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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD

ORIGINAL APPLICATION NO. 169 OF 2006

(THIS THE 30th DAY OF NOVEMBER 2012)

Present

**HON'BLE DR. K.B.S. RAJAN, MEMBER (J)
HON'BLE MR. SHASHI PRAKASH, MEMBER (A)**

Mahesh Chandra Gupta, S/o Sri R.D. Gupta, R/o Mohalla – Kanoongoyan, Kashipur, District – Udhampur Singh Nagar.

... Applicant

By Advocate : Shri A. Tripathi & Sri R.K. Dixit

VERSUS

1. Union of India through its Secretary, Department of Post, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Dehradun Circle, Dehradun (UK).
3. Senior Superintendent of Post Offices, Nainital Division, Nainital.

... Respondents

By Advocate : Shri R.P. Singh.

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

In a case of alleged misappropriation of government money committed by one Shri M.C. Suyal, the RD/NSC Discharge Counter Assistant Haldwani Head Office, the applicant in this O.A. was also identified as one of the co-offender consequent to which departmental proceedings were initiated by issue of Rule 14 Charge Sheet dated 29-07-2003, vide Annexure A-1 (which was served upon the applicant on 30-07-2003 the previous day of superannuation of the applicant on 31-07-2003) while on the other, the matter was reported to the CBI for investigation. During the CBI investigation, no criminal case was established

against the applicant and accordingly the name of the applicant had been deleted from the chargesheet filed against various individuals in the CBI court on criminal charges. This matter was intimated by the applicant to the respondents and request had been made for dropping of the procedure in view of the clean chit given by the CBI. However, the representation of the applicant had been rejected by the respondents, vide Annexure A-2. Annexure A-1 and A-2 are under challenge.

2. The main ground of challenge by the applicant is that on the same set of facts, there cannot be two simultaneous proceedings, as held in a few decisions of the Apex Court and also as provided for in para 81-82 of the Postal Manual. The resistance by the respondents is that the restriction in proceeding departmentally when criminal proceedings have been initiated on the basis of the same set of facts is limited and conditional one and does not apply universally in all cases.

3. After exchange of the pleadings, the case was heard. Counsel for the applicant referred to investigation report dated 14-12-2004 whereby it was recorded that against the applicant (and certain others) '*no evidence could emerge against them during investigation and hence, 'they may be discharged'*'. The applicant was also exonerated by the Criminal Court vide their order dated 04-01-2005 (filed as Annexure I to the affidavit dated 31-07-2012)

4. The counsel then referred to the Charge Sheet and contended that these charges are proximately related to the very same set of facts investigated by the CBI in which the CBI has held there is no complexity of the applicant with the criminal offence. Again, the counsel argued that a glimpse at the very articles of charge would go to show that these could not be considered as a misconduct.

The counsel submitted that there are three Articles of Charges, the first one was that the applicant while discharging the duties of Postmaster, Haldwani H.O. for one week between 24-06-2002 to 30-06-2002 had failed to rotate Shri M.C. Suyal RD/NSG (Discharge) Counter Assistant on completion of his two years tenure. The next charge relates to the alleged failure of the applicant in his capacity as the Dy. Postmaster, in carrying out the prescribed checks and procedure as laid down in Rule 108 and Appendix II of PO SB Manual Volume I, which facilitated the said Suyal to commit the fraud. The third article of charge is that while working as Dy. Postmaster, the applicant failed to exercise the prescribed checks as required under Rule 106, 108 and Appendix II of PO SB Manual Vol I, which again facilitated the said Suyal in committing the fraud of not accounting for the deposit of moneys tendered by certain depositors. Likewise, the fourth charge was alleged failure to follow the procedure contained in Rule 23 (2) of the PO SB Manual Volume II and the last Article of charge was that the applicant failed to bring the 'suspicious circumstances' in which the said Suyal had credited certain money in 23 different RD Accounts irregularly, to the personal notice of the Superintendent of Post Offices. According to the applicant, the charges are not concrete, definite and specific as required under the CCS(CC&A) Rules, 1965.

5. In so far as the first article is concerned, the Counsel submitted that rotation of the members is the affair of the regular Postmaster and a Deputy Postmaster who has been asked to discharge the functions of Postmaster for a very short period in addition to his own cannot be expected to undertake the exercise of rotating the staff members. As regards the other charges, a perusal of requisite rules referred to would show that the duties cast are all of the Postmaster. For example, in respect of encashment of Certificate, it has been stipulated as under:-

[Handwritten signature/initials over the last sentence]

"(2) If the counter Assistant is satisfied on all the above points, he will calculate the amount payable and then ask the holder to sign the endorsement on the certificate "Received payment of Rs....." in words and in figures in his presence. If the certificate is presented for encashment through a messenger, the endorsement should have been signed already and the certificate accompanied by a letter of authority containing the specimen signature of the messenger. It should be seen whether the signature below the endorsement and the letter of authority if any, agrees with that on the application or the identity slip. The certificate will then be placed before the postmaster who will satisfy himself about the authority of the certificate and the title of the holder. He will also ensure that the examination of the certificate has been carried out in the matter prescribed and that the amount payable as noted on the certificate is correct. He will then pass order "Pay" under his signature at a suitable place above the place for the holder's signature to authorize payment. Payment will then be made by the counter Assistant. When payment is made to a messenger, his signature or thumb impression must be taken in addition to the signature of the holder, below the holder's endorsement, "Received payment of Rs....."

6. The charges are not directly related to misappropriation as in the criminal case. The charges are alleged non following of certain procedures as laid down in the Rules. The charge sheet issued in 2003 had been stayed by this Tribunal vide order dated 06-07-2006. The counsel for the applicant further submitted that at the relevant point of time, the rule existed vide Rule 82 which reads as under:-

"82. It is not permissible to hold departmental enquiry in respect of a charge based on the same facts or allegations which have already been examined by a Court of competent jurisdiction and the Court has given a finding that they are not true. If, however, that Court has merely expressed a doubt as to the correctness of the allegation, there may be no objection to hold departmental enquiry on the same allegation. If better proof than that was produced before the Court or was then available, is forthcoming. If the Court has held that the allegations are proved but they do not constitute the criminal offence with which the Govt. servant was charged, then also it would be permissible to hold a departmental enquiry on the basis of the same allegations."

7. Counsel for the respondents has not denied the fact that the applicant was exonerated in the criminal offence as no evidence at all had been found against him. He has, however, submitted that as the instructions contained in

the Directorate's letter dated 11 November 1983, it is well settled law that the disciplinary action and criminal proceedings are independent of each other and there is no bar to departmental action being initiated simultaneously with the launching of the criminal proceedings.

8. Arguments were heard and documents perused. First as to the law on the subject. In a very recent decision in the case of *Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao*, (2012) 1 SCC 442, the Apex Court has held as under:-

"24. Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in a criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this Court in Capt. M. Paul Anthony does not lay down the law of universal application. Facts, charges and nature of evidence, etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry."

9. The above decision thus emphasizes the fact that what would determine as to whether the decision of acquittal would have any bearing on the findings recorded in the domestic inquiry is the facts, charges and nature of evidence etc., Thus, it is to be examined whether the instant case warrants holding of departmental inquiry.

10. Judicial interference at the stage of charge sheet is normally not resorted to except in an obvious case where the alleged misconduct apparently does not come within the term misconduct. The Apex Court in the case of *Union of India v. Upendra Singh*, (1994) 3 SCC 357, held as under:

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"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into."

11. Referring to the above case, the Apex Court in a recent case of **State of Orissa v. Sangram Keshari Misra**, (2010) 13 SCC 311 has held as under:-

"...normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous. It is well settled that the correctness or truth of the charge is the function of the disciplinary authority (vide Union of India v. Upendra Singh.)"

12. Thus, the prayer for quashing of the Charge Sheet is out of question in view of the fact that the respondents have alleged non following of certain prescribed procedure by the applicant. However, in so far as Annexure A-2 is concerned, the respondents have stated that simultaneous proceedings are permissible and hence request for dropping of the proceedings is rejected. Existence of power with the authority is one thing; invoking the same judiciously is another. In the instant case, the charge sheet was slapped upon the applicant just on the penultimate day of his superannuation in July, 2003. No proceedings have taken place. The applicant is by now a septuagenarian, having completed 69 years of age. There are 29 relied upon documents and 18 witnesses. The number of defence documents and defence witnesses is not known. Even if they be the minimum, if the proceedings are to commence now, it would take a minimum of about six to eight months for the I.O. to furnish the inquiry report whereafter, the case has to be referred to UPSC for their opinion, which may take, even in conservative measure, a couple of months. It is thereafter a



decision has to be taken. Thus, the Democle's sword would be hanging over the applicant, a senior citizen, till then. There is no allegation of any misappropriation or fraud played by the applicant. All that has been stated is that had the applicant been more vigil, certain loss to the government due to the indulging in the criminal activities of Suyal would have been averted. This is a fit case where the decision of the respondents needs reconsideration. The rejection order has been issued by the Sr. Superintendent of Post Office in response to the applicant's representation addressed to him. The limited powers vested with the Sr. Superintendent are understandable. A decision has to be taken in this case by the Chief Post Master General, who may consider the case keeping in view the gravity of the alleged misconduct as also the outcome of the investigation by the CBI in respect of the applicant and arrive at a judicious conclusion. If the Chief Postmaster General arrives at a decision to continue the probe, the applicant shall cooperate and in view of the fact that the applicant is already 69 plus, attempt should be made to conclude the proceedings within a period of six months from the date the CPMG takes a decision to proceed. If the CPMG concludes that the case be dropped, the applicant be disbursed his withheld terminal benefits so that he could reap the benefit of his long service. Time limit calendared for the CPMG to consider the matter is two months from the date of communication of this order.

13. The OA is disposed of with the above directions. No costs.

SHASHI PRAKASH
ADMINISTRATIVE MEMBER


Dr K.B.S.RAJAN
JUDICIAL MEMBER