

7/13

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 419/2012

Jodhpur this the 11th day of April, 2013.

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms Meenakshi Hooja, Member (A)**

Arjun Ram S/o Shri Thakur Ram, Aged about 55 years, b/c-
Bishnoi, R/o Vill+Po – Bhojasar, Tehsil – Phalodi, District –
Jodhpur. Office Address :- PA (under suspension) Jodhpur HO

.....Applicant

(Through Advocate Mr. S.P. Singh)

Versus

1. Union of India through the Secretary to Govt. of India,
Ministry of Communication, Department of Post, Dak Tar
Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur –
302 007.
3. The Director, Post Master General, Western Region,
Jodhpur.
4. Sr. Superintendent of Post Offices, Jodhpur Division,
Jodhpur.
5. ADPS, Postal Services, Western Region, Jodhpur – 342001.

**(Through Advocate Ms K. Praveen, Mr Mrigraj Singh with Mr Vinit
Mathur)**

.....Respondents

H/14

ORDER (Oral)**Per Justice Kailash Chandra Joshi, Member (J)**

By way of this application, the applicant has sought following relief (s) :

- a. "That the impugned order vide Memo No. F-9-1/09-10/Supp-3 dt 05.10.2011 (Annexure- A/1) forwarded by Respondent No. 4 may kindly be declared illegal, unjust and deserves to be quashed and set aside.
- b. That respondent may kindly be directed to continue the inquiry by inquiry officer B.L. sonar SPO Barmer till completion of disciplinary proceedings.
- c. That the costs of this application may be awarded to the applicant."

2. The applicant while posted at Phalodi as Sub Postmaster, a fraud was committed and many other officials were identified as subsidiary offender and charge sheets were issued. The department handed over the case to the CBI and FIR was lodged on 09.06.2009. The CBI commenced inquiry and the statements were recorded. The CBI submitted chalan and court proceedings are in progress as well as the departmental proceedings simultaneously. The evidence in both the proceedings are common. The respondent-department issued charge sheet dated 30.11.2009 while disciplinary process was in process and competent authority issued corrigendum dated 11.08.2010 whereby many legal points were corrected and charge sheet was also corrected. The applicant while working as Sub Postmaster Phalodi and being supervisor, the applicant took the work from the staff and all paper work consolidated was dispatched to Jodhpur HO. The respondents alleged allegation of negligence on the part of the applicant. The SPO Barmer namely B.L. Sonar was appointed as Inquiry Officer

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(IO) and disciplinary proceedings initiated. The applicant did not raise any objection which is also confirmed by the competent authority. The respondent department after issuing charge sheet and inquiry conducted all of a sudden changed IO vide letter dated 05.10.2011 without stating the reason, which is against the mandatory provisions. Therefore, this OA has been filed for the relief (s) mentioned in para No. 1.

3. The respondents by way of counter denied the charges of the biasness against Mr Hanif Khan, PSD & IO and also denied irregularity and illegality in the order dated 05.10.2011 and it has been further averred that the IO was changed as Mr B.L. Sonar was transferred to Bikaner, and as it was inconvenient for him to continue the inquiry at Jodhpur, therefore, another IO, Mr Hanif Khan, PSD Jodhpur was appointed vice Mr B.L. Sonar to expedite the inquiry and Mr Sonar later retired on 22.07.2012 as stated orally during the course of argument by the counsel for the respondents. It has been further averred that simply denying of the documents or copy of the documents does not amounts to any biasness. Demand for documents is limited by its relevance and nearness to the incident otherwise it would become nearly impossible for any department proceedings to succeed as the delinquent official could ask for a large number of papers and claim the violation of audi alteram partem as the ground for getting the order quashed. It has been further averred in the reply that bias on the part of the IO could not have been alleged merely on the ground that certain

documents demanded by the applicant were not allowed to be produced by the IO. The representation filed by the applicant against the order of the IO to the disciplinary authority for not allowing certain documents to be produced was considered and accordingly rejected and there was no irregularity in rejecting the representation filed by the applicant. The respondents in their counter also averred that it is the settled principle of law that departmental proceedings can be continued parallel to the criminal proceedings and Rule 14 of CCS (CCA) rules, 1965 does not debar the disciplinary authority to change the IO. The grounds as averred in the application have been denied by the respondents in the reply.

4. Counsel for the applicant contended that by way of this OA he has challenged the legality of order Annex. A/1, the order of appointment Mr Hanif Khan as IO in place of Mr Sonar. He contended that no reasons have been assigned in the order Annex. A/1. Therefore, it is per se illegal and further he contended that he has asked the IO to supply certain documents and IO partly allowed the application of the applicant and intentionally and malafidely rejected his claim for getting all the documents. Therefore, an established biasness is made out against the IO and simply on this ground order Annex. A/1 is liable to be quashed. He further contended that his representation has been decided vide Annex. A/12 which is also erroneous in fact. He further contended that when the CBI has already filed the charge sheet against the applicant under the Prevention of Corruption Act, therefore, there

are no grounds to continue the present inquiry because the same set of the evidence shall be adduced by the department in both the proceedings.

5. Per contra counsel for the respondents contended that simply partial acceptance of the application for providing the copy of the document is no ground to prove the biasness against Mr Hanif Khan because whatever order has been passed by the IO was passed while exercising the powers conferred to him under CCS (CCA) Rules, 1965 and IO was competent to reject the application by assigning proper reasons and no other ground of the biasness has been averred in the application except the rejection of the documents and on such a weak ground order Annex. A/1 passed by the public authority against his subordinate cannot be quashed. He further contended that it is a settled principle of law that departmental proceedings are entirely different to criminal proceedings; therefore, departmental proceedings cannot be stayed or quashed at this stage. He further contended that applicant applied for several documents which were not relevant to conclude the inquiry. Therefore, this was merely an attempt on the part of the applicant to delay the departmental proceedings.

6. We have considered rival contentions of both the parties and perused the relevant records. Counsel for the applicant drew our attention towards Swamy's Commentary on CCS (CCA) Rules, 1965 and contended that once the Govt. servant or the delinquent

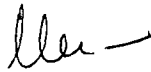
official alleges any biasness against the IO, the inquiry should be stayed. The relevant commentary is annexed at page 45 of the OA.

7. We are unable to accept this argument of the counsel for the applicant because in our considered view, the application filed by the applicant to procure the copy of the documents and simply rejection or partial acceptance of the application does not amount to biasness against the IO because while exercising the powers under CCS (CCA) Rules, 1965, the IO has to take the decision after considering the facts and material available on record and the nature of the charges framed against the delinquent official. In this particular case, he has passed the order that copies of the documents which were made available to the delinquent official were relevant and other documents were not relevant to decide the real question. Therefore, the simple rejection by the IO does not amount to any biasness on the part of the IO.

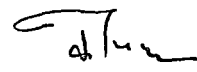
8. So far as the contention of counsel for the applicant that Annex. A/1 does not refer any reason for the substitution of Mr Hanif Khan in place of Mr Sonar in the inquiry as IO is concerned, it is clear that on account of transfer of Mr Sonar to Bikaner Mr Hanif Khan was appointed as IO and we think for the convenience of the department this order was passed because when the order in OA No. 59/2011 this Tribunal ordered to expedite the inquiry, it was necessary for the department to appoint a local IO.

9. Turning to the question of legality of the Annex. A/12, we are of the considered view that when the IO himself has passed a reasoned order to reject or accept the application for providing the copy of the documents and the same point has been dealt in Annex. A/12, therefore, in our considered view Annex. A/12 cannot be said to be suffer from illegality or irregularity.

10. We have given our thoughtful consideration to the arguments and annexures annexed with the OA but looking into the entire facts and circumstances of the case, no case for staying the charge sheet or quashing the charge sheet on the ground of biasness on the part of the respondent-department is made out. Accordingly, the OA is dismissed with no order as to costs.



(Meenakshi Hooja)
Administrative Member



(Justice K.C. Joshi)
Judicial Member