

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 25 DAY OF 2 2010)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon.ble Mrs. Manjulika Gautam Member (A)

Original Application No.1241 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

Mohd. Ayub Khan, E.D. Branch Post Master (Dundawa Buzurg), S/o Abdul Gafoor Khan, R/o Village and Post dundawa Buzurg, District Farrukhabad/Kannauj, Uttar Pradesh.

..... *Applicant*

Present for Applicant : **Shri H.C. Shukla**

Versus

1. Union of India through the Ministry of Director General (Posts), Defence Dak Bhawan Sansad Marg, New Delhi.
2. The Chief Post Master General, U.P. Circle, Lucknow.
3. The Post Master General, Kanpur Region, Kanpur.
4. The Superintendent of Post Office, Farrukhabad Region, Farrukhabad (Kannauj).
5. Mohd. Daraj Khan, E.D. Post-Man, Branch Post Office Dundawa Buzurg, Farrukhabad (Kannauj).
6. Sri R.K. Mishra, The then, Inspector, Post Offices, Chhibara Mau, District Farrukhabad (Kannauj).
7. Sugher Singh Pal, the then Overseer Post Office Chhibara Mau, District- Farrukhabad (Kannauj).

..... *Respondents*

Present for Respondents: **Shri R.K. Srivastava**
Shri Saurabh Srivastava

✓

ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

Through this O.A., the applicant has claimed following main relief/s:-

- (a) *This Hon'ble Tribunal may kindly call for the records of the present case as the mala fide respondents are adamant to pass the order against the applicant, to save their skin.*
- (b) *This Hon'ble tribunal may kindly quash the departmental proceeding for the reason of gross mala fides and violation of principles of natural justice coupled with dehors, the rules.*
- (c) *This Hon'ble Tribunal may kindly be pleased to direct the respondent to allow the applicant to join his duties and work as Branch Post Master Dundawa Buzurg, District-Kannaju, further may be pleased to direct the respondents to release the consequential benefits.*

2. The factual matrix of the case is that the Applicant was appointed as Branch Post Master in Dundwa Buzurg Post Office, District Kannauj on 01.01.1991. The Applicant remained unauthorized absent w.e.f. 15.08.1999 to 17.08.1999. He reported for duty in the late evening on 17.08.1999. It is alleged that in absence of the Applicant the Officers with *mala fide* intention shifting the Post Office to the House of E.D. Post Man, Mohd. Daraz. This act of shifted^{ing} the Post Office was done at the instance of the then Sub Divisional Inspector, Post Office, Chhibaramau, Shri R.K. Mishra, Over-seer, Sri Sughar Singh Pal and E.D. Post Man, Mohd. Daraj. On 20.08.1999, First Information Report was lodged against the applicant and it was reported that the applicant is absconding. The applicant was falsely implicated in a criminal case of misappropriation of Public Money. The

applicant ran from pillar to the post to join duties but could not get any favourable relief. With the lapse of time, getting no response from the Higher Authorities, the applicant through his communication dated 18.05.2001 pointed out the illegal action of the respondents, putting him off the duty. As the grievance of the applicant could not be redressed, he wrote to the General Manager, Post Offices. Accordingly to the applicant, after two and half years, Superintendent Post Offices Fatehgarh issued baseless charge sheet to the applicant due to *mala fide*. It is alleged that Superintendent of Post Office, Fatehgarh and other Officers were trying to proceed illegally having no such authority. The applicant sent representations, reminders as well as Telegram dated 06.10.2003 to all concerned, requesting not to proceed against him. He submitted that the Disciplinary Authority is highly biased and has no right to proceed against him. It is also urged that the Hon'ble High Court stayed the criminal proceedings pending against the applicant in Criminal Case No.2902 of 2002 pending before the Court Chief Judicial Magistrate, Kannauj vide order dated 30.01.2003. The sole contention of the applicant in the present O.A. is that the entire departmental proceedings are wholly *void ab initio* and the same quashed.

3. By filing Counter Reply respondents have submitted that on receipt of complaint dated 16.08.1999 from one Sri Qasim Khan depositor of RD Account No.93784 and Shri Sabir Khan, depositor of RD Account No.44995 and 45000, Shri R.K. Mishra the then SDI

(P)Chhibramau were directed to enquire and submit report in the matter on 17.08.1999. He submitted his report on 19.08.1999. During the course of enquiry both the complainants confirmed their complaints. After establishment of misappropriation of amount of Pass Books by the applicant, the past work verification of applicant was ordered to be made and completed by the Competent Authority. During the course of enquiry the son of the applicant deposed that the whereabouts of his father, the applicant are not forth coming and he absconded since 14.08.1999. The other members of the family were also not aware about his whereabouts. The guilt of the applicant was fully established after completion of past work verification. The Disciplinary action was initiated against him and after completion of open enquiry; the applicant was dismissed from service on 22.03.2005.

4. According to the respondents, the applicant was absent from his duty since 14.08.1999. During the year 1997, 1998 and 1999 the applicant misappropriated the Government money from SB, RD and TD Accounts. The applicant was placed under put off duty and dismissed from the service. It is also submitted that as the applicant was placed under put of duty, hence it was not feasible to run the Post Office from his building further. The action taken by the respondents are wholly in conformity with various Rules and instructions issued in this regard. The applicant has utterly failed to come forth without any cogent grounds for filing the present Original Application before this Tribunal. The O.A. is liable to be dismissed being premature.

Y

5. By filing Rejoinder Affidavit, applicant submitted that the entire initiative of the respondents was illegal, arbitrary and void. As the initiation of departmental proceedings was contrary to the provision of Rule, the applicant did not participate in the enquiry proceedings.

6. Learned counsel for the official respondents has also filed Supplementary Counter Affidavit and reiterated the same fact, which were stated in the Counter Reply and nothing new has been added therein.

7. We have heard Sri H.C. Shukla, learned counsel for the applicant and Sri R.K. Srivastava and Saurabh Srivastava, learned counsel for the Respondents and also perused the written arguments filed by the parties counsel.

8. Learned counsel for the applicant submitted that the proceedings were initiated by an incompetent authority and the Disciplinary Authority was incompetent authority to proceed with the case of his being personally concerned with the charges or being a material witness in support of the charges. In the facts and circumstances of the case, the matter should have been referred to the Ad hoc Disciplinary Authority by a Presidential Order under the provisions of Rule 14(2) of C.C.S. (C.C.A.) Rules, 1965. It is also argued that the respondents have committed serious illegality in initiating departmental proceedings against the applicant and have acted in a most arbitrary manner. The

request of the applicant not to proceed with the disciplinary proceedings was not accepted by the respondents due to illwill and malafide.

9. Learned counsel for the official respondents submitted that the misappropriation of amount of pass books by the applicant was established on the basis of verification of past work of the applicant. The disciplinary action was initiated against the applicant after completion of open enquiry and the applicant has been dismissed from service on 22.03.2005 by the competent authority. In view of the dismissal order of the applicant from service the aforesaid Original Application has been rendered infructuous. The applicant has not at all challenged the dismissal order dated 22.03.2005 in the present Original Application.

10. Having heard parties counsel, we find that there is nothing on record to indicate that the disciplinary proceeding was initiated against the applicant on account of mala fide or without any substance. The applicant was offered full opportunity to defend himself. A perusal of the relief clause of the O.A. indicates that the O.A. is not legally maintainable. The written arguments filed by the applicant has got no substance. No tangible ground has been taken by the applicant, which may warrant interference by the Tribunal. The validity of termination order dated 22.03.2005 has also not been challenged in the instant O.A. by the applicant.

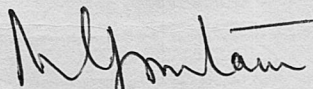
✓

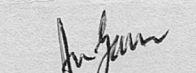
11. It is well settled by a catena of decisions rendered by Hon'ble Supreme Court that the Tribunal must be very careful in interfering at the stage when disciplinary authority had not passed any final order. In support of this plea, learned counsel for the respondents has placed reliance on the decision reported in *1995 Suppl. (1) SCC 180 Union of India & Ors Vs. Ashok Kacker*.

12. Learned counsel for the applicant would further contend that the courts interference at interlocutory stage of chargesheet or initiation of disciplinary proceedings would not be proper. In order to buttress the aforesaid argument reliance has been placed on following decisions of Hon'ble Supreme Court:-

- (i) *2000 SCC (L&S) 1100 D.F.O. Vs. R. Raja Manickam*
- (ii) *1994 (27) ATC 200 U.O.I. & Ors. Vs. Upendra Singh*
- (iii) *1992 (21) ATC 670 U.O.I. & Ors. Vs. A.K. Saxena*

13. Having given our thoughtful consideration to the pleas advanced by the parties counsel, we are convinced that this Tribunal must be very slow in interfering with the disciplinary proceedings at interlocutory stage. All the grounds taken by the applicant in the original application are not tenable in law and O.A. is premature. The applicant has utterly failed to make out any tangible ground warranting interference with the matter. Accordingly, original application is dismissed. No costs.


Member-A


Member-J

Sushil