the head of a sub Post office. Applicant was thus posted at District Court, Post office Machilipatnam to work as Sub Post Master, but his work style invited complaints from the public members, women savings agents and most notably from the Hon'ble District Judge, Krishna, District.

II. On receipt of the complaints, enquiry was ordered to be conducted by the ASP (HQ) and when the applicant was given notice about the inquiry on 13.11.2013, he applied for medical leave from 14.11.2013 till 16.11.2013. When a reliever was sent to relieve him on medical leave, applicant sent back the reliever. Thereafter, considering the previous request of the applicant that since his physical health does not permit him to hold independent charge, he was transferred to Avanigadda as Postal Assistant on 14.11.2013. However, the applicant did not hand over charge to the reliever on 14.11.2013 even in the presence of the



Inspector Posts, who was deputed to ensure smooth handing over charge to the reliever. The ASP (HQ) was also present in the office premises in the context of enquiring into the complaints received against the applicant. Aggravating the situation, applicant called the police claiming that intruders have entered the post office and are not allowing him to do his work. Police did arrive and on knowing the identity of the Inspector Sub Division as well as that of the Asst. Supdt. Of Post offices, they left advising the applicant to cooperate with the superiors. The contention of the applicant that he had to call the police, since the Inspector and Asst. Supdt did not come out of the post office, when the night guard of the District court wanted to close the Post office is far from the truth. The Inspector and the Asst. Supdt. of Post offices are officers superior to the applicant and they have visited the Post office on an official duty relating to the conduct of the applicant. Therefore, calling the police has to be rather construed as an attempt made by the applicant to obstruct the Inspector and the Asst. Supdt. to discharge the official duties assigned to them. Rarely, we come across instances where subordinates call the police to prevent the superior officers from doing their duty. It is gross insubordination. The version given by the respondents in the reply statement has not been refuted by the applicant by way of a rejoinder. Hence we disapprove of the conduct of the applicant in calling the police by falsely complaining that intruders have entered the post office and prevented him to do his work.

III. The applicant claimed that he cannot work in an independent assignment like the Sub post Master for reasons of physical health and sought a transfer vide his representation dated 04.01.2013

Noticing that there were complaints against the applicant from different sections of the society and in particular, allegation of illegal gratification from women savings agents, respondents have transferred the applicant to Avanigadda Head post office as Postal Assistant, acceding to his request.



However, applicant though promised to hand over charge on transfer to the reliever on 16.11.2013, he did not turn up on the said date and instead, went on medical leave without forwarding daily account of 14.11.2013 and not acknowledging the remittance received from the Head Post office. The respondents had no other alternative but to break open the locks of the post office by conducting panch nama in the presence of public members, bar association office bearers etc. The applicant cannot be irresponsible by not handing over the charge or making proper arrangement to hand over the keys to the concerned by approaching the competent authority. In the respondents organization, Post Masters going on medical leave is a common occurrence but seldom they leave the post without proper relief, since as Head of the office they are accountable for the cash, stamps, certificates, continuity of public service and so on. The applicant being well aware of this aspect and yet, not coming over to the post office on 16.11.2013, as assured by him, is something, which we find it difficult to understand. The applicant has adduced that he has informed Regional Office that the keys of the Post office are with him and that arrangements be made for taking over the keys. The proper authority to be informed is the Divisional Office, which is at stone's throw away distance from the sub post office and not Regional Office, which is around 100 KM away plus this office is not the proper authority to report to. The Post office is a public institution and public members should not be put to inconvenience



by the conduct of the employees. However, the applicant by not opening the post office on 16.11.2013 has forced the customers wait till the afternoon to get their transactions done, after the post office locks were broke open on conducting panch nama as per procedure. Moreover, non submission of the daily account would put the entire accounting system in disarray since the Head Post office as an accounting unit has to tally the balances of all the sub post offices under its jurisdiction on a daily basis. The Post offices are dealing with public money and every pie has to be accounted for by the end of the day. Therefore, while heading an office, one has to be responsible, which we find is lacking.

Interestingly, applicant applied for medical leave from 13.11.2013 till 16.11.2013, but the applicant was on duty and did not get relieved though a reliever was deputed to relieve him on medical leave and later on transferred as per his request. We are not able to understand as to why the applicant did not get relieved after seeking leave on medical grounds and also relinquish charge on transfer. It gives an impression that the applicant wanted to avoid the enquiry to be conducted by the ASP (HQ) in regard to the complaints received against him and hence the request for medical leave.

IV. Observing the insubordinate conduct of the applicant as at above, respondents suspended the applicant on 16.11.2013 and charge memo dated 2.1.2014 was issued. The suspension when challenged in OA 1535/2013 it was set aside by the Tribunal on 11.07.2014 and when the Tribunal order was challenged, Hon'ble High Court has stayed the order of the Tribunal dated 11.07.2014, in WPMP No.42043/2014 in WP No.

33612/2014 on 11.11.2014. The applicant contending that the respondents have not revoked the suspension and not reinstated the applicant is not maintainable when the Hon'ble High Court has stayed the order of the Tribunal dated 11.07.2014. It is surprising that the orders of the High Court were not stated in the OA by the applicant. It was expected of the applicant to make full and true disclosure of facts. Thus, the applicant has not come with clean hands to the Tribunal.



A litigant is bound to make "full and true disclosure of facts" as observed by the Hon'ble Supreme Court in *Tilokchand H.B. Motichand & v. Munshi* [1969 (1) SCC 110]; *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam* [(2012) 6 SCC 430]; *Chandra Shashi v. Anil Kumar Verma* [(1995)1 SCC 421]; *Abhyudya Sanstha v. Union of India* [(2011) 6 SCC 145]; *State of Madhya Pradesh v. Narmada Bachao Andolan* [(2011) 7 SCC 639]; *Kalyaneshwari v. Union of India* [(2011) 3 SCC 287]. Applicant seeking justice, should be fair to the Court and if he is not, then it amounts to abuse of process of the Court and indeed Contempt of Court {*K.D. Sharma v. SAIL* [(2008) 12 SCC 481]}. While approaching the Tribunal, the applicant need to come not only with clean hands but also clean mind, heart and objective, which are the prerequisites for judicious litigation. Majesty of law should not be marred by suppression of information. Over the centuries, Courts discouraged litigants to approach without full disclosure of facts and in fact, held that they need not be heard nor granted any relief. The obligation to approach the court with clean hands is an absolute obligation. An applicant who files a misconceived application need not be dealt lightly. The jurisdiction of the

Tribunal should not be a source for abuse of the process of law by a disgruntled applicant. The applicant cannot play hide and seek with the Tribunal or pick and choose. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. In making the above remarks, we take support of the observations of the Hon'ble High Court of Karnataka in **Pushpa B R vs The State of Karnataka** on 21 August, 2018 in Writ Petition Nos.35510-35513/2018 (LB-RES)



*“18. The petitioners have not produced any material documents to establish their residential proof in the address furnished along with the writ petitions with verifying affidavit. This clearly indicates that the petitioners have not come to the Court with **clean hands**. It is expected that every citizen, who approach the Court seeking justice should be fair to the Court. When they are not fair, it amounts to abuse of process of Court and contempt of Court. It is well settled that the person seeking equity must do equity. It is not just the **clean hands**, but also **clean** mind, **clean** heart and **clean** objective that are the equi-fundamentals of judicious litigation. The petitioners have unnecessarily dragged the Tahsildar, Municipal Commissioner and the Counselor before this Court, wasting their public time. The conduct and attitude of the petitioners in manner to cause colossal insult to justice and are against the majesty of law which cannot be encouraged in order to see that democratic values enshrined in the Constitution are respected and faith of people in the judicial institutional system is not lost.*

Xxxx

*32.1 Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with '**unclean hands**'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.*

*32.2 The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant. 32.3 The obligation to approach the Court with **clean hands** is an absolute obligation and has repeatedly been reiterated by this Court.*

xxx



36. The party not approaching the Court with **clean hands** would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under [Article 136](#) of the Constitution. While approaching the court, a litigant must state correct facts and come with **clean hands**. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to an abuse of process of court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to an abuse of process of court. A litigant is bound to make "full and true disclosure of facts".

37. The person seeking equity must do equity. It is not just the **clean hands**, but also **clean mind**, **clean heart** and **clean objective** that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiore*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with **clean hands**.

38. No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of court. {*K.D. Sharma v. SAIL* [(2008) 12 SCC 481]}.

39. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. ([Buddhi Kota Subbarao v. K. Parasaran](#), (1996) 5 SCC 530)."

V. However, when the inquiry proceedings were being conducted in respect of the charge sheet dated 2.1.2014, applicant filed OA 458/2014, wherein the Tribunal has set aside the charge sheet and gave liberty to proceed with the disciplinary action on 6.1.2016 as under :

“Having regard to the procedural defects and the lack of proper basis for several articles of charge including in the charge memorandum, we hold that the charge memorandum is vitiated and liable to be quashed. Accordingly, the impugned charge memo is quashed and set aside. However, this does not preclude the respondents from proceeding against the applicant in a manner which would not be disproportionate to the lapses purported to have committed by him and after deleting the charges for which there is no basis.”



The order makes it clear that the respondents can proceed against the applicant in a manner which would not be disproportionate to the lapses committed and after deleting charges which have no basis. Accordingly, respondents cancelled the charge sheet dated 2.1.2014 and issued a fresh charge sheet on 28.4.2016 by deleting certain charges keeping in view the orders of the Tribunal . The applicant claims that the respondents were only given permission to delete the charges, which had no basis and not for issuing fresh charge sheet. We do not agree with this contention since the order of the Tribunal was to proceed against the applicant in a manner which is not disproportionate to the lapses. Hence, nowhere it was said in the Tribunal order as at above that the respondents are forbidden from issuing a fresh charge sheet. Therefore, the action of the respondents in issuing a fresh charge sheet on 28.4.2016 cannot be found fault with.

VI. However, applicant filed OA 747/2016 challenging the fresh charge sheet and the Tribunal directed the respondents on 25.7.2016 as an interim measure, to proceed with the inquiry with a proviso that the final orders will be with the leave of the Tribunal. The Inquiry thus commenced and the applicant requested for 61 additional documents and sought permission to present 20 additional witnesses on his behalf. The I.O after due examination allowed 9 documents and 17 witnesses. The applicant wanted the change of venue of inquiry on 19.7.2016 which was also



conceded to. Therefore, respondents were accommodative to the extent they could within the ambit of the rules. Nevertheless, applicant moved bias petitions against the I.O which were rejected by the disciplinary authority and the Appellate Authority. Aggrieved over the rejection of the bias petition, applicant has filed OA 592/2017 for which the reply statement has been filed and the OA is pending adjudication. Annexure III appended to the reply statement details 15 occasions on which the applicant sought postponement of the inquiry for one reason or the other. This gives an impression that the applicant was dodging the inquiry in as many intelligent ways as he can. Thereafter, OA 860/2015 was filed seeking enhancement of subsistence allowance wherein the relief sought is as under:

“...to declare the respondents action in not enhancing subsistence allowance at the rate 75% immediately after completion of three months period of suspension as illegal, arbitrary and clear violation of the Rule 53 of FRSR and also applicants fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India, and

Consequently direct the respondents to enhance payment of subsistence allowance at the rate 75% with arrears to the applicant forthwith with 18% interest as per FR 53..”

The Tribunal adjudicated the matter and ordered on 11.1.2018 as under:

“5. During the course of hearing today, Mr. M. Brahma Reddy, learned counsel for the Respondents submitted that the applicant has not been co-operating with the Inquiry Officer for completion of the on-going inquiry and the delay in completion of the disciplinary proceedings is entirely attributable to the applicant. This argument of Shri Reddy cannot be acceptable for the simple reason that nothing prevents the Inquiry Officer in proceeding ex parte against the applicant in case he feels that the applicant is not co-operating with the inquiry proceedings. Be that as it may, the fact remains that the applicant has remained under suspension for over 4 ½ years and has been getting Subsistence Allowance only @ 50% of his salary. I feel that the ends of justice would meet by granting the prayer made in this O.A. for enhancement of the Subsistence Allowance from 50% to 75%. Accordingly ordered. It is however, made clear that this enhancement is prospective in nature and shall be effective from 01.02.2018.

6. The Applicant is directed to fully co-operative with the Inquiry Officer and efforts should be made jointly by the Applicant and the Respondents to conclude the disciplinary proceedings within three months. No order as to costs.”



VII. The applicant was directed to cooperate with the inquiry officer and efforts should be made jointly to conclude the inquiry. In view of the fact that the applicant was not cooperating in the conduct of the inquiry, it was specifically observed to cooperate and jointly work for the concluding of the disciplinary proceedings within 3 months. Disciplinary proceedings do include the imposition of the penalty. Thereafter, once the disciplinary proceedings are concluded with the imposition of the penalty, it is open to the applicant to pursue remedies of appeal, petition, mercy petition etc. Thus the order of the Tribunal dated 11.1.2018 in OA 860/2015 supersedes its own interim order dated 25.7.2016 in OA 747/2016. Therefore, the stand of the applicant that the respondents have violated the interim order of the Tribunal dated 25.7.2016 would not hold good. It is well settled that the later judgment would take precedence over its previous order. When the respondents proceeded with the inquiry, applicant sought permission to leave HQ, which, when denied for reasons of complying with the order of the Tribunal in OA 860/2015, he filed a fresh OA No.392/2018 wherein Tribunal directed by way of an interim order to stay the inquiry for 8 weeks and directed the matter to be listed on 11.6.2018 for filing the reply by the respondents. Though the Respondents prepared the reply statement and sworn and signed by the Deponent on 19.06.2018, it was received by the Registry on 04.07.2018. The interim order dt.24.04.2018 was extended further till the date of next hearing when the matter was listed on 11.06.2018. Thereafter the interim order was not extended. Even otherwise, an interim order is valid only for 6 months unless it is extended by the Tribunal as per Hon'ble Supreme Court

judgment in Asian Resurfacing of Road Agency Pvt Ltd & Anr. v. CBI, in
 Crl. Appeal No. 1375-1376 of 2013 dt. 28.08.2018, extracted hereunder:



“35. In view of above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this, situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.”

Based on the principle laid down by the Hon'ble Apex Court supra, interim order passed by the Tribunal on 24.04.2018 would not hold good after 24.10.2018, since it was not extended.

We also observe that the applicant has filed a series of bias petitions numbering 15 as seen from the annexure IV of the reply statement, which were mostly rejected. Further, it is seen that whenever inquiry was ordered, applicant was producing MC and not attending the inquiry. When directed to appear before the medical board, applicant was not complying with the order as seen from the numerous details furnished in the reply statement. Thus, it is clear that the applicant was avoiding to participate in the inquiry, which indeed is against the orders of the Tribunal in OA 860/2015. The applicant need to have participated in the inquiry to defend himself effectively. The respondents did examine the 3 defence witnesses and the

rest 14 did not appear despite notices served on them. The applicant appeared on 23.6.2020 for general questioning by the I.O and the I.O submitted his report on 21.8.2020, which was received by the applicant on 26.8.2020. Thereafter, based on applicant's defense dated 17.9.2020 and I.O report, Disciplinary authority imposed the penalty of removal from service on 29.10.2020.



VIII. We find from the facts of the case that the respondents have followed the principles of Natural Justice giving reasonable opportunities to the applicant to defend himself. The issue got complicated because of the non cooperation of the applicant to get to the root of the issue. The inquiry was protracted by adopting delay tactics of filing bias petitions, postponement of inquiry by producing medical certificates when sittings were ordered, not coming clean on facts, etc. As a responsible Post Master, it was his duty to provide effective postal services to the public members and for not doing so, the lengthy litigation has emerged. Had he been dutiful, the respondents would not have had any occasion to proceed against him. Therefore, it was not correct on part of the applicant to contend that the Superintendent of Post offices was harassing him. On the contrary, we find it very strange that the applicant has filed a police complaint against his own superiors for trying to do their duty. The applicant has filed as many as 8 OAs including the one under consideration in regard to the consequences that flowed due to the complaints lodged against him by public members, advocates, women savings agents and the Hon'ble District Judge, Krishna District. It is applicant's right to fight for his legal rights, but that should be for a justifiable cause. For failing to discharge the

responsibilities assigned in public interest, there will be penal action and that is exactly what the respondents have done within the ambit of rules and law.

IX. Therefore, to sum up the action of the respondents was in



compliance with the directions of the Tribunal and we do not find any error in their decision in imposing the penalty in question based on the charges laid against the applicant. Thus, there being no merit in the OA, the same is dismissed. No costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

evr