

Central Administrative Tribunal Lucknow Bench Lucknow.

O.A./ No. 123/2007.

This, the 5<sup>th</sup> day of April, 2007.

Hon'ble Mr. A. K. Singh, Member(A)

Hon'ble Mr. M. Kanthaiah Member (J)

Uma Narain Dubey, aged about 55 years, son of late Tribhuwan Nath Dubey, Resident of Village Chasipur, Post- Lohramau, District Sultanur.

Applicant.

By Advocate Shri R. K. Upadhyay

Versus

1. Union of India through Superintendent of Post Offices, Sultanpur, U.P.
2. District Magistrate, Sultanpur, U.P.
3. Tehsildar, Sadar, Sultanpur, U.P.

Respondents

BY Advocate Shri K.K. Shukla holding brief of Smt. Dr. Neelam Shukla.

Order (Oral)

BY Hon'ble Mr. A. K. Singh, Member (A)

Heard the counsel for applicant Shri R. K. Upadhyay and Shri K.K. Shukla, holding brief of Smt. Dr. Neelam Shukla. A copy of preliminary objection is taken on record.

2. O.A. 123/2007 has been filed by Sheri Uma Narain Dubey (address give in the O.A.) against the order-dated 28.2.2007 whereby an amount of Rs. 77,505/- has been ordered to be recovered from the applicant. The applicant was working as Postal Assistant and he was dismissed on 20.3.2003 in pursuance of the disciplinary proceedings. The counsel for the applicant submits that as the applicant was working on the post of Postal Assistant, the amount cannot be recovered from the applicant under the provision of Section 3/4/Public Account Default Act, 1850. In the second place the inquiry report against the petitioner shows that only a sum of Rs. 2510/- was found to be misappropriated by the applicant, whereas recovery order has been passed for a sum of Rs. 77,505/- which suggest a total non application of mind on the part of the authority concerned and hence is absolutely illegal and arbitrary and deserves to be quashed and set aside. In the third place, only two weeks have been granted by respondents for making payment of the aforesaid amount falling which they have proposed to attach the personal properties of the applicant. On the basis of the above, applicant seeks an interim stay against the impugned order dated 28.2.2007 of the respondents.

3. Shri K.K. Shukla, holding brief of Dr. Smt. Dr. Neelam Shukla, counsel for respondents opposes the O.A. on the ground that proceedings under Revenue Recovery Act is not a service matter, cognizable by this Tribunal. He cited the decision of Hon'ble Supreme Court in Special Leave Petition No. 1505/97 in the case of Raja Ram Saroj Vs. the Collector, District Sultanpur & Ors.

He also cited the decision of this Tribunal in O.A. 471/96 dated 24.9.96 and another decision of this Tribunal dated 17.1.2007 in O.A. 3/2007 filed by Anoop Singh Vs. Union of India and others. The learned counsel for respondents Shri K.K. Shukla holding brief of Dr. Smt. Neelam Shukla as well as the counsel for applicant shri R.K. Upadhyay at this stage prayed for a hearing and final decision in the matter. The request of the counsels was accepted. The applicant as well as the Respondents were accordingly heard through their respective counsels. Shri R. K. Upadhyay counsel for the applicant reiterated his argument that the impugned recovery has been ordered in consequence of the condition of service of the applicant and therefore, the dispute is well maintainable before this Tribunal. Shri K.K. Shukla, holding brief of Dr. Smt. Neelam Shukla reiterated his submissions as above.

4. We have given our anxious considerations to the submissions made by the learned counsel on both sides and have also perused the record. The Hon'ble Apex Court in the case of Raja Ram Saroj Vs. Collector, District Sultanpur has enunciated the following dictum in Special Leave Petition No. 1505/97, the relevant extract of which is reproduced hereunder:

*"In the impugned judgment, the Central Administrative Tribunal has observed that the matter of recovery that is being effected against the petitioner under the provisions of the Public Accountant and Default Act and the Revenue Recovery Act and it cannot be said to be a service matter cognizable before the Tribunal. We do not find any infirmity in the aid view of the Tribunal. It would be open to the petitioner to seek redress in an appropriate forum. The special leave petition is, therefore, dismissed."*



5. The principles of law enunciated by the Apex Court is binding on a subordinate court under Article 141 of the Constitution of India. My learned brothers of this Tribunal have also held the same view in the case of Raja Ram Saroj Vs. Union of India and Others as per their order of this Tribunal dated 24.9.96 in O.A. 471/96. As law is settled on this point, the applicant's has no case for seeking interim stay in this regard. We may like to clarify in this regard that the applicant as well as respondents have waived their rights to file counter and rejoinder in this case and the case has been accordingly heard today and arguments on both sides were allowed to be completed by us.

6. It is our considered view that in In the light of the law as settled by the Apex Court as well as the decision of this Tribunal in the case of Raja Ram Saroj Vs. Union of India and Others dated 24.9.96 in O.A. 471/96, the O.A. 123 of 2007 filed before us is without jurisdiction and accordingly merits dismissal. We order accordingly for its dismissal. Liberty is however, given to the applicant to approach the appropriate forum for redressal of his grievances without any order as to costs.

As the O.A. is being dismissed, the interim order granted as earlier as <sup>per</sup> order dated 3.4.2007 stands automatically vacated.

Member (J) *5-4-07*

Member (A) *AK Singh*