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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH.

O.A. No. 1289 of 1988

Rajan Babu Singh Applicant.

Versus

Senior Superintendent, Post Offices &
others Respondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, A.M.

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

By means of this application, the applicant has prayed for quashing the order dated 31.8.88 passed by the Senior Superintendent, Post Offices initiating the enquiry against the applicant under section 8 of E.D.A. Conduct & Service Rule, 1954 which is being held after 12 years and had not been completed within four months maximum according to Rule 9 of E.D.A. Conduct and Service Rule 1954.

It has also been prayed that the enquiry may be declared illegal because a criminal case under section 409 IFC relating to the same offence is pending in the Court of Chief Judicial Magistrate, Allahabad and the acts of the authorities are prejudicial because absence of applicant on one date has ~~been~~^b resulted in ~~an~~ ex parte proceeding against the applicant and the authorities are now reconsidering the matter while the then Senior Superintendent Post Office Allahabad after considering the matter at length ordered for issuing a new pass book to the Pass Book Holder which is without jurisdiction and the Enquiry Officer has given his mind that there is no escape and the applicant was bound to be dismissed from service.

It appears that in the year 1976, a First Information Report was lodged against the applicant

stating that there was an entry of Rs.500/- and again Rs.80/- in Pass Book No.2780392 and there was no mention of this money in the Post Office Register. The statement of one lady-Pass Book Holder was recorded by the Investigating Officer and subsequently the statement of Pandit Suryadin Shastri-father-in-law of said lady was recorded and thereafter proceedings under section 409 IPC started against the applicant which are pending in the Court of Addl.Chief Judicial Magistrate, Allahabad (Case No.4 of 1983) notwithstanding the fact that 9 years have passed but nothing has happened and the case is being lingered on unnecessarily. It was only in the year 1988 that the applicant received a letter from the Senior Superintendent, Post Offices, Allahabad Mandal that there were some charges against the applicant and if he wants, he may file his written statement. The applicant submitted his reply and an Enquiry Officer was appointed who gave a notice to the applicant to appear before him on 19.9.88. He moved an adjournment application as during that period he was busy in connection with the settlement of the marriage of his daughter. Although the applicant appeared but the department proceedings are even now pending. The applicant, who was put off duty on 27.1.76, contested the election of the Village Pradhan and he was elected as such. His rival candidate, who lost the election, manipulated all these things against the applicant. An election petition was filed by his rival candidate in which by way of amendment a ground was taken that the applicant was holding office of profit and in order to help the rival candidate, it appears that the

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department has taken this proceedings. The proceedings have been stayed by this Tribunal and the prayer of the applicant is that as a criminal case is pending before the criminal court and as charges before the criminal court and the Enquiry Officer are identical, the departmental proceedings may be stayed.

2. The respondents resisted the claim of the applicant by filing written statement. They have pointed out that under what circumstances, the departmental proceedings were started after 12 years. It has been stated that the applicant had admitted that a sum of Rs.580/- was received by him. A FIR was lodged on 22.8.76. Regarding the departmental proceedings, it has been stated that a charge-sheet under Rule 8 of Extra Departmental Agents (Conduct & Service) Rules, 1964 was issued to him on 16.8.88. It has further been stated that previously enquiry was being ordered to proceed after finalisation of criminal case but subsequently the policy has now been changed that the departmental enquiry will be commenced even before the finalisation of the court case. Learned counsel for the applicant contended that the charges are the same and as such the proceedings may be stayed. In this connection, reference has been made to the case of 'Kusheshwar Dubey Vs. M/s Bharat Coking Coal Ltd. & others (AIR 1988 Supreme Court 2118) in which it has been observed that

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"While there could be no legal bar for simultaneous proceedings being taken against the delinquent employee against whom disciplinary proceedings were initiated, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. It is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. In the instant case, the criminal action and the disciplinary proceedings were grounded upon the same set of facts, and, therefore, the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal."

3. Charges have yet not been framed by the Criminal Court and in the departmental proceedings, the charges are that as the applicant had not made entry in the relevant record, he acted against Rules 13 and 165(c) and Rule 17 of the Extra Departmental Agents (Conduct & Service) Rules, 1964. As no charge has been framed by the Criminal Court against the applicant, it cannot be said that the charges before the criminal court and in the departmental proceedings are identical.

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As such there is no occasion for staying the departmental proceedings. However, if the applicant co-operates with the departmental proceedings, the same may be expedited. The application has no merit and accordingly it is dismissed without any order as to cost.

R. Venkateswara
MEMBER (A)

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VICE CHAIRMAN.

DATED : APRIL 23, 1992

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