

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 89/2008

This, the 24/8 day of August, 2009.

**Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)**

Arjun Kumar Srivastava aged about 58 years S/o Late G. B. Rai Srivastava, R/o 548/209 Surya Nagar, Rajajipuram Lucknow.

Applicant.

By Advocate Sri A. Moin.

Versus

1. Union of India through Secretary, Department of Post, Dak Bhawan New Delhi.
2. The Senior Superintendent of Post Office, Lucknow Division Lucknow.

Respondents.

By Advocate Sri S. P.Singh.

Order

By Hon'ble Dr. A. K. Mishra, Member (A)

The applicant has challenged the order dated 29.9.2007 of respondent No. 2 in which a certificate has been sent to the District Magistrate, Sultanpur for recovery of an amount of Rs. 7,43,146/- from the applicant under the Revenue Recovery Act, (the R.R. Act) 1890.

2. The brief facts of the case are as follows:-

The applicant was working as Postal Assistant, Nighoan at Lucknow when he was put under suspension on 06.12.2005. A disciplinary proceeding for major penalty was initiated against him on 14.8.2007 primarily alleging misappropriation of public funds. An FIR was also lodged against the applicant following which, he was arrested. Later on he was released on bail. The applicant gave his initial reply to the charge sheet on 19.11.2007 denying all the charges and seeking further opportunity to submit his detailed reply. He sought for copies of documents



which, according to him, had not been supplied to him; nevertheless, he claims to be preparing his detailed reply to the charge sheet, which would be submitted soon.

2.1. However, he came to know about the proceeding initiated against him under the Revenue Recovery Act (the R.R. Act) 1890 when the Amin of Musafirkhana Sultanpur contacted him and asked for deposit of the amount. He learnt that a proceeding under Revenue Recovery Act, 1890 as amended by Revenue U.P. (Amendment) Act 1965 has been started for recovery of the amount.

2.2. The main grounds taken in this application are that the impugned recovery certificate letter dated 29.9.2007 has been issued without affording any opportunity to the applicant to contest his liability;

that he has denied the charge of embezzlement in the disciplinary proceeding initiated against him;

that he has not been found guilty either in the disciplinary or criminal proceedings initiated against him;

that no recovery proceeding under the Revenue Recovery Act could be initiated against him unless there was a statutory provision to that effect;

that in the absence of any such statutory provision, the amount due either to state or to any public authority could not be recovered in any other proceeding except in civil suit which has not been started against him.

3. At the time of the hearing, the learned counsel for the respondents raises the preliminary objection that this Tribunal has no jurisdiction to hear any matter relating to recovery of



arrears of land revenue which is governed by a separate statute. The learned counsel for the respondents has placed before us the judgment of this Bench in O.A. 73/1993 in which, a view was taken that any matter falling within the scope of Public Accountants' Default Act, 1850 (PAD) Act and Revenue Recovery Act, 1890 could not be said to be a service matter and therefore, the Tribunal could not take cognizance of such a matter. The judgment in this O.A. followed the ruling given by this Tribunal in Raja Ram Saroj Vs. Collector District Sultanpur in O.A. 471/96 which went up to the Hon'ble Supreme Court where the judgment of the Tribunal was upheld. In other words, the principle that any subject relating to recovery under PAD Act or Revenue Recovery Act, could not be adjudicated in this Tribunal treating it to be a service matter has been established.

4. In reply to the preliminary objection, the learned counsel for the applicant made the following submissions: that the subject matter in the O.A. 73/93 and O.A. No. 471/96 was in respect of recovery proceedings under Sections 3 and 4 of the PAD Act, whereas the present recovery proceeding has been initiated under the Revenue Recovery Act; although a passing remark was made by the Supreme Court in connection with the SLP filed against the order of the Tribunal in O.A. No. 471/96 that matters falling within the scope of PAD Act and the Revenue Recovery Act could not be said to be service matters and cognizable before this Tribunal, such a passing remark could not constitute a binding precedent to be followed in each and every case. He cited the following cases:

(i) AIR 1968 SC-I 647-State of Orissa Vs. Sudhansu Sekhar Misra,



(ii) 1987 Vol. (1) SCC 213 Ambica Quarry Works Vs. State of Gujrat and Others,

(iii) (2003) 2 SCC 111, Bhavnagar University Vs. Palitana Sugar Mill (P) LTD. And Others,

(iv) 2004 SCC Vol. (8) 579 Bharat Petroleum Corp. Ltd. And Another Vs. N.R. Vairamani and Another to the effect that only a principle of law laid down by the superior courts would have precedent value provided the facts are the same. An observation, much less an obiter dictum, could not be applied as a general principle outside the factual matrix of a case. Each case should be decided on the basis of its own facts.

5. Let us examine the provisions of the PAD Act 1850 and the Revenue Recovery Act, 1890 to ascertain whether the observations in respect of the aforesaid Acts could cover a proceeding initiated only under the Revenue Recovery Act. Sections 4 and 5 of the PAD Act which are relevant for our purpose are extracted below:-

“4. Prosecution of accountants and sureties-The person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his sureties for any loss or defalcation in his accounts, as if the amount thereof were an arrear of land -revenue due to Government.

5. Enactments applied to proceedings by and against accountants-All Regulations and Acts now or hereafter to be in force for the recovery of arrears of land revenue due to Government, and for recovery of damages by any person wrongfully proceeded against for any such arrears shall apply with such changes in the forms of procedure as are necessary to make them applicable to the

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case, to the proceedings against and by such public accountant."

6. It is clear that any recovery action contemplated under the PAD Act has to be followed up by treating the demand as an arrear of land revenue and taking steps for its recovery under the provisions of Revenue Recovery Act. The PAD Act, by itself, does not provide a procedure for recovery of a public demand; recourse has to be made to the Revenue Recovery Act for the purpose of recovery. Therefore, the mention of the Revenue Recovery Act along with the PAD Act by the Supreme Court was not a passing remark, because recovery under the Revenue Recovery Act is inextricably linked with the demand under the PAD Act.

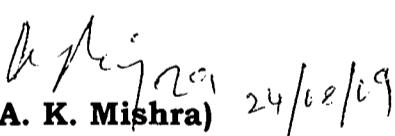
7. The Collector of the District concerned initiates recovery proceeding in respect of any demand relating ^{to} _{to} arrear of land revenue. He follows the provisions of the Revenue Recovery Act and the U.P. (Amendment) Act, 1965 and the rules made there under for the purpose of realization of the amount mentioned in the recovery certificate either by himself, or by other public officers/authorities. In the present case, a certificate relating to recovery of 7,43,146/- has been issued by respondent No. 2 to the Collector for initiating recovery proceeding. Admittedly, this is a proceeding which has been initiated under a separate statute namely Revenue Recovery Act 1890- read with U.P. (Amendment) Act 1965. The ratio of the judgments of this Bench in O.A. No. 471/96 and 73/1993 which was upheld by the Supreme Court is that any recovery proceeding under PAD Act and/or Revenue Recovery Act could not be adjudicated in this Tribunal treating

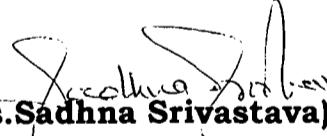


it to be a service matter. The law laid down above has been followed by this Bench consistently in other cases also.

8. The learned counsel for the applicant referred to Section 3(q)(v) of Administrative Tribunal Act, 1985 and contended that challenging a letter of the Respondent No. 3, which might be in the manner of a certificate, would come under the scope of the jurisdiction of this Tribunal by treating it "as any other matter" and holding it to be an issue relating to service conditions of employees. However, we are not impressed with the logic of this argument, particularly when a clear stand of this Tribunal that a recovery proceeding under a specific statute would not come under the definition of service matters has been upheld by the Apex Court. The applicant however, could challenge the recovery proceeding initiated under the aforesaid Act in an appropriate judicial forum.

9. Since the principle is well settled that this Tribunal cannot take cognizance of such a matter, the objection of the respondents is sustained and the application is rejected on the ground of lack of jurisdiction. No costs.


(Dr. A. K. Mishra) 24/6/19
Member (A)


(Ms. Sadhna Srivastava)
Member (J)