

Annexure - A

CAT- 82

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
CIRCUIT BENCH, LUCKNOW

27

AI

INDEX - SHEET

CAUSE TITLE

Reg. No. 39 - OF 1909(2)

Name of the Parties

Zulizar Hussain

Versus

Superintendent of post office,  
Sitapur and others

Part A, B and C

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B1: Vakalatnama - (Power) - - - - - 1

B2: Application dated 2/3/09 - - - - - 1

B3: Notice - - - - - 1

Certified that no further action is required  
to take and that the Code is fit for conser-  
vation to the record room (D).

By J/22-6-2011

Received  
on 27/11/12  
am

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AB  
1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
CIRCUIT BENCH, LUCKNOW.

Registration O.A.No.39 of 1989 (L)

Intizar Husain ... Applicant

Vs.

Superintendent of Post  
Offices, Sitapur and  
others ... Respondents.

Hon.D.S.Misra, AM  
Hon. D.K.Agarwal, JM

(By Hon. D.K.Agarwal, JM)

This is an application u/s.19 of the Administrative Tribunals Act XIII of 1985 for issue of a writ, order or direction in the nature of certiorari and quashing the order dated 20.12.1988 purported to have been passed by the Superintendent of Post Offices, Sitapur Division, Sitapur directing the recovery of Rs.46,899.42P from the applicant, i.e., Intizar Husain posted as Sub Post Master, Sub Post Office Rampur Mathura, District Sitapur, on the allegation that the said amount was embezzled for which separate prosecution is also pending against the applicant. The facts are that the applicant filed Writ Petition No.3772 of 1988 in the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow and secured an order for stay of recovery proceedings in respect of the aforesaid amount. The stay order was not absolute. It <sup>is</sup> stated that it will be open to the opposite party, i.e., (respondents before us) to hold an inquiry against the applicant and after completion of the inquiry, it was left open to opposite party no.3 in the said writ petition, i.e., Superintendent Post Offices, Sitapur to apply for vacation of the interim

*D.K.Agarwal*

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order. The above named authority, in compliance of the order of the High Court, held an inquiry and passed the impugned order. It may be mentioned here that before the impugned order was passed, opportunity was given to the applicant as already mentioned in the impugned order itself as well as in the counter affidavit filed by the respondents. The applicant now apprehends that recovery would be made from him on the basis of the impugned order. Therefore, he has moved this Tribunal to quash the impugned order.

2. In our opinion, since the High Court is already ceased of the matter, the proper forum for the applicant would be to seek relief from the High Court to avoid multiplicity of the proceedings. In this view of the matter, the present claim petition is dismissed. There will be no order as to costs.

*Dr. Gopal*  
MEMBER (J)

*W. H. M.*  
MEMBER (A)

Dated: 14.3.1989  
kkb.

(Ar)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH AT JUHNO.

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O.A./T.A. No. 39 1989

Q. Hassan

Applicant(s)

Versus

Sabot of P.O. No.

Respondent(s)

Sl. No.	Date	Orders
10-2-1989	Mon. Shri A. Jay John 19. m.	
		Issue notice to respondents to show cause why this application should not be admitted. Notice returnable on 23/2/89. Notice to be issued <del>the next</del> <sup>on</sup> date.
		30 A.m.
		10/2/89.
10/2/89	OR	Notice issued to the counsel of the applicant.
22/2/89	OR	Notice issued through the counsel for applicant under the court's order dt. 10-2-89.
		Counsel for applicant has not submitted the acknowledgement as regards under C.A.T. Procedure Rule 1986.
		No reply on the question of show cause has so far been filed by the respondents.
		submitted for admission
		Jash 22/2/89

23-2-89.

Hon. D. S. Moses, I.M.

Hon. T. S. Sharma, I.M.

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On the request of the learned  
Counsel for the applicant the  
case is adjourned to

8.3.89.

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7.3.89

53  
Date Summons were issued  
through the counsel for applicant under the  
Court's order dt. 10.2.89.

Counsel for applicant has not  
submitted the acknowledgement along with an  
Affidavit as regards under C.A.T. Procedure  
Rule 190B.

Respondents have not filed any  
Reply against the notice so far.  
Submitted for Admissio

Josh  
7/3/89

8/3/89. Hon. Justice Ram Lekhaw Nath, V.C.  
Hon. A. J. D. M., Adv.

The applicant's counsel has  
sent an application for postponement  
on account of his illness. List for  
orders on 13.3.89.

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V.C.

Am

Registered

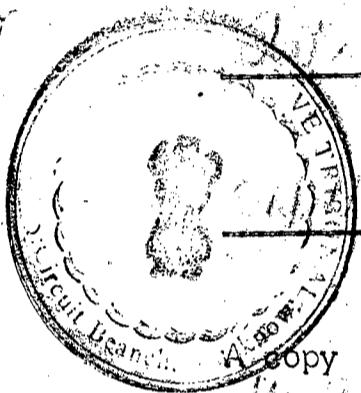
*o/c*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD  
CIRCUIT BENCH, GANDHI BHAWAN  
LUCKNOW

No. CAT/CB/LKO/ 1013 to 1014  
Dated : 15-3-89

OFFICE - MEMO

Registration No. O.A. 1013 of 1936  
T.A.



Applicant's

Versus

Respondent's

A copy of the Tribunal's Order/Judgement  
dated 15-3-89 in the abovenoted case is forwarded  
for necessary action.

*Mukundan* 15-3-89  
For DEPUTY REGISTRAR (H)

*M. K. Banerjee*  
Principal Secretary  
Central Administrative Tribunal  
ALLAHABAD

To.

*Mr. V.K. Chaudhary, M.A., LL.B.*

dinesh/

\*\*\*\*\*

*Yashwant*

15/3/89

*Reckha Verma*

16/3

OA No 39/89.G

Order Sheet

13.3.89

Hon' D. S. Misra AM  
Hon' D. K. Agarwal JM

None is present for applicant.  
Sri V.K. Chaudhary, counsel for respondent  
files his reply and opposes the prayer  
for interim relief. Put up tomorrow  
for admission/orders on interim prayer.

Ad  
13/3

Op  
AM.

BP  
AM

14.3.89

Hon. D.S. Misra, AM

Hon. D.K. Agarwal, JM.

Sri Ishaq Ahmad for the  
applicant and Sri V.K. Chaudhary  
learned counsel for the respondents  
are present. Heard the arguments,  
Orders reserved to be passed in  
the later part of the case day.

ht

Op  
J.M.

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AM.

(R)  
Pleas  
Case No. 10289  
Date  
9/2/89

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ADDITIONAL  
BENCH ALLAHABAD.

Intizar Husain ..... Applicant

Versys

Superintendent of Post Offices,  
Sitapur and another ..... Respondents

I N D E X

S.No.	Particulars	Pages
1.	Application	1 to 12
2.	Annexure No. 1 True copy of Show Cause notice	13-14
3.	Annexure No. 2 True copy of question & Answer dated 18.1.1989.	15
4.	Annexure No. 3 True photostat copy of application dated 8.9.88.	16
5.	Annexure No. 4 True photostat copy of application dated 14.10.1987.	17
6.	Annexure No. 5 True copy of application dated 19.11.1987.	18
7.	Annexure No. 6 True photostat copy of order dated 20.12.1988.	19-20
8.	Power.	21

Lu cknow:Dated:

Feb. 9, 1989

  
( ISHTIAQ AHMAD )  
Advocate  
Counsel for the applicant

A4

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE  
TRIBUNALS ACT 1985

For use in Tribunal's Office:

Date of filing: .....

Date of receipt by post.....

Registration No. ....

SIGNATURE REGISTERAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ADDITIONAL  
BENCH ALLAHABAD

BETWEEN

Intizar Husain aged about 48 years,  
son of Mirza Imtiaz Husain, resident of  
Mohallah Bazdari Tola Qasba Khairabad,  
District Sitapur, U.P.

..... Applicant

Versus

1. Superintendent of Post Offices,

Sitapur Division Sitapur.

2. Assistant Superintendent of Post Offices

(Town) Sitapur Division Sitapur,

..... Respondents

Details of application:

1. Particulars of the applicant:

(i) Name of the applicant:

(i) Intizar Husain

(ii) Name of Father:

(ii) Sri Mirza Imtiaz Husain

(iii) Designation and office in which employed:

Sub-Post Master at Sub Post Office Rampur-

Mathura Distt. Sitapur.

(iv) Office address:

Sub-Post Office at Rampur-Mathura Distt. Sitapur.

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(v) Address efor service of all notices:

Resident of Bajdari Mohallah Wasba

Khairabad Distt. Sitapur. U.P.

2. Particulars of the respondent:

(i) Name and/or designation of the respondent:

(a) The Superintendent of Post Offices, Sitapur  
Division Sitapur.

(b) Assistant Supdt. of Post Offices (Towns)  
Sitapur.

(ii) Office address of the respondent:

(a) Office of the Supdt. of Post Offices  
Sitapur Division, Sitapur.

(b) Assistant Supdt. of Post Offices (Towns)  
Sitapur.

(iii) Address efor service of all notices:

(a) Office of the Supdt. of Post Office,  
Sitapur Division, Sitapur.

(b) Assistant Supdt. of Post Offices (Towns)  
Sitapur.

3. Particulars of the order against which application  
is made:

The application is against the following order:

(i) Order No..... F-10/87-88

(ii) Date..... 20.12.1988

(iii) Passed by... The Supdt. of Post Offices  
Sitapur Division, Sitapur.

(iv) Subject in brief:

The applicant is subpost Master at Sub-  
Post office Rampur Mathura, the respondent  
no. 1 charged to the applicant with the  
alleged mis-appropriation of Govt Money of  
Rs. 46899.42 and filed a criminal case u/s

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409 I.P.C. which is still pending in the court of Chief Judicial Magistrate, Sitapur. In the meantime the respondents initiated departmental enquiry and hastily concluded by holding the applicant guilty of embezzlement and directed the Collector Sitapur, to recover the money as arrears of Land Revenue from the application by the order dated 20.12.1988 impugned in this application.

**4. Jurisdiction of the Tribunal :**

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

**5. Limitation:**

The application further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act 1985.

**6. Facts of the case:**

- 1) That the applicant is sub-Post Master at Post Office of Rampur Mathura in Distt. Sitapur.
- 2) That the applicant was appointed as packer on 12.6.1960 at Post Office Khairabad, Distt. Sitapur, and so has since been promoted twice to his present post and during his long career in the Post Office of about 28 years, the services of the applicant have been all along spotless and blameless and he has been a most trustworthy and bonafide servant of the

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Dept. It was because of his sincerity and trustworthiness that he was sent on deputation to Army Postal Service for more than 17 years and after his return from A.P.S. he was posted at Rampur Mathura Post Office in January 1987.

3) That the respondent no. 1 who was on eminical terms and wanted to punish the applicant on account of the applicant's statement in a departmental proceedings against one Bachaan Pd. Yadav a Union leader of applicant's Union in 1986. In his statement the applicant had supported Sri Bachan Prasad Yadav who was a postal Assistant against the Sub-Postmaster Sri D.B. Singh, who was alleged to have misappropriated some Govt. money and as the respondent no. 1 was siding with said D.B. Singh no action has so far been taken against him.

4) That in order to take vengeance with applicant and with most malafide intention to harm and take away his service and illegally implicate him in Criminal Proceedings, the respondent no. 1 had made a surprise visit at the Post Office of the applicant on 4.8.1987 and after checking the applicant's daily account of 29.7.1987 and the Cash box in every hurry and miscalculation declared that there were Rs. 10000/- short in the cash box and when the applicant requested that he should be permitted to find out the relevant vouchers to show the payment to meet the said alleged shortage the respondent no. 1 flatly said that All right the applicant could show

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that in unclassified payment and thus no opportunity was given the applicant to explain the matter and virtually the application later on foundout the erroneous calculation in the daily account and the alleged shortage of the Rs. 1,0000/- was removed.

5) That the respondent no. 1 realizing the correctness of the daily account of the applicant did not take any further action in the matter until on 11.8.1987 when the respondent no. 1 in a premeditated design and conspiracy and in absence of the applicant got broken locks of the Sub- Post Office at Rampur Mathura and allegedly inspected the Daily Account and Cash Box of the applicant's Post Office in the presence of Police and Sri S.P. Maurya S.D.I. and others and again found a shortaged of Rs. 36899.42 and after this alleged inspection on the order of the respondent no. 1 the Sub- Divisional Inspector Sri S.P. Maurya lodged the F.I.R. at 21-30 while allegedly locks were brokwn on 11.8.1987 at 6.10 P.M.

6) That the applicant was on leave w.e.f. 19.8.1987 to 18.8.1987 and was under treatment of Dr. Mohd. Ismail M.B.B.S. Musahib ganj, Lucknow, and as such he was not present in the Post Office and as the entire action by the respondent no. 1 on 11.8.1987 was a hatched conspiracy and fake and malafide against applicant and no opportunity to explain has so far been given to the applicant.

*J. Bhagat*

(AU)  
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7) That the police has filed a Criminal case u/s 409 I.P.C. against the applicant, which is pending in the court of Cheif Judicial Magistrate Sitapur, and after appearing therein the applicant has obtained his bail from ~~this Hon'ble High Court~~

~~(xxxxxxxxxxcopyxxofxChargexxxsexxedxuponxthexx)~~  
~~applicantxxisxxfxxkedxherexxwithxxanxxexxxNxxz~~

~~✓ to this application. ✓~~

8) That the respondent no. 1 without any enquiry without giving and opportunity of hearing and show cause to the applicant and without actually determining the factum of guilt and default of the applicant regarding the alleged misappropriation of Govt. money had directed the Collector and Tehsildar ,Sitapur to recover the amount of Rs. 46899.42 from the applicant as arrears of land revenue u/s 4 of Public Accountants Defaults Act 1850, and the Tehsildar Sitapur had issued a citation for recovery of the amount of Rs.46899.42 from the applicant consequently the applicant filed a Writ Petition no. 3771 of 1988 ' Intizar Husain vs: Collector Sitapur and others ) in the Hon'ble High Court of Judicature at Allahabad Lucknow bench Lucknow which had been admitted and the recovery had been stayed by the Hon'ble High Court, during the pendency of the said Writ Petition, wherein the respondent no. 1 hereto was the respondent no. 3.

9) That whereafter the respondent no. 1 started departmental enquiry against the applicant in respect of the said Rs. 46899.42 alleged to have been embezzled by the applicant and issued, the

Yours

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show cause notice dated 25.8.1988 with the directions to appear and give his statement o/Y W.S. before the respondent no. 2 on 9.9.1988 who was made enquiry officer ( A true photostat copy of the said show cause is Annexed herewith as Annexure No. 1 to this application ).

10) That it is fact that a criminal case u/s 409 I.P.C. has been pending against the applicant in the court of Cheif Judicial Magistrate, Sitapur in respect of the embezzlement of the aforesaid amount regarding which departmental proceedings had been started against the applicant and in the said criminal case no. 1760/87 u/s 409 I.P.C. is still pending and is fixed for 1.5.1989 ( True copy of the question and answer dated 18.1.1989 obtained from the C.J.M. Sitapur is filed herewith as Annexure No. 2 to this application. )

11) That after the service of the aforesaid show cause notice the applicant applied on 8.9.88 to the respondent no. 1 for issue a copies of certain documents in order to produce his defence but the said copies were not supplied ( A true copy of application dated 8.9.1988 bearing the official seal of the respondent no. 1 is filed herewith as Annexure No. 3 to this application. )

12) That the applicant had also made a request through an application dated 14.10.1987 to the respondent no. 1 that during the pendency of Cr. proceedings Departmental Proceedings for recovery of alleged embezzled amount could not be legally initiated against the applicant ( A true

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photostat copy of the said application is  
Annexure No. 4 to this application.

13) That again the applicant had moved an application on 19.11.1987 to the respondent no.1 requesting him to drop the departmental proceedings till the conclusion of the criminal case ( A true photostat copy of the said application is Annexure No. 6 to this application .

14) That at that time the respondents without conducting any enquiry had directed to the Collector, and Tehsildar ,Sitapur, to recover the amount from the applicant straightaway as the respondents were quite aware of the legal position that criminal proceedings and departmental proceedings could not simultaneously be proceeded within the case of applicant, but after the stay of recovery by the Hon'ble court in the aforesaid Writ Petition, the respondents again illegally and out of sheer vengeance and malafide in order to prejudice the case of applicant in the criminal court started the departmental action ignoring all the pleas and requests made by the applicant at very outset.

15) That during the said Departmental proceedings also the applicant due to his illness could not attend and had submitted his Medical Certificate on various dates but still the respondent no.2 at the instance of the respondent no. 1 in violation of all the judicial norms and rules of fair play and opportunity of being heard completed his enquiry and the respondent no. 1 in utter

*Yours*

(Am)  
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haste and to smooth his personal vendetta passed on ex parte order dated 20.12.1988 holding the applicant guilty of mis-appropriation of Govt. money and has directed the Collector, Sitapur to recover the same while the said criminal proceedings are still pending (A true photo stat copy of the order dated 20.12.1988 is filed as Annexure-6 to this application.

16) That the order dated 20.12.1988 is prima facie illegal and against the provisions of ~~the~~ law and unless the operation of the order is stayed the applicant shall suffer a great prejudice and his criminal case would adversely be affected and he shall suffer an irreparable loss.

17) That the applicant being aggrieved by the order dated 20.12.1988 the applicant is filing this application before this Hon'ble Tribunal on the following material grounds:

G R O U N D S

I) Because no Departmental Proceedings can be conducted during the pendency of the criminal prosecution in court of law in view of provisions of para 80 of Posts and Telegraphs, Manual Volume -III.

II) Because the impugned order is unwarranted in law and is without jurisdiction.

III) Because the impugned order would illegally prejudice the criminal case of the applicant and would in effect hold him guilty even without

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the trial of prosecution case in appropriate court of law which is grossly unwarranted in law.

IV) Because the respondents have acted with malafide intention in order to cause wrongful loss to the applicant by passing the impugned order which is illegal and uncalled for and is arbitrary.

V) Because the impugned order is also erroneous in law as no opportunity of hearing has been afforded to the applicant.

7. Relief(s) sought:

In view of the facts mentioned in para 6 above, the applicant prays for the following reliefs:

(i) That by issue of a writ, order or direction in the nature of certiorari by any other appropriate writ, order or directions, this Hon'ble Tribunal may kindly be pleased to quash the order dated 20.12.1988 ( contained in Annexure No. 6 ) to this application.

(ii) That the cost of this ~~xxix~~ application may kindly be granted to the applicant.

(iii) That any other reliefs which this Hon'ble Tribunal may deem just and proper in the circumstances of the case may also be granted to the applicant.

8. Interim order, if prayed for:

Pending final decision on the application, the

AO  
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applicant seeks issue of the following interim order:

That the operation and implementation of the order dated 20.12.1988 contained in Annexure No.6 to the application may kindly be stayed during the pendency of the application, and in the mean time ad-interim stay to the same effect may kindly be passed till the disposal of this application.

9. Details of the remedies exhausted:

The applicant declares that he has availed of all the remedies available to him under the relevant service rules, etc. In fact there is no remedy available to the applicant against the impugned order.

10. Matter not pending with any other court etc:

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.

11. Particulars of Bank-Draft/Post Order in respect of the application fee:

DD

1. Number of Indian Postal Order: 5 088937
2. Name of the issuing Post Office: High Court Post Office.
3. Date of issue of Postal Order: 4.2.1989
4. Post Office at which payable: ~~xxxyyxxRikftx~~  
General Post Office,

12. Details of Index:

In index in duplicate containing the details of the documents to be relied upon is enclosed:

*J. Husen*

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13. List of enclosours:

- 1) Annexures No. 1 to 6 of the application.
- 2) Indian Postal Order No. 5 DD 088937 dt. 4.2.89  
issued by High Court Branch Post Office, Lko.  
for Rs. 50/- payable at General Post Office,  
Allahabad/ Lucknow.
- 3) Index of document;
- 4) Vakalat Nama

Lucknow:Dated:

Feb. 9, 1989

*Jhusain*  
Applicant

VERIFICATION

I, Intizar Husain son of Imtiaz Husain aged about 48 years working as Sub- Post Master, at Rampur Mathura, Distt. Sitapur, resident of Mohalla Bazdari Tola, Qasba Khairabad, Distt. Sitapur do hereby verify that the contents from 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Lucknow:Dated:

Feb. 9, 1989

*Jhusain*  
Applicant

To

The Registrar,  
Addl. Central Administrative Tribunal,  
Allahabad.

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Annexure NO ४

प्राचीन लक्ष विभाग

प्रेषण,

अधीक्षक डॉल्कर सीतापुर मण्डल,  
सीतापुर-261001

सेवा में,

१. श्री इन्द्रजीत दुलेन  
निवासित नायब पोस्टमास्टर,  
रामपुर मधुरा(सीतापुर)

२. श्री इन्द्रजीत दुलेन  
(निवासित पोस्टमास्टर रामपुर मधुरा)  
मोहल्ला-बाजारारी टीला, बैराबद-सीतापुर

पंजीकृत पात्रों गवित-

पत्र सं०-ए०-10/८७-३८ सीतापुर-261001, दि० २५.८.८८

आपने ब्लौर नायब पोस्टमास्टर रामपुर मधुरा कार्य करते हुए दि० २९.७.८७ से डॉल्कर लैगा वे प्राप्तियों का योग रु 34664.25पै० तथा भुगतान का योग रु 1195.20 सभी दर्शाया पर बक्सी धन रु 33469.07 पै० के बजाय रु 23,469.07 दै० दिल्ला गया तथा रु 10,000/- राजकोष से निकल कर लापता कर दिया। विवेचना पूरी होने तक इस शानि वे अवैध भुगतान में छालने का निर्देश दि० ४.८.८७ को देना पड़ा। दि० १०.८.८७ से विवेचना के लिये पहुंच निरीक्षकों ने आपकी अवैध अनुपस्थित पाया तथा श्री लल्लाराम पेकर ने कहा कि डॉल्कर के दरवाजे तो चाही द्रातः उनके शिशु पुत्र की देहर आप करार है। डॉल्कर छोलने पर पहले से रु ००८००पैर्सी छटी बानों में छुली पढ़ी थी, अकिया के लिये अमानत की छोमा का इन्द्राज था। अन्य न तो चाही थी न उपस्थित लाम्ब्रो नकदी जादि का चार्ज लिसी वी आपने दिया था। पुलिस को सूचना देने पर, पुलिस ने अधीक्षक लैगा, श्री रामराव कर शादकथानाध्यक्ष रामपुर मधुरा, श्री श्री. वी. सिंह सब इस्पेक्टर थाना रामपुर मधुरा, श्री सरयुग्राद मौर्य व श्री तनवीर अहमद निरीक्षक डॉल्कर, सर्कीरी जगदीक प्रशाद मिश्र, धीरज ग्राहाद व रामप्रताप मिश्र निवासी ग्राम रामपुर मधुरा के लाभे श्री हामीदयाल लैगा से सभी बद तरी हुड्डवाकर तलाशी लिया जिसमें कुल नकदी रु 13.03 पै०, डॉल्कर टिकट रु 130.15पै०, रसीदी टिकट रु 533.40पै० व अमानती बैग रु १.२० पै० का भिला जिसका योग रु 1057.58 पै० हुआ और रु ०८०८०पै० से देय बैलेस ०० १०००८०८० १०१०५.६२ लैगा रु 11963.20पै० भिला जबकि आप द्वारा भेजे वालिरी डेलीएक्याउन्ट और एन्जी. एक्याउन्ट के अनुसार नकदी रु 36891.90, डॉल्कर टिकट १३२३.५०पै०, ए.टिकट ५३२/-, बैग १.२० व रु ०८०८०पै० से देय राशि १०१०५.६२ पै० हीना कहिये था। इसप्रकार रु 36899.42 पै० फिर हे राजकोष का आपके बड़े से लापता पाया गया। कुल नकदी धन हानि रु ३६,८९९.४२ पै० अन्तिम बार तथा रु १०,०००/- आपने राजकोष से नायब किया है। कुल रु ०४६,८९९.४२ पै० के गायब करने के लिये डॉल्कर नियमावली बण्ड-प्रथा भाग एक नियम 203 के अन्तर्गत आप उत्तरदायी पाये जाते हैं। इसके लिये आपको अवसर दिया जाता है कि आप अपना लिपित स्पष्टीकरण इस प्रकार भेजें कि वह दिनीक १०.८.८८ या उससे पहले अधीक्षक लैगा के कार्यालय में प्राप्त हो जाय।

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आप दिनांक ८९० ८८ की १० बजे अधीक्षकारी के कार्यालय में उपस्थित होकर सहायक अधीक्षक के सम्मान अपना बयान समर्पित प्रस्तुत कर सकते हैं। आपको यह भी अवसरा दिया जाता है कि उक्त तारों से पहले भी उक्त अधीक्षकारी के सम्मान अपना समर्पित बयान किसी कार्य दिवस की उपस्थित होता हो सकते हैं।

यदि ९९० ८८ या उससे पहले आपने लिखित ज्ञान न भेजा या स्वयं उपस्थित होकर बयान नहीं दिया तो यह समझा जायेगा कि आपेक्ष पास उक्त आरोप के विस्तृत लोई समर्पित नहीं है तथा तदनुसार कार्रवाई नहीं जायेगी।

Shreem

अधीक्षक अधिकार,  
सीतापुर पञ्चल, सीतापुर 261001

प्रतिलिपि-१-२ यही जात पाते पर जारी।

३० कार्यालय ग्रन्ति

४५ अतिरिक्त ।

True copy attested.

Dating 10/10/2015  
A.D  
Court for applicant



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Annexure no. 3

मेवा मे,

ल्धीक्षक डाकघर सीतापुर मैडल  
सीतापुर 261001

संदर्भ:-

आपका पत्र सं0 एफ- 10/87-88 सीतापुर 261001  
दिन 25-8-88

महोदय,

उपरोक्त पत्र के संदर्भ में मुझे निवेदन करना है कि मैंने आपना स्पष्टीकरण अथवा समर्थ देने के लिए निम्न कागजात जिन पर आधारित करके आपने कारण बताओ नोटिस भेजा है की प्रतिलिपि शीघ्रात्मक प्रदान करने की कृपा करें जिसमें मैं अपनी समर्थ पेश कर सकूँ इनकी अनुपस्थिति में मैं अपनी समर्थ पेश करने में असमर्थ हूँ।

1- दिनांक 29-7-87 को रु 10000/- के गायब होने से सम्बन्धित विवेदना आख्या।

2- विभागीय अवर्गीकृत भुगतान में डालने के निर्देश दिन 4-8-87 की प्रतिलिपि।

3- दिन 10-8-87 को विवेदना के लिए गये निरीक्षकों की टिक्की।

4- लल्लाराम पैकर के ब्यान।

5- रु 10000 डेली एकाउन्ट की प्रतिलिपि दिन 8-8-87

6- स्टेम्प रजिस्टर की प्रतिलिपि दिन 7-8-87 से 8-8-87

7- स्वामीदयाल लोहार का ब्यान।

8- रु 10000/- से सम्बन्धित पुलिस को सूचना देने की प्रतिलिपि

9- समस्त कागजात या आख्याएँ जिन पर आधारित करके मेरे उम्मर रु 46899-42 के गायब करने का आरोप लगाया गया है की प्रतिलिपि।

10- डाक घर नियमावली के नियम 203 जिसके अन्तर्गत मुझे उत्तरदायी करार करने का आरोप है उसकी प्रतिलिपि।

कृम्या उपरोक्त कागजात शीघ्र ही उपलब्ध कराने का काट करे जिसमें की मैं अपनी समर्थ पेश कर सकूँ जिसके बिना मैं समर्थ पेश करने में असमर्थ हूँ।

दिन 25-8-88

भवदीय

इन्तजार हूँगा।

नायब पोस्ट मास्टर निलिमित  
मो० बाजदारी टैला - सीतापुर  
खराबाद - इसीतापुर

True Copy attested  
John  
for official record

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सीता में,

### Annexure No. 4

अटारीक छाक्कार,  
सीतापुर मण्डल,  
सीतापुर।

विषय:- प्रार्थना-पत्र वा स्ते रोके जा ने वसुली दानराई 46899-42 पै० विरह  
इन्तजार हुतेन पुत्र निर्णय इमितया ज हुतेन निर्णय वा बदारी टोला क्षेत्र  
लोराबाद छाक्कार, परगना व धाना लोराबाद तहसील व जिला  
सीतापुर। पोर्ट मास्टर रामपुर मधुरा जनपद सीतापुर।

महोदय,

विनम्र निवेदन है कि प्रार्थी के विरह दिनांक 12-8-87 के धाना  
रामपुर मधुरा मैं एक मुल्कमा मु० 46899-42पै० के दुर्विनियोग के सम्बन्धमें दर्ज  
करवाया था। उक्त अभियोग में प्रार्थी ने दिनांक 18-8-87 के न्यायालय  
श्रीमान मुख्य न्यायिक दण्डाधिकारी सीतापुर मैं आत्मसमर्पण कर दिया था।  
जो कि अब जमानत पर है जिसका प्रमाण संलग्न प्रार्थना-पत्र है।

प्रार्थी को ज्ञात हुआ है कि आपके विभाग द्वारा प्रार्थी के विरह  
मु० 46899-42 पै० की वसुलयाद्वी का आदेश जारी किया गया है। जबकि उक्त  
रामपुर अधीन न्यायालय श्रीमान मुख्य न्यायिक दण्डाधिकारी सीतापुर मैं  
विवाराधीन है। इस परिस्थिति मैं आपके विभाग द्वारा उपरोक्त दानराई  
की वसुलयाद्वी अथवा अन्य कोई कार्यालयी न्यायिकता मैं उचित नहीं है।

अतः आपसे अनुरोध है कि उक्त मामले मैं जब तक न्यायालय द्वारा  
कोई निर्णय न हो जाय तब तक उक्त दानराई की वसुलयाद्वी या अन्य कोई  
कार्यालयी न करें।

अतिः कृपा होगी।

Ghuzen

दिनांक:- 14-10-87

संलग्नक:- उपरोक्ता नुसार

True copy attested

Ghuzen प्रतिलिपि

श्रीमान जिलाधिकारी महोदय, सीतापुर की तेवा मैं सुधनार्थ एवं उचित कार्यालयी  
हेतु प्रेषित।  
संलग्नक- उपरोक्ता नुसार।

Ghuzen

१ इन्तजार हुतेन १ उपरोक्त

प्रार्थी  
१ इन्तजार हुतेन १ पुत्र स्व० श्री  
इमितया ज हुतेन  
निर्णयो वा बदारी टोला क्षेत्र लोराबाद  
पोर्ट-लोराबाद  
तहसील व जिला सीतापुर।  
सब पोर्टमास्टर रामपुर मधुरा पौरी जिला  
सीतापुर।

३८

अधीक्ष डाक घर,  
सोतापुर मण्डल,  
सोतापुर।

A decorative motif consisting of a stylized knot on the left and a loop on the right, both rendered in a dark, textured style.

**विष्णु:-** प्रार्थना- पूर्व वारते रोके धाने दहुली धन राशि 46899-47840 बिल्ड  
इन्तजार हुसेन पुर मिर्जा इम्तियाज हुसेन निधासा। वाणिदारा टोला फस्ता  
छैराबाद डाफ्टर, परग्ला व धाना छैराबाद उड्डलौल व व जिला सातपुर  
पोस्ट मास्टर रामपुर मध्यां जनपद सातपुर।

महोदय

विनम्र निवेश के फ़िल्म प्रार्थी के बिल्ड फ़िल्म १८-८-८७ को धाना रामगुरु मृत्यु  
में एक मुख्यमा गुरु ४८८७७-४२ पै० के दूरीपालनोग के सम्बन्ध में दर्ज करवाया था। उपर्युक्त  
उनिमीलोग में प्रार्थी ने फ़िल्म १८-८-८७ को न्यायालय अधिकार सुनिय न्यायिक कानूनी विधारी  
सोलापुर में आत्मसमर्पण कर दिया था। जो फ़िल्म ज्यानत पर है जिसका प्रमाण तीनजन  
प्रार्थी - पर है।

प्रार्थी जो इस दुनिया के लिए आपके विनाश क्षारा श्रद्धी के बिल्कु गुप्त 45097-9240 को दृढ़रूपता का आदेश भारी लिखा रखा है। जबकि उक्ति मामला किंव अभी विवरणसंधि न्यायालय द्वारा मान गुण्य न्यायिक विधानीय गरी सातापुर में विधाराधीन है। इस परिस्थिति में अपने विधानसभा उपर्योग लक्ष्यराशि की चर्चालाभी अस्थाअन्या की दृष्टि गर्ववादी न्यायविधि के उपर्योगों को प्रार्थी ने जाकर एक प्रार्थी-विधानसभा की सेवा ग्रहीता है। 14-10-87 को राजितद्वी डाक गता प्रीकार प्रिया था। परन्तु उस पर अभी तक कोई भी आदेश नहीं प्रारित किया गया।

अतः आम से अनुरोध है कि उनसे गान्धीजी का जन्म तथा निधानलय द्वारा जोई विधिवत हो, जाय। तब तक उपर्युक्त धर राजिया का कहानी रोके जाने के सम्बन्ध में जिला-अधिकारी राजीव गुरु के गर्वालिय में आवश्यक विवरों से का ज्ञान करें।

અન્તિમ કૃત છો. ૧

प्रियांका :- १०-११-८७

### संस्कृतका:-

## उपरोक्तानुसारः—

४८८  
प्रसाद

पुनर्स्यं रमित्याणं ह्योन  
निधारोः- सोऽपि वाणि शरो तेला

प्रस्तुत्य धान्ताः- खेराद्वाद

तेहु व विला:- सीतापुर।

सब पाँस्टामा स्के राग पुर मधुर पाँस्टामा, स  
तितिपुर

(AU NO 29)

Annexure no 6

भारतीय डाक विभाग  
कार्यालय नियंत्रक डाकघर, सीतापुर मण्डल, सीतापुर 261001  
जारी सं-एफ 10/87-88 सीतापुर दिनांक, 20.12.88

\*मुद्रा 2335

श्री इन्तजार हुसेन नायब पोस्टमास्टर रामपुर मथुरा  
(नियंत्रक) के विलक्षण लोक लेखापाल बूक अधिनियम 1850 के 12  
वीं धारा 3 व 4 के अन्तर्गत रु 46,899.42पै 0 की बसूली के  
आदेश जिलाधिकारी सीतापुर के दिन 12.8.87 को दिये गये थे जिसके  
विलक्षण नानार्थी उच्च न्यायालय इलाहाबाद लाइन ब्रॉड फील ने स्थान  
आदेश जारी किया कि कम जारी हो इस सम्बन्ध में पर्याप्त अवसर नहीं  
दिया गया।

इस आदेश के अन्तर्गत श्री इन्तजार हुसेन को इस कार्यालय  
के समर्थन तत्र दिनांक 25.8.88 की आरोपी का विवरण देते हुए  
दिन 19.9.88 तक स्वयं उपस्थित होकर बयान देने हेतु या लिखित रेजने  
हेतु पत्र जारी किया गया परन्तु श्री हुसेन ने प्रार्थना तत्र दिनांक 9.10.88  
द्वारा सम्बन्धित अधिसेक दिलाए जाने का अनुरोध किया।

दिनांक 12.9.88 की पुनः श्री इन्तजार हुसेन को आदेश  
दिया गया कि वे 19.9.88 के कार्यालय में उपस्थित होकर बयान देवें,  
जिसमें यह भी उल्लेख किया गया था कि जहाँ आवश्यक होगा सम्बन्धित  
अधिसेक दियाये जायेंगे। दिन 19.9.88 के कार्यालय में उपस्थित होकर  
श्री इन्तजार हुसेन ने सम्बन्धित दस्तावेजों का अकलोकन किया ताँ परना  
बेयोन दिन 26.9.88 की मार्फतीय कार्यालय में उपस्थित होकर देने का  
आश्वासन लिखित रूप में दिया परन्तु वह 26.9.88 को उपस्थित नहीं  
हुए तथा विस्तृ प्रकार हो लिखित सूचना भी नहीं भेजी।

तत्त्वज्ञात् दिनांक 30.11.88 की पुनः स्व पत्र व्यक्तिगत  
रूप से दिनांक 10.12.88 को इस्तेश्वर प्राप्त करके दिया गया कि वे  
दिन 15.12.88 के नानार्थी कार्यालय में बयान देवें परन्तु उन्होंने  
स्त्री प्रतार को लिखित सूचना नहीं प्रेषित की।

श्री इन्तजार हुसेन को दस्तावेजों का अकलोकन भी कार्या  
गया तथा उपरोक्त तिथियों में मार्फतीय कार्यालय में बयान देने हेतु  
उपस्थित होने का आदेश दिया गया परन्तु वे अपना बयान देने हेतु  
उपस्थित नहीं रुके।

अतः नियंत्रित आरोपी की पुष्टि होती है कि श्री  
इन्तजार हुसेन दे पाए इन आरोपी का स्वाक्षरता नहीं है तथा रु 46,899.42पै 0  
के गबन के लिए उत्तरादायी पाये जाते हैं।

श्री इन्तजार हुसेन ने ब्रतोर नायब पोस्टमास्टर के रामपुर-  
मथुरा कार्यालय से हुए दिन 29.7.87 की डाकघर लेखा में प्राप्तियों का  
योग रु 34,664.27पै 0 तथा भुगतान का योग रु 1195.20पै 0  
सही दर्शया पार अवश्य धन रु 33,469.07 पै 0 के बजाय रु 23,469.07 पै 0 दिखाया गया तथा रु 10,000/- राजस्व से  
निकालकर लापता कर दिया। विवेकना पूरी होने तक इस हानि को  
अवरोक्त भुगतान में छातने का निर्देश दिन 4.8.87 को देना पड़ा।  
दिन 10.8.87 को विवेकना के लिए पहुंचे नियंत्रकों ने श्री इन्तजार हुसेन  
को अनुस्थित पाया तथा श्री ललाराम पैकर ने बताया कि डाकघर

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के दावजे दी जाभी प्रातः उन्होंने शिशु पुत्र को देका वे करार हैं। ढाक्षर औजने पर पहले से शाठांपक्षीयी कटी जानों में बुली पढ़ी थी, ढाक्षिया के लिये अवानत की बीमा हन्दराज था। अन्य न तो जाभी थीं न उपस्थित रामग्री नक्वे आदि का जर्ज किसी को दिया था। मुलिस को सूखना देने पर, मुलिस ने अधीस्त्रीक्षरी, श्री रामार्थकर पादकथानाध्यक्ष रामपुर मधुरा, श्री बी. पी. सिंह सब इन्स्पेक्टर थाना रामपुर मधुरा, श्री सरयुग्राद मैर्ड व श्री तनवीर अहमद निरोक्षक ढाक्षर, सर्वानी जगदेव प्रसाद मिश्र, धीरज प्रसाद व रामप्रताप मिश्र निवासी ग्राम-रामपुरमधुरा के समने श्री स्थानी दयाल लोहार से सभी बन्द ताले तुड़वाकर तलारी लिया जिसमें कुल नकदी रु 000 13.03पै०, ढाक टिकट रु 130.155पै०, रसोदी टिकट रु 533.40पै० व आनंदी बैरंग रु 1.20पै० का मिला बिपक्षा योग रु 185.758 पै० हुआ और शाठांपक्षीयी से देय बैलेस रु 10,105.62 लेका रु 11,963.20पै० मिला जबकि श्री इन्तजार हुसेन द्वारा ऐसे बाड़ीयी डेलीएक्याउन्ट और एफओ एक्याउन्ट के अनुसार नकदी रु 36,89.1090पै०, ढाक टिकट 1323.50पै०, रसोदी टिकट 532/- बैरंग 1.20 व शाश्वा ढाक्षरों से देय राशि 10,105.62पै० होना चाहिये था। शा प्रकार रु 36,899.42पै० फिर से राजकोष का श्री इन्तजार हुसेन के कब्जे से पालता पाया गया। कुल नक्वे धन बनि रु 00, 36,819.42पै० अन्तिम बार तथा रु 10,000/- उन्होंने राजकोष से गायब किया है। कुल रु 46,899.42पै० के गायब करने के लिये ढाक्षर नियमावली छप्पन भाग-एक नियम 203 के अन्तर्गत वे उत्तरादायी पाये जाते हैं।

अभिज्ञों का निरोक्षण करने के बाद भी, बारांबार अवसर देने पर भी, शाश्वात्त श्री इन्तजार हुसेन कोई सफार्द न लिखित प्रस्तुत कर पाए न बिक्तगत रुप से उपस्थित होकर बयान दे सके।

अतः उपरोक्त वर्णित परिस्थितियों से स्पष्ट हो जाता है कि श्री इन्तजार हुसेन ने सातारा धन मु 0 रु 46,899.42पै० का गबन कर लिया है तथा उनसे लोक लेखापाल चूक अधिनियम की धारा 3 अंतर्ण 4 के अन्तर्गत उक्त धन की वसूली के आदेश किए जाते हैं क्योंकि लोक लेखापाल चूक अधिनियम (1850) के सख्त 12 के धारा 3 के अन्तर्गत श्री इन्तजार हुसेन लोक लेखापाल है तथा धारा 4 अंतर्गत अधीस्त्रीक्षरी कायलिय विभागीय प्राधिकारी है।



अधीस्त्रीक्षर ढाक्षर,  
सीतापुर मण्डल, सालामुर 26/100

प्रतिलिपि प-१। जिसाधिकारी सीतापुर की(दो प्रतियों में) इस जारी से लिये उक्त धन की वसूली बीमुरी की जायें।

श्री इन्तजार हुसेन नायब पौर्साठा (निलम्बिक्त रामपुरमधुरा को सुनाया)

355 कायलिया प्रति एवं अतिरिक्त।

True Copy attached  
Y. A. P. S.  
Dr. A. P. S. S.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD  
CIRCUIT BENCH, GANDHI BHAWAN  
LUCKNOW.

O.A. No. 39 of 1989 (L)

Intizar Husain .. Applicant

Versus

Superintendent of Post offices  
Sitapur and others. .. Opp. parties.

COUNTER AFFIDAVIT OPPOSING ADMISSION OF THE  
APPLICATION AS WELL AS GRANT OF INTERIM RELIEF.

*Copy  
B/S  
13/3/89*  
I, J.M. Sinha, aged about 51 years, son of  
Shri J.S. Lal at present posted as Supdt. of Post  
Offices, *Sitapur* <sup>Sitapur</sup>, Sultanpur do hereby solemnly affirmed and  
state as under:-

That the deponent is the Opp; party no.1  
in the above noted case and he is fully conversant  
with the facts of the case.

2. That the *applicant* <sup>deponent</sup> was served a copy of  
the application along with other documents only  
on 9.3.1989, and since the case is fixed for  
13th March 1989, the opposite parties are submitting  
only preliminary objection instead of filing the  
parawise reply.

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3. That it is pertinent to mention that the applicant has earlier moved a Writ Petition ie. Writ Petition No. 3772 of 1988 (Intizar Husain -vs- Collector, Sitapur and others) against the orders of recovery issued against the applicant and the Hon'ble High Court was pleased to stay the proceedings of recovery against the petitioner.

4. That after hearing both the parties the Hon'ble High Court held that the recovery order was passed without giving any opportunity to the applicant and hence the stay order was modified to the extent that the recovery can be made against the petitioner only after giving him a reasonable opportunity.

5. That the deponent in pursuance of the orders of the Hon'ble High Court issued a letter to the applicant dated 25th August 1988 calling upon him to give his explanation with regard to the shortcomings of the Government money in the post office.

6. That the applicant wanted to inspect the relevant records before giving the statement in defence and on 19.9.1988 he was allowed to inspect the relevant records. On that day the applicant requested

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some more time for giving his defence statement and gave in writing that he will come to the office of the deponent on 26.9.1988 for giving his defence statement. In that hand-note he also acknowledged that he has inspected the relevant record. A photostate copy of the hand-note given by the petitioner himself is being enclosed as Annexure-A to this affidavit.

7. That the applicant did not turned up on 26.9.1988 as promised by him and the deponent after waiting quite a long period issued another letter/reminder dated 30.11.1988 by which the deponent directed the applicant to appear on 15.12.1988 for giving his defence statement. This letter was served on the applicant on 1.12.88 but the applicant did not turned up on 15.12.88, which is clear from the report of the Asstt. Supdt of Post Offices dated 15.12.88.

A photo state copy of the letter dated 30.11.88 along with the report is being enclosed as Annexure-B to this affidavit.

8. That the deponent has no alternative but to pass final orders for recovery of the amount embezzled by the applicant ie. Rs. 46,899.42 Paise and the said

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recovery orders were passed on 20.12.88. ~~Copy of the~~

~~same is being enclosed as Annexure-C to this affidavit.~~

9. That it transpires that the applicant has nothing to offer in his defence as the embezzlement is proved from the documents of the Post Office and therefore he deliberately firstly avoided to give any reply on the pretext to inspection of relevant documents and secondly after perusing the relevant records did not submit his written statement in his defence.

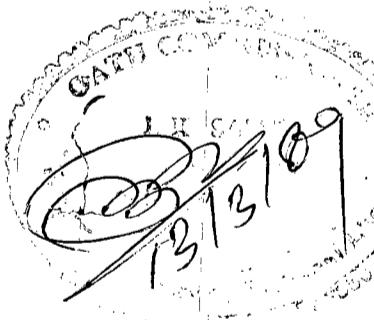
10. That the order of recovery has been sent to the Collector, Sitapur for realizing the amount from the applicant. That the order of the recovery passed against the applicant are in confirmative with the principles of natural justice and the opposite parties have every right to recover the public money embezzled by the applicant from his moveable and immoveable properties immediately otherwise the applicant will transfer his immoveable property and ultimately the Government will be put to irreparable loss as the Government will not be able to recover the aforesaid amount from the applicant.

11. That the Post Master Sitapur intimated to the office of the deponent on 3.8.1987 vide his letter No.XP/

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1250/3 da that Sub Post Master Rampur Mathura is showing his balance loss by Rs.10,000/-. The XP was received on 3.8.87 at 17.30. hrs. Therefore the deponent proceeded to R. P. Mathura on 4.8.87 and cash and stamps as per balance of dated 3.8.87 was verified and it was found correct. On scrutiny of S.O. account dated 29.7.87 it was observed that the Sub Post Master struck total of receipt Rs.34664.70 and total payment was Rs.1195.70. Both totals were correct but the balance casted by the applicant , Sub Postmaster was Rs.23,469.07 instead of Rs.33,469.97. Thus Rs.10,000/- was found short.

12. That on enquiry the applicant was found guilty and was placed under suspension on 7.8.87. Shri S. P. Maurya SDI(C) Sitapur was ordered to serve the memo of the suspension and report the case to police as per enquiry. On 8.8.87, the Postmaster Sitapur received one LR on forenoon. The LR wanted TA advance and D.O. was closed on that day being Saturday. The advance was sanctioned by the ~~xxxxxx~~ deponent on 8.8.87 at residence. Next day was Sunday. So Shri SP Maurya , SDI(C) Sitapur accompanied by Sri Tanveer Ahmed CI Sitapur and LR



Sri JK Yadav, P.A. Sitapur HO proceeded on 10.8.87 and reached on 10.8.87 at 11.00 A.M.

13. That on arrival of P.O. Shri Lalla Ram ED Tacker told to Shri Maurya that the applicant had gone to Hospital for treatment by giving an application addressed to the deponent. The deponent proceeded to RP Mathura on 11.8.87 and found that the applicant is absconding. The door of Post office was opened in the presence of Thana Incharge, RP Mathur and it was found that cash amounting to Rs.36,899.42 is short. Thus total loss of shortage was Rs.46,899.42.

14. That the applicant comes within the ambit of the definition of Public Accountant as given in the Public Account Default Act, 1850 as he was a person who was entrusted with the receipt, custody and control of monies of the Central Government and was in service of Central Government. The Public Accountant has been defined under Section 3 of the said Act which is reproduced as under:-

" 3 - Public Accountant' defined - For the purposes of Sections 1 and 2 of this Act, the expression

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public accountant' means any person who as official Assignee or Trustee, or as sarbarakhar, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons, and for the purposes of section 4 & 5 of this Act the expression shall also include any person who, by reason of any office held by him in the service of the Central Government or the Government a State, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to such Government."

15. That under Section 4 of the said Act provides that the head of the office to which any such Public Accountant belongs may proceed to recover any such loss as such if the amounts thereof where an arrear of land revenue due to Government. The provision of Section 4 of the said Act are reproduced below:-

" 4. Prosecution of Accountants and sureties -

The person or persons at the head of the office to which any public accountant belongs may

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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."

16. That the arrears of land revenue are recoverable at present under the provisions contained in U.P. Zamindari Abolition and Land Reforms Act (Act no.1 of 1961) and Rules framed thereunder. There is no provision of giving any opportunity before issuing citation /demand, although there is a provision contained in Section 287-A of the said Act which provides that demand may be made under protest and a suit for recovery may be filed and the said provision is being quoted below:-

" 287-A. Payment under protest and suit for recovery - (1) Whenever proceedings are taken under this Chapter against any person for the recovery of any arrear of land revenue or for the recovery of any sum of money



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recoverable as arrear or land revenue he may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment, the proceedings shall be stayed and the person against whom such proceedings were taken may sue the State in the Civil Court for the amount so paid and in such suit be plaintiff may, notwithstanding anything contained in section 278, give evidence of the amount, if any, which he alleges to be due from him.

(2) No protest under this section shall enable the person making the same to sue in the Civil Court, unless it is made at the time of payment in writing and signed by such person or by an agent duly authorised in this behalf."



17. That as such the application is not maintainable and the applicant may approach in the manner aforesaid after making demand under protest.
18. That the applicant's writ petition is still pending before the Hon'ble High Court and that the applicant cannot approach this Hon'ble Tribunal unless

he withdrawn the writ petition.

19. That it is also pertinent to mention that the order impugned in the instant application was not passed in a disciplinary proceedings under the provisions of Central Civil Services (CCS) Rules and therefore the provisions of para-80 of Posts and Telegraphs Manual Vol.III will not be attracted.

20. That the instant application is not liable to be admitted nor the applicant is entitled to get any interim relief in the circumstances narrated above.

  
Deponent.

Lucknow,

Dated: 13.3.89

Verification.

I, the above named deponent do hereby verify that the contents of paragraphs 1 & 2 are true to my personal knowledge, and those of para 3 to 13 are believed to be true on the basis of perusal of office records as well as information gathered and

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- 11 -

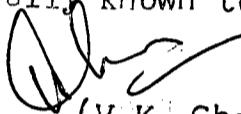
those of paras 14 to 20 are believed to be true on the basis of legal advice. Nothing material fact has been concealed and no part of it is false.

~~G. K.~~  
Deponent.

Lucknow,

Dated: 13/3/89

I identify the deponent who has signed before me and is personally known to me.

  
(V.K. Chaudhari)

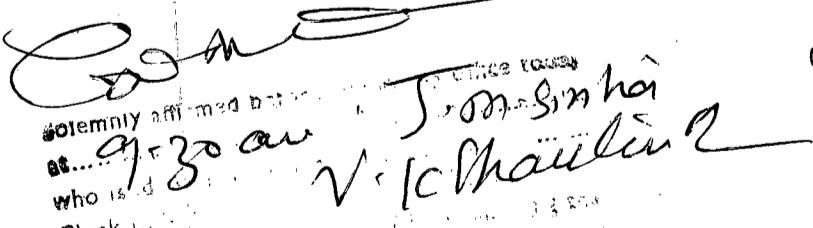
Addl. Standing Counsel for Central Govt.  
(Counsel for the Opp-Parites)

Lucknow,

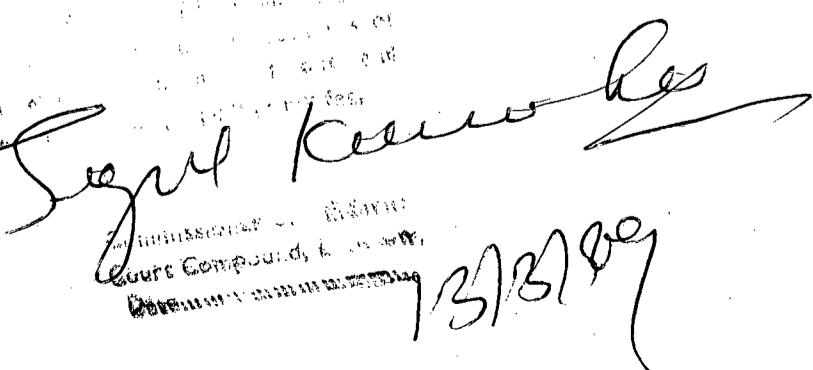
Dated: 13 Mar. 89.

Solemnly affirmed before me on  
at am/pm by the deponent Shri JM Sinha by  
Shri VK Chaudhari, Advocate, High Court, Lucknow Bench,  
Lucknow.

I have satisfied myself by examining the  
deponent that he understands the contents of this  
affidavit which were read over and explained to him  
by me.

  
Oath Commissioner.

Solemly affirmed before me this day  
at 9.30 am by J. M. Sinha  
who is Clerk  
deponent  
the 13th day of March  
1989  
Signature

  
Sejal Keshav Rao  
13/3/89

Annexure No 4  
W/S of Smt. Indira Gandhi  
Smt. Ranjeeta Kaur 4/5

Am.A

12

स्त्रीमती

मार्च 19191886 की अद्यता का दिनांक 1/4/88 का अद्यता  
ही कल मार्च 191886 Rights की दिनांक 1/4/88 का अद्यता  
अपना दिनांक वर्षान्त दिन, के दिन 26-9-88 का अद्यता  
कायदे के अद्यता का अद्यता होगा।

1. Balance as on 19/3/88	7802.02 + 2303.60	3.60
2. So A/c R.P. Mathurा dt 28/3/88 to 31/3/88		1308.60
3. & A/c 30/3/88 to 9/4/88		1002.60
4. Dr Drifts dt 27/3/88 to 31/3/88		2303.60
5. Dr Drifts received at R.P. Mathurा dt 29/3/88 to 8/4/88		10/4/88
6. Dr Drifts received at R.P. Mathurा dt 27/3/88 to 8/4/88		19/4/88
7.		

Statement

Given on 15/4/88

15/4/88

ASD(7)

Signature

19/4/88

R.P. Mathurा 1/5  
Sitarpur

अधिकारी दाक विभाग सीतापुर मण्डल  
सीतापुर-261001  
SUPDT. OF POST OFFICES SITAPUR Dt.  
SITAPUR-261001

GATE NO. 12  
15/4/88  
ASD(7)

Annexure B.

Annexure No. 8-B

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INDIAN POSTS AND TELEGRAMS DEPARTMENT

मालवा राज्य विभाग  
मालवा राज्य विभाग  
In reply  
Please quote

मालवा राज्य विभाग  
मालवा राज्य विभाग  
SUPPORT OFFICE, SITAPUR, U.P.  
SITAPUR-261001

Shri Jagdish Hussain  
S.P.M. Rampur Madhura (Raj)

क्रम संख्या  
No.

F-10/87-88

मालवा राज्य विभाग  
मालवा राज्य विभाग  
SITAPUR-261001

सन्दर्भ: आपका आवेदन पत्र दि. 19.9.88

आपने आपने आवेदन पत्र दि. 19.9.88 को सम्बद्ध प्रतिक्रिया का निश्चिकारण करने के लाद दि. 26.9.88 की उपर्युक्त हो कर आपना विवाह देने का आवेदन पत्र दिया था। परन्तु आप इसका उपर्युक्त नहीं कुप्रे तथा भावतों आपके कारण लाभित हो। विविध अग्रिकल्पों का निश्चिकारण 19/88 की कर रुक्के हो।

जहाँ आगे को मुला इस आवेदन दिया जाता है कि दिनांक 15-12-88 को मालवा राज्य विभाग इच्छापत्रों उपर्युक्त हो कर आपना विवाह हो। जाप खात; 10 लोगों सम्बन्धित आवधीकार अमरा के सम्बुद्ध उपर्युक्त हो।

अधीक्षक डाक विभाग गोपालगढ़  
सितापुर-261001  
SUPPORT OFFICE, SITAPUR, U.P.  
SITAPUR-261001

Reck

Phujiwari  
11/12/88

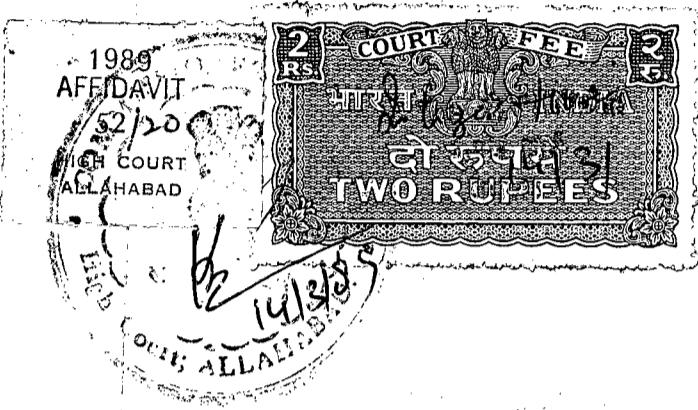
1032  
13/12/88

S.P.S.  
मालवा राज्य विभाग  
मालवा राज्य विभाग  
(गोपालगढ़) 10/12/88  
ज्ञ. 3 वर्षावारी 39 रु.  
15/12/88  
ASR(1)

12.12.88  
अधीक्षक डाक विभाग गोपालगढ़  
सितापुर-261001  
SUPPORT OFFICE, SITAPUR, U.P.  
SITAPUR-261001

AB  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABA  
CIRCLE LUCKNOW GHANDHI BHAWAN .

O.A. No 39 of 1989 (L)



Intizar Husain ..... Applicant

Versus

Superintendent of Post Office

Sitapur and others ..... Opp. parties

REJOINDER AFFIDAVIT ON BEHALF OF THE APPLICANT  
AGAINST THE COUNTER AFFIDAVIT OF THE ADMISSION  
OF THE OPP. PARTY.

I, Intizar Husain aged about 48 years son of Mirza Imtiaz Husain resident of Mohalla Bazzari Tola Qasba, Khairababad, Distt. Sitapur, do hereby solemnly affirm and state on oath as under:-

xx  
xxxxxxGxxMxxSxxxxxx ✓

1. That the deponent has gone through the counter affidavit of Sri J.M. Sinha dated 13.3.1989 ( hereinafter referred to as the counter affidavit ) and the deponent has understood the contents thereof and <sup>he is</sup> ~~these~~ also fully conversant with the facts deposed hereto ~~is~~ under:

2. That the contents of para 6 of the application under section 19 of the Act are reiterated as correct and those of the contents of para the

Date.....

counter affidavit in so far as those are contrary to the facts mentioned in the para 6 of the application Under section 19 of the Act are emphatically denied .

3. That the contents of paras 1 and 2 of the counter affidavit need no reply.

4. That the contents of para 3 of the counter affidavit are not disputed except that Hon'ble High Court had stayed the recovery of the money sought to be recovered vide citation dated 18.4.1988.

5. That the contents of para 4 of the counter affidavit are not disputed except that Hon'ble High Court vide order dated 8.3.1988 had stayed the recovery during the pendency of the writ petition and the Hon'ble High court has also observed " However it will be open the opp. parties to hold enquiry against the petitioner . After the enquiry has been completed it will be open to the opp. party no. 3 to apply for vacation of this interim order " . As the matter of fact the Hon'ble High Court had observed by way of a passing reference so far as the interim order before the Hon'ble High Court was concerned . The Hon'ble High Court has not mandated or empowered the opp. party to undertake any enquiry , Only an option was given to the opp. party to make or not to make any enquiry in the matter .

6. That the contents of para 5 of the counter

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- 3 -

affidavit are incorrect, wrong and emphatically denied, the alleged proceedings mentioned in para under reply have been vindictively started against the petitioner with utmost malafide intention to harm and prejudice the case of the applicant before the Criminal court.

7. That the contents of para 6 of the counter affidavit are not admitted as stated. It is however true that after the deponent made application for supply of certified copy of the documents vide annexure No. 3 to the application and a copy was not supplied and refused and the applicant had no alternative but to <sup>Subcom</sup> apply for inspection & that was not allowed for all the papers of Annexure 3 but the applicant was not permitted to make notes therefrom, as such no proper inspection or copies of documents relied upon by the opp. parties were given. The annexure - no-1 is however not disputed.



8. That the contents of para 7 of the counter affidavit are denied as stated, on the date fixed of which the deponent was informed he could not attend because he was seriously ill and was advised rest and for his absence he had consistently submitted medical Medical certificate on relevant dates for his reason of absence. On 15.12.1988 also the deponent was ill and he had submitted his Medical certificate to the opp. parties, but the opp. party malafide and in utter haste passed impugned order on 20.12.1988 imposing a recovery of 46,899.42 paise without considering the Medical certificate and the application for

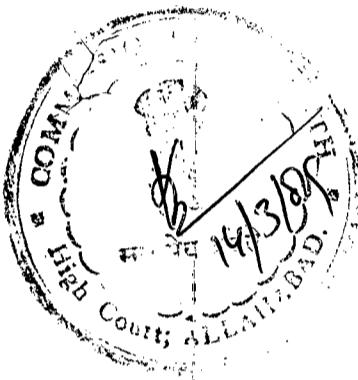
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excused. It is also pertinent to mention that applicant has orally as well as vide annexure -4 and 5 of the application requested several times opp. parties that the proceedings of recovery should be withheld till the conclusion of a criminal case u/s 409 I.P.C. pending in C.J.M. Sitapur, but the opp. parties most ~~xxxx~~ cruelly ignored the request and ~~straightaway~~ straightaway passed the impugned order of recovery of the alleged ~~xxxxxx~~ embezzled amount from the applicant even without determining the actual guilt of the deponent. The deponent has also frequently intimated that the deponent's case before the criminal courts would be adversely prejudiced but it was not heeded by the opp. parties who had taken law in their hand and ignored all the judicial norms and principles of natural justice.

9. That the contents of para 8 of the counter affidavit are denied as stated. By no enquiry worth the name the applicant has so far ~~xxxxxx~~ been guilty and the matter is subjudice. The order dated 20.12.1988 has been passed with malacious motive and is illegal.

10. That the contents of para 9 of the counter affidavit are wrong and emphatically denied. The contents of under reply are mere creatures of imagination of the opp. parties, malicous mind. Neither embezzlement has been proved so far nor it can be inferrend that applicant has nothing to say in reply especially when hotly contested matter is pending from the court of C.J.M. Sitapur till the ~~Apex~~ court



*Ansawar*

of the ~~same~~ State.

11. That the contents of para 10 of the counter affidavit are misconceived, wrong and emphatically denied. the amount alleged to be embezzled by the deponent can not be recovered until the guilt of embezzlement has been ~~xxx~~ determined in any court of law or properly initiated departmental proceedings after the conclusion of criminal case pending in the court of Chief Judicial Magistrate, Sitapur.

12. That the contents of para 11 of the counter affidavit are denied as stated, and the contents of application contained in para 6 thereof as are relevant to the extent of the contents of para under reply are reiterated as correct .

13. That the contents of para 12 of the counter affidavit are denied as stated and those of the contents para 6 of the application relevant for the purposes of the para under reply are reiterated as correct .

14. That the contents of para 13 of the counter affidavit are wrong and denied and the contents of para 6 of the application relevant for the purposes of para under reply are reiterated as correct .

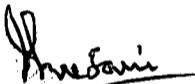
15. That the contents of para 14 of the counter affidavit are highly misconceived and not applicable to the ~~extant~~ instant case. The provisions of

be termed otherwise than departmental proceeding s because the opp. parties have no power or quasi-jurisdiction to undertake any judicial or ~~executive~~ judicial proceedings except the departmental proceedings .

21. That the contents of para 20 of the counter affidavit, <sup>as</sup> misconceived & are denied. No opportunity of hearing has been given to the deponent and as the impugned order dated 20.12.88 is wholly without jurisdiction , it is liable to be quashed and the application deserved to be admitted and ultimately allowed against the opp. parties.

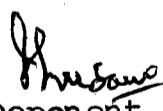
Lucknow:Dated:

March 14, 1989

  
Deponent

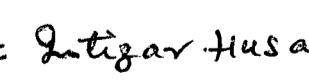
Verification

I, the above named deponent do hereby verify that the contents of paras 1 to 14 & 21 of this rejoinder affidavit are true to my knowledge and those of paras 15 to 20 are believed by me to be true. signed and verified on this 14<sup>th</sup> day of March 1989 at Lucknow.

  
Deponent

I identify the deponent who has signed before me.

  
Advocate

Solemnly affirmed before me on 14-3-89 at 10.30 am/pm by the deponent  Latifur Hussain who identified by Sri Iftiqaq Ahmed Advocate High Court Lucknow Bench Lucknow. I have satisfied myself by examining the deponent he understands the contents of this affidavit which ha e been read over and explained by me.

K. Rehman  
(14/3/89)  
OATH COMMISSIONER  
High Court, Allahabad  
Lucknow Bench

S. No. 57/20  
14/3/89

Public Accountants Defaults Act 1850 have been misconceived and those are not applicable in the instant case.

16. That the contents of para 15 of the counter affidavit are misconceived are denied. The provisions of Public Accountant s Defaults Act 1850 are not attracted in the ~~extenuation~~ instant case

17. That the contents of para 16 of the counter affidavit are wrong are denied. The provisions of U.P.Z.A. & L.R. Act have been misconceived and are not applicable in the case of the deponent .

18. That the contents of para 17 of the counter affidavit are misconceived and are denied. The application is perfectly valid and maintainable

19. That the contents of para 18 of the counter affidavit are misconceived and are emphatically denied.

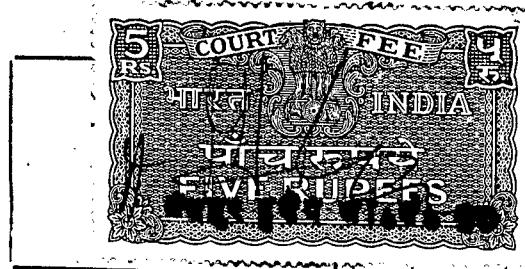
20. That the contents of para 19 of the counter affidavit are highly misconceived and are emphatically denied. The opp. party were absolutely debarred from taking any departmental proceedings under para ~~18~~ 80 of Post and Telegraph Manual Vol. III during the pendency of the above mentioned criminal case . It is ludicrous to say that the order impudic has not been passed in the ~~departmental~~ disciplinary proceedings . As a matter of fact the instant proceedings can not

*Yudhbir*

(B)

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ब अदालत धीमान् Central Administrative Tribunal  
 [वादी अपीलान्ट] महोदय  
 प्रतिवादी [रेस्पाडेन्ट] Allahabad  
 Pratibadi (रेस्पाडेन्ट) का वकालतनामा



Intiaz Hussain  
 बनाम प्रतिवादी (रेस्पाडेन्ट)  
 Subdt of Post offices Lucknow

नं० मुकद्दमा सन् वेशी की ता० १६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री... Ishaq Ahmad Advocate  
 118/06 Kha Court Road वकील  
 Lucknow महोदय  
 एडवोकेट

नाम अदालत	नं०	नाम फरीकेन
मुकद्दमा		

को अपना वकील नियुक्त करके प्रतिज्ञा ( इकरार ) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय ईवयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रूपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकद्दमा उठावें या कोई रूपया जमा करें या हारी विपक्षी ( फरीकसानी ) का दाखिल किया हुआ रूपया अपने या हमारे हस्ताक्षर युक्त ( दस्तखती ) रसीद से लेवें या पंच नियुक्त करें—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकर को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे ।

हस्ताक्षर ... ... ... ... ...

साक्षी ( गवाह ) ... ... ... ... ... ... ... ... ... ... ... ... ...

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स्वीकृत

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arbitrary nor actuated by any malafides. It was taken in public interest after following the prescribed procedure and after examination of the relevant records by the appropriate authorities. In view of above, the application is dismissed being devoid of merit. There would be no order as to costs.

*Appeal dismissed*

**CENTRAL ADMINISTRATIVE TRIBUNAL**

(Bangalore Bench)

*T.A. No. 19 of 1986 (F)*

*Decided on 28-4-1986*

**CORAM**

The Hon'ble Mr. Ch. Ramakrishna Rao, Member (J)

The Hon'ble Mr. L.H.A. Rego, Member (A)

Mr. M. Huchaiah

*—Applicant*

*Versus*

Union of India and others

*—Respondents*

(i) **P&T Manual, Para 80—Charge-sheet in force of Police action—Charge of mis-appropriating over a lakh of Rupees—FIR filed—Special Judge has been informed—Rules provide when case of substantial amount is there, it should be given to police and departmental action should await—Held departmental enquiry could not proceed.**

**Held**, We are, therefore, satisfied that the holding or continuance of the departmental inquiry pending investigation by the CBI, is likely to prejudice the case of the Applicant. The loss alleged to have been sustained by the Government, is over a lakh of rupees and keeping in view the magnitude of the loss, the department would be transgressing paragraph 80 of the Manual, which lays down that prosecution should be the general rule in cases which involve loss of substantial public funds i.e. in excess of Rs. 2,000. (Para 9)

(ii) **Departmental enquiry in face of Court Case—Charge-sheet issued—Plea that no Court Case has started so there was no bar to departmental action—Tribunal found FIR already filed, Special Judge informed, CBI is already seized of the matter—Held the departmental action should be pended till police case is over.**

**Held**, since the Delhi Police Establishment, Bangalore Branch, is already seized of the matter and a regular case has already been registered by the CBI. As the Special Judge has been informed of the FIR, the Respondents have to await further progress of the investigation and the final outcome. We, therefore, reject the submission of Shri Verudeva Rao that the non-filing of the Charge-sheet, enables the Respondents to hold departmental proceedings against the applicant. (Para 12)

**Cases referred :**

1. Tata Oil Mills v. Workmen, AIR 1965 S.C. p. 155.

2. Project Manager, ONGS v. Lalchand Vajirchand Chandana, 1981 (2) SLJ p. 332.
3. State of Andhra Pradesh v. Rama Rao, AIR 1963 SC 1723.
4. Union of India v. Sardar Bahadur, 1972 SCR 213.
5. Board of Trustees, Port of Bombay v. D.R. Nandkarni, 1983 (1) SLJ 257 (SC).

**Advocates :**

For the Applicant ; Mr. Raghavendrachar, Advocate.

For the Respondent ; Mr. Vasudeva Rao, Advocate.

**IMPORTANT POINT**

*When rules provide police action to precede departmental action in certain cases, the departments must await disposal of police case.*

**JUDGMENT**

**Ch. Ramakrishna Rao, Member (Judicial)**—This is an application filed by the applicant for quashing the order dated 31-12-1985, passed by Respondent No. 4 i.e. the Senior Superintendent of Post Offices, West Division, Bangalore (referred to as 'Superintendent') directing the Applicant to attend the departmental enquiry as and when called by the Inquiry Officer (referred to as 'I.O.') and restraining the Respondents from holding the departmental inquiry till decision of the case in Crime No. R.C. 9/85 BLR, the First Information Report (referred to as 'FIR') relating to which, was forwarded by the Central Bureau of Investigation (referred to as 'CBI') on 30-3-1985, to the Principal City Civil and Sessions Judge (referred to as 'Special Judge'), Bangalore.

2. The facts giving rise to the application are briefly as follows :

The Applicant was placed under suspension on 1-12-1984, by the Superintendent, who later framed charges and issued a Memorandum dated 12-12-1984, calling upon him to file his written statement of defence, within 10 days of receipt of the Memorandum. On 30-3-1985 at 16.30 hrs. Respondent No. 1 i.e. the Director of Postal Services, Karnataka Circle, Bangalore (referred to as 'Director') lodged FIR for an offence under section 409 IPC and section 5(2), read with 5(1)(c) of the Prevention of Corruption Act, 1947 with the CBI, Bangalore, who forwarded the same to the Special Judge. When the complaint was still under investigation by the CBI, the Superintendent in and by his letter dated 31-12-1985, directed the applicant, to attend the departmental inquiry, as and when called upon by the I.O.

3. The thrust in the argument of Shri M. Raghavendrachar, the learned Counsel for the applicant is, that holding of a departmental inquiry against his client, when the matter is still being investigated by the C.B.I., militates against the provisions in paragraphs 80 and 81 of the Posts & Telegraphs Manual Vol. III (referred to as the 'Manual'). To help appreciate the argument of the counsel, it would be useful to refer to the following relevant except of the aforesaid provisions in the Manual.

"80. Prosecution, should be the general rule in all those cases which are found fit to be sent to the court, after investigation and in which, the offences are of bribery, corruption or other criminal misconduct

involving loss of substantial public funds. In such cases, departmental action should not precede prosecution. In other cases, involving less serious offences or involving malpractices of a departmental action should be taken and the question of prosecution should generally not arise.

Note I : A case involving loss of substantial funds, would be a case in which the loss exceed ;

(1) Rs. 2,000 in respect of a departmental employee.

(2) x x x x x

Note II : x x x x x

Note III : In all cases, where prosecution has to be launched, a report should be lodged with the Police, as soon as the case comes to notice and departmental enquiries should not be held simultaneously with the police enquiry, except to the extent permitted by the police. The question of taking departmental action in such cases, would arise, either on completion of police enquiries and other referring the case for departmental action, or after completion of the court case. If, however, it is desired to conduct departmental enquiries, simultaneously with police enquiries or to take departmental action, wherever feasible before the case is taken up for prosecution by the police the matter should be decided after consultation with the police authorities."

"81. Once a charge-sheet has been filed in the court against an employee, the departmental proceedings, if any, initiated against him on the same facts of the case should be kept in abeyance, till the finalisation of the criminal proceedings. Similarly, an appeal filed against the penalty imposed in the departmental case, should not be disposed of, if in the meantime, criminal proceedings on the same facts of the case, have been initiated.

4. Shri Raghavenderchar submits, that the charges framed in the departmental inquiry and the subject matter of investigation by the CBI, are identical and since they both involve loss of substantial public funds exceeding Rs. 2,000 departmental action should not precede prosecution, as laid down in paragraph 80 of the Manual extracted above. According to Shri Raghavendrachar, even in exceptional case, where the competent authority deems it expedient to take recourse to departmental action simultaneously with the police enquiry, this should be done after consultation with the police authorities. In the present case there seems to have been no such consultation.

5. Shri M. Vasudeva Rao, counsel for the Respondents, on the other hand, submits, that the charges in the departmental inquiry and the subject matter of FIR, are not one and the same; that there is no legal impediment to the continuance of a departmental inquiry pending investigation by the police; that paragraph 81 of the Manual envisages, keeping in abeyance departmental proceedings, only in a case, where a charge-sheet has been filed in the court, against an employee and since this stage had not been reached, there is no violation of the procedure prescribed in the Manual.

6. We have had a close look at the statement of articles of the charge framed against the Applicant (referred to as 'statement') annexed to the Memorandum, issued to the Applicant, by the Superintendent and the contents of the FIR forwarded to the Special Judge. The complaint in the FIR pertains to misappropriation of customs duty, realised by the Applicant, in respect of 14 parcels/articles aggregating to Rs. 1,08,057.06, while the statement also relates to failure on the part of the Applicant to credit to the P.O. account amounts realised from various addresses of foreign parcels, towards customs duty in respect of 13 items. The number of the parcels given in the statement, broadly tally with the number of parcels/articles mentioned in the FIR. Shri Raghavendrachar is therefore right, in contending that there is an overlap of the charges in the statement and the allegations in the FIR.

7. Shri Raghavendrachar next relies on the decision in the *Tata Oil Mills v. Workmen*<sup>1</sup>, wherein the law has been laid down by the Supreme Court as follows :

"It is desirable, that if the incident giving rise to a charge framed against a workman, in a domestic enquiry, is being tried in a criminal court, the employer should stay the domestic enquiry, pending the final disposal of the criminal case. It would be particularly appropriate, to adopt such a course, where the charge against the workman is of a grave character, because in such a case, it would be unfair to compel the workman to disclose the defence, which he may take before the criminal court."

and on the decision of a Division Bench of the Gujarat High Court in *Project Manager, ONGC v. Lalchand Vajirchand Chandana*<sup>2</sup> wherein it was observed :

"The prayer is in respect of the stay of disciplinary proceedings, initiated under the Oil and Natural Gas Commission Regulations ; (1) because a parallel departmental proceeding is likely to cause prejudice to the defence in the criminal case, where the accused has the right to keep his mouth shut and not to reveal his defence (2) he can obtain a verdict from a Court presided over by a Judicial Officer, who is adept appreciation and assessment of evidence; in an objective manner, instead of a decision from a disciplinary authority, constituted by his employer who does not possess these advantages ; (3) complications may arise, if the same evidence is believed by one and disbelieved by the other and contradictory verdicts rendered by them. These are not matters which relate to Industrial Disputes Act or any other Labour Legislation. We are, therefore, unable to uphold the contention, that the learned single Judge had no jurisdiction and that the learned Single Judge ought not to have granted interim relief, maintaining *status quo*, during the pendency of the petition."

8. Though the decisions relied upon by Shri Raghavendrachar, were rendered in respect of a domestic inquiry under the Industrial Disputes Act *vis-a-vis* the proceedings pending in a criminal court against an employee, the principles enunciated therein, are equally applicable to departmental proceedings against a civil servant, under Article 311 of the Constitution of India.

1. AIR 1965 SC 155.

2. 1981 (2) SLJ 332.

9. We are, therefore, satisfied, that the holding or continuance of the departmental inquiry pending investigation by the CBI, is likely to prejudice the case of the Applicant. The loss alleged to have been sustained by the Government, is over a lakh of rupees and keeping in view the magnitude of the loss, the department would be transgressing paragraph 80 of the Manual, which lays down that prosecution should be the general rule in cases which involves loss of substantial public funds i.e. in excess of Rs. 2,000. Nothing has been stated in the reply, filed on behalf of the Respondents to the application filed by the Applicant, as to why a departure was made in the present case, from the general rule. Nor has it been stated in the reply, whether CBI was consulted regarding continuance of the departmental proceedings as laid down in Note III appended to paragraph 80 of the Manual.

10. Shri Raghavendrachar next contends, that the Superintendent, in his letter dated 31-12-1985 stated, that the CBI had not submitted the FIR to any court against his client, that the case was still under investigation by the CBI ; whereas the CBI had forwarded a copy of FIR to the Special Judge even on 30-3-1985 and in view of this factual infirmity in the letter dated 31-12-1985 his client was not bound to attend the departmental inquiry, as directed in the said letter.

11. Shri Vasudeva Rao states that no charge-sheet has yet been filed but only FIR was forwarded to the Special Judge for information and as such, there is no bar to the continuance of the departmental inquiry against the Applicant.

12. We do not find any substance in this submission of Shri Vasudeva Rao, since the Delhi Police Establishment, Bangalore Branch, is already seized of the matter and a regular case has already been registered by the CBI. As the Special Judge has also been informed of the FIR, the Respondents have to await further progress of the investigation and the final outcome. We, therefore, reject the submission of Shri Vasudeva Rao that the non-filing of the Charge-sheet, enables the Respondents to hold departmental proceedings against the Applicant.

13. There is yet another reason as to why the criminal proceedings, should take precedence over the departmental inquiry, in cases of the kind we are dealing with. In the *State of Andhra Pradesh v. Rama Rao*<sup>3</sup>, it has been laid down :

"In considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials, that an offence is not established, unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, cannot be applied, and if that rule be not applied, the High Court in a petition under Art. 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid".

14. This has been reiterated by the Supreme Court of *Union of India v. Sardar Bahadur*<sup>4</sup>, in the following words :

"The disciplinary enquiry is not a criminal trial. The standard of proof required, is that of preponderance of probabilities and not proof beyond reasonable doubt."

3. AIR 1963 SC 1723.

4. AIR 1972 SC 213.

15. Thus, the Respondents are not in any way prejudiced, if the criminal proceedings against the Applicant are finalised in the first instance and later a decision is taken, regarding the holding of the departmental inquiry then in light of the judgment of the criminal court, as ruled by the Supreme Court in the decisions cited *supra*.

16. Shri Raghavendrachar vehemently contends, that the personal liberty of his client guaranteed under Article 21 of the Constitution will be infringed, by holding the departmental inquiry concurrently with the investigations of the criminal case pending with the CBI and in support of his contention, counsel has relied on a decision of the Supreme Court in the *Board of Trustees, Port of Bombay v. D.R. Nadkarni*<sup>15</sup>, in which, it was held that 'life' includes reputation or livelihood of a person. We do not consider it necessary, to examine this contention, in the view we have already taken, regarding the merits of the application. After carefully considering the pros and cons, we are satisfied that the order dated 31-12-1985, issued to the Applicant, by the Superintendent is factually and legally unsustainable and we accordingly set aside the same. We also direct the Respondents, not to hold the inquiry against the Applicant till the completion of the criminal case (Crime No. RC 9/85-BLR) FIR in respect of which, was lodged by the Director with the CBI and copy of which was forwarded to the Special Judge by the CBI for information.

17. In the result the appeal is allowed. No order as to costs.

*Appeal allowed*

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**(Jodhpur Bench)**

**O.A./T.A. No. 139 of 1986.**

**Decided on 3-9-1986**

**CORAM**

The Hon'ble Mr. B.S. Sekhon, Vice-Chairman.

The Hon'ble Mr. G.C. Singhvi, Administrative Member.

Shri Mool Chand

—Petitioner

*Versus*

Union of India and others

—Respondents

(i) Surplus staff, how to deal with—Applicant a confirmed Carpenter—Became surplus due to a senior being reinstated by Court orders—reverted as Khalasi—Held reversion could not be done except under Art. 311(2)—Correct course would to create a supernumerary post for him.

Held In view of the foregoing and the fact that the petitioner was holding the post of carpenter on permanent basis, his reduction to the rank of Khalasi is impermissible. This is so not only in view of the protection available to the applicant under article 311(2) of the Constitution but also for the reason that such a course is to say the least is extremely unfair and unjust. The proper course for the competent authorities was to create a supernumerary post and not to penalise the applicant for no fault of his. (Para 6)

In the High Court of Judicature at Allahabad,

Lucknow Bench, Lucknow.

C.M.W. No. 7256 of 88.

In re

Writ Petition No. 3772 of 88.

Intizar Husain,

Petitioner.

vs.

1. The Collector Distt. Sitapur.

2. The Tahsildar, Sitapur.

3. Sri J.M. Sinha, The Superintendent of post Offices  
Sitapur Division, Sitapur.

opp. parties.

Stay Application.

Lucknow dated 8.8.88.

Hon'ble S.C.Mathur, J.

Hon'ble G.B.Singh, J.

During the pendency of the writ petition the interim order dated 16.5.1988 shall remain in operation. However, it will be open to the opposite parties to hold enquiry against the petitioner. After the enquiry has been completed, it will be open to the opposite party no. 3 to apply for vacation of this interim order.

Sd/ S.C.Mathur.

Sd/ G.B.Singh.

8.8.88.

Typed by Madan Lal/

*Exo. Moshel*  
12-8-88

**TRUE COPY**

McLennan  
Section Officer  
Copying Department  
High Court, Lucknow Bench  
LUCKNOW



Ishraq Ahmad

Advocate  
(High Court)

Sl. No. 16

Phone No. 31703

(B1)  
1

118/86-KHA CANTT. ROAD,  
LUCKNOW

Dated..... 8.3.89.

My Lords

I appear on behalf of the applicant  
in case at Sl. No. 16 (Intizar Hussain v/s  
S P O & another OA 39/89(L)) but as  
I am indisposed & unable to  
conduct the case today I very  
respectfully pray that the case  
may kindly be adjourned.

(Ishraq Ahmad)

Advocate  
Counsel for applicant

(B3)  
1

c/c

Registered

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD  
CIRCUIT BENCH, GANDHI BHAWAN  
LUCKNOW  
\*\*\*

No. CAT/CB/LKO/

Dated : 10.2.89

Registration No. 39 of 1989 (L)

Iftizar Hussain - Applicant

Versus

Superintendent of Post office Respondent's

TO

①

Superintendent of Post offices

Sitapur Division Sitaipur

Ass'tt. Superintendent of Post offices

(T.O.R) Sitaipur Division Sitaipur

Please take notice that the applicant above

named has presented an application a copy whereof is enclosed  
herewith which has been registered in this Tribunal and the

Tribunal has fixed 23 day of 2 1989 for to  
show cause why the petition be not admitted

If no, appearance is made on your behalf, your  
pleader or by some one duly authorised to Act and plead on  
your in the said application, it will be heard and decided in  
your absence.

Given under my hand and the seal of the Tribunal

this

10

day of

2

1989