

(27)

(A1)

Annexure - A

CAT- 82

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
CIRCUIT BENCH, LUCKNOW

\*\*\*\*\*

INDEX - SHEET

CAUSE TITLE Reg. OA. 39 - OF 1909 (2)

Name of the Parties Malizan Husain

Versus

Superintendent of Post Office,

Sitapur and others  
Part A, B and C

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Certified that no further action is required  
to take and that the case is fit for conclusion  
sent to the record room (C)

226201

Recheck  
on 2/2/12  
em

SCJ

(A3/1)

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)

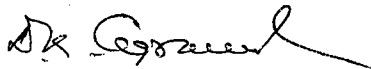
This is an application u/s.19 of the Administrative Tribunals Act XIII of 1985 for issue of a writ, order or direction in the nature of certiorari and quashing the order dated 20.12.1988 purported to have been passed by the Superintendent of Post Offices, Sitapur Division, Sitapur directing the recovery 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 embezzelled 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

*DK Agarwal*

.2.

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 seized 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.



MEMBER (J)



MEMBER (A)

Dated: 14.3.1989  
kkb.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH AT LUCKNOW.

\*\*\*\*

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

2. Hassan

Applicant(s)

Versus

Spl. J. P.O. & Co.

Respondent(s)

Sl. No.	Date	Orders
	10-2-1989	<p>Hon. Shri A. Jay Sahni J.M.</p> <p>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>through</del> dasti.</p> <p>30 A.M.</p> <p>10/2/89.</p> <p>OR</p> <p>Dasti notice issued to the counsel of the applicant.</p> <p>h 10/2</p> <p>OR</p> <p>Dasti Samanans were issued through the counsel for applicant under the court's order dt. 10.2.89.</p> <p>Counsel for applicant has not submit the acknowledgement as regards under C.A.T. Procedure Rule 1986.</p> <p>No reply on the question of show cause has so far been filed by the repdts.</p> <p>submitted for admission</p> <p>hsh 22/2/89</p>
10/2/89		
22/2/89		

23-2-89

Hon. D. S. Mohan, Jm.  
Hon. Z. S. Sharma, Jm.

(A2/2)

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

8.3.89.

Jm

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7.3.89

SB

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

Counsel for applicant has not submit the acknowledgement along with an Affidavit as regards under C.A.T. Procedure Rule 1906.

Respondents have not filed any reply against the notice so far.  
Submitted for admissions.

7/3/89

8/3/89. Hon. Justice Kamleshwar Nath, V.C.  
Hon. Ajay Dalmi, Jm.

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

Am.

V.C.

Am

Registered

*a/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. *29* of 193 *1014*  
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.

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

Encl : Copy of Order/Judgement dated *15-3-89* (K. K. Banerjee)  
Private Secretary  
Central Administrative Tribunal  
ALLAHABAD

To.

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*15/3/89*  
*Recd for respondents*  
*16/3*

OA No 39/89-6

Order Sheet

13.3.89

Hon. D. S. Mishra AM

Hon. D. K. Agarwal JM

Now a present for applicant.  
Sr. V.K. Chaudhry, counsel for respondents  
files his reply and opposes the prayer  
for interim relief. Put up tomorrow  
for admission/orders on interim prayer.

JP  
AM.

JP  
AM

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14.3.89

Hon. D. S. Mishra, AM

Hon. D. K. Agarwal, JM.

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

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J.M.

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AM.

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Ritef today  
Lislan 10.2.89  
9/2/89

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ADDITIONAL  
BENCH ALLAHABAD.

Intizar Husain ..... Applicant

Versys

Superintendent of Post Offices,

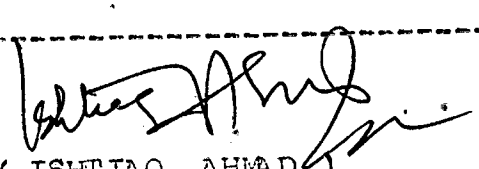
Sitapur and another ..... Respondents

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 date 19.11.1987 .	18
7.	Annexure No. 6 True photostat copy of order dated 20.12.1988.	19-20
8.	Power.	21

Lucknow: Dated:

Feb. 9, 1989

  
( ISHTIAQ AHMAD )  
Advocate  
Counsel for the applicant



14/2

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.

Filed today  
notes for  
10.2.89  
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(v) Address for 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 for 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 applicant 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

Deptt. 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

14/6

- 5 -

that in unclassified payment and thus no opportunity was given the applicant to explain the matter and virtuanlly the applicant 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 primeditated 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 conspriracy and fake and malafide against applicant and no opportunity to explain has so far been given to the applicant.

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- 6 -

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 Hon'ble High Court. ~~(xxxxxxcopy of chargesheet served upon the applicant is filed herewith xxxxxxxxxx)~~ 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 (Imtizar 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. 45899.42 alleged to have been enbezzled by the applicant and issued, the

*Imtizar*

show cause notice dated 25.8.1988 with the directions to appear and give his statement of 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 Crl. proceedings Departmental Proceedings for recovery of alleged embezzled amount could not be legally initiated against the applicant (A true

14/9

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. 5 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 <sup>High</sup> 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



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haste and to smoothe his personal vendetta passed on exparte 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 Provisionis 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 interiala grounds:

G R O U N D S

I) Because no Departmental Proceedings can be conducted during the pendency of the criminal proseedition 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 held 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 ~~xxxxx~~ 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

Johnson

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

- ## 12. Details of Index:

.....12/

13

13. List of enclosures:

- 1) Annexures No. 1 to 6 of the application.
- 2) Indian Postal Order No. <sup>DD</sup>5 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

*J. Husain*  
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

*J. Husain*  
Applicant

To

The Registrar,  
Addl. Central Administrative Tribunal,  
Allahabad.

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23

Annexure no 1

भारतीय रेल विभाग

प्रेषक,

अधीक्षक डाकघर सीतापुर मण्डल,  
सीतापुर-261001

सेवा में,

1. श्री इन्तजार हुसैन  
निलम्बित नायब पोस्टमास्टर,  
रामपुर मथुरा(सीतापुर)

2. श्री इन्तजार हुसैन  
(निलम्बित पोस्टमास्टर रामपुर मथुरा)  
मोहल्ला-बाजदारी टीला, बौराबाद-सीतापुर

पंजीकृत भावों सहित-

पत्र सं०-एफ-10/87-88 सीतापुर-261001, दि० 25-8-88

जाने बतौर नायब पोस्टमास्टर रामपुर मथुरा कार्य करते हुए दि० 29-7-87 को डाकघर सेवा में प्राप्तियों का योग ₹ 34664.25 तथा भुक्तान का योग ₹ 1195.20 सबी दर्शाया पर अवशेष धन ₹ 33469.07 पै० के बजाय ₹ 23469.07 पै० दिखा गया तथा ₹ 10,000/- राजकोष से निकाल कर लापता कर दिया। विवेचना पूरी होने तक रेल हानि को अर्कीकृत भुक्तान में डालने का निर्देश दि० 4-8-87 को देना पड़ा। दि० 10-8-87 को विवेचना के लिये पड़ुचि निरीक्षकों ने आपको अवैध अनुपस्थित पाया तथा श्री लल्लाराम पेंकर ने बताया कि डाकघर के दरवाजे की चाबी प्राप्त उनके शिष्य पुत्र को देकर आप करार थे। डाकघर खोलने पर पहले से श० डा० पर्किया कटी बानों में खुली पड़ी थी, अकिया के लिये अमानत की छोमा का इन्दराज था। अन्य न तो चाबी थी न उपस्थित सामग्री नकदी जादि का चार्ज किसी को आपने दिया था। पुलिस को सूचना देने पर, पुलिस ने अधीरस्ताक्षरी, श्री रामचंद्र शर्मा दयानाथ रामपुर मथुरा, श्री बी. पी. सिंह सब इन्स्पेक्टर थाना रामपुर मथुरा, श्री सत्यप्रसाद मौर्य व श्री तनवीर अहमद निरीक्षक डाकघर, सर्वजी जगदेव प्रसाद मिश्र, धीरज प्रसाद व रामप्रताप मिश्र निवासी ग्राम रामपुर मथुरा के सामने श्री स्वामीदयाल लोहार से सभी बन्द ताली तुड़वाकर तलाशी लिया जिसमें कुल नकदी ₹ 13.03 पै०, डाक टिकट ₹ 1301.55 पै०, रसीदी टिकट ₹ 533.40 पै० व अमानती बैरंग ₹ 1.20 पै० का मिला जिसका योग ₹ 1857.58 पै० हुआ और श० डाकघरों से देय बैलेन्स ₹ 10105.62 और ₹ 11963.20 पै० मिला जबकि आप द्वारा भेजे जाचिरी डेली एकाउन्ट और एम.ओ. एकाउन्ट के अनुसार नकदी ₹ 36891.90, डा० टिकट 1323.50 पै०, र.टिकट 532/-, बैरंग 1.20 व श० डा० घरों से देय राशि 10105.62 पै० हीना चाहिये था। इस प्रकार ₹ 36899.42 पै० फिर से राजकोष का आपके कर्जे से लापता पाया गया। कुल नकदी धन हानि ₹ 36,899.42 पै० अन्तिम बार तथा ₹ 10,000/- आपसे राजकोष से नायब किया है। कुल ₹ 46,899.42 पै० के गायब करने के लिये डाकघर नियमावली खण्ड-IV भाग एक नियम 203 के अन्तर्गत आप उत्तरदायी पाये जाते हैं। इसके लिये आपको अवसर दिया जाता है कि आप अपना लिखित स्पष्टीकरण इस प्रकार भेजें कि वह दिनांक 9-9-88 या उससे पहले अधीरस्ताक्षरी के कार्यालय में प्राप्त हो जाय।

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आप दिनांक 8-9-88 को 10 बजे अधीनस्थकारी के कार्यालय में उपस्थित होकर सहायक अधीक्षक के समक्ष अपना बयान समझ प्रस्तुत कर सकते हैं। आपको यह भी अवसर दिया जाता है कि उक्त तारीख से पहले भी उक्त अधिकारी के समक्ष आप अपना स्पष्टीकरण का बयान किसी कार्य दिवस को उपस्थित होकर दे सकते हैं।

यदि 9-9-88 या उससे पहले आपने लिखित बयान न भेजा या स्वयं उपस्थित होकर बयान नहीं दिया तो यह समझ जायेगा कि आपके पास उक्त आरोप के विरुद्ध कोई स्पष्टीकरण नहीं है तथा तदनुसार कार्रवाई की जायेगी।

*Rusen*

*[Signature]*  
अधीक्षक अधिकार,  
सीतापुर मण्डल, सीतापुर 261001

प्रतिलिपि-1-2 सभी ज्ञात पार्षदों पर जारी ।

3- कार्यालय प्रति

4-5 अतिरिक्त ।

*True copy attested.  
J. K. Sharma  
A-2  
Counsel for applicant*

*Hazen*

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Annexure No. 3

सेवा में,

अधीक्षक डाक्टर सीतापुर मंडल  
सीतापुर 261001

संदर्भ:-

आपका पत्र सं० एफ- 10/87-88 सीतापुर 261001  
दि० 25-8-88

महोदय,

उपरोक्त पत्र के संदर्भ में मुझे निवेदन करना है कि मैं आपका स्पष्टीकरण अथवा स्पष्टी देने के लिए निम्न कागजात जिन् पर आधारित करके आपने कारण बताओं नोटिस भेजा है की प्रतिलिपि शीघ्रातिशीघ्र प्रदान करने की कृपा करें जिससे मैं अपनी स्पष्टी पेश कर सकूँ इनकी अनुपस्थिति में मैं अपनी स्पष्टी पेश करने में असमर्थ हूँ।

- 1- दिनांक 29-7-87 को ₹ 10000/- के गायब होने से सम्बन्धित विवेचना आख्या ।
- 2- विभागिय अवर्गीकृत भुगतान में डालने के निर्देश दि० 4-8-87 की प्रतिलिपि ।
- 3- दि० 10-8-87 को विवेचना के लिए गये निरीक्षकों की रिपोर्ट।
- 4- लल्लाराम पैकर के बयान।
- 5- एफ०ओ० डेली एकाउन्ट की प्रतिलिपि दि० 8-8-87
- 6- स्टैम्प रजिस्टर की प्रतिलिपि दि० 7-8-87 से 8-8-87
- 7- स्वामीदयाल लोहार का बयान ।
- 8- ₹ 10000/- से सम्बन्धित पुलिस को सूचना देने की प्रतिलिपि
- 9- समस्त कागजात या आख्याएँ जिन् पर आधारित करके मेरे ऊपर ₹ 46899-42 के गायब करने का आरोप लगाया गया है की प्रतिलिपि।
- 10- डाक घर नियमावली के नियम 203 जिसके अन्तर्ग मैं उत्तरदायी करार करने का आरोप है उसकी प्रतिलिपि।

कृपया उपरोक्त कागजात शीघ्र ही उपलब्ध कराने का कष्ट करें

जिससे की मैं अपनी स्पष्टी पेश कर सकूँ जिसके बिना मैं स्पष्टी पेश करने में असमर्थ हूँ।

16-8-88

भवदीय

इन्तजार हुसैन

नायब पोस्ट मास्टर, निलंबित  
मो० बाजदारी टोला - सीतापुर  
खराबाद - सीतापुर

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for official use



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सेवा में,

Annexure No 4

अधीक्षक डाक्टर,  
सीतापुर मण्डल,  
सीतापुर।

विषय:- प्राधाना-पत्र वास्ते रोके जाने वसुली धनराशि 46899-42 पे0 विरुद्ध इन्तजार हुतेन पुत्र मिर्जा इम्तियाज हुतेन नि0 वाजकारी टोला कस्बा लोराबाद डाक्टर, परगना व थाना लोराबाद तहसील व जिला सीतापुर। पोस्ट मास्टर रामपुर मथुरा जनपद सीतापुर।

महोदय,

विनम्र निवेदन है कि प्राधानी के विरुद्ध दिनांक 12-8-87 को थाना रामपुर मथुरा में एक मुकदमा मु0 46899-42 पे0 के दुर्विनियोग के सम्बन्ध में दर्ज कराया था। उक्त अभियोग में प्राधानी ने दिनांक 18-8-87 को न्यायालय श्रीमान मुख्य न्यायिक दण्डाधिकारी सीतापुर में आत्मसमर्पण कर दिया था। जो कि अब जमानत पर है जिसका प्रमाण संलग्न प्राधाना-पत्र है।

प्राधानी को ज्ञात हुआ है कि आपके विभाग द्वारा प्राधानी के विरुद्ध मु0 46899-42 पे0 की वसुलवाबी का आदेश जारी किया गया है। जबकि उक्त मामला अभी न्यायालय श्रीमान मुख्य न्यायिक दण्डाधिकारी सीतापुर में वधाराधीन है। इस परिस्थिति में आपके विभाग द्वारा उपरोक्त धनराशि की वसुलवाबी अथवा अन्य कोई कार्यवाही न्यायिकतः उचित नहीं है।

अतः आपसे अनुरोध है कि उक्त मामले में जब तक न्यायालय द्वारा कोई निर्णय न हो जाय तब तक उक्त धनराशि की वसुलवाबी या अन्य कोई कार्यवाही न करें।

अति कृपा होगी।

*Shree*

दिनांक:- 14-10-87 ई0  
संलग्नक:- उपरोक्तानुसार

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*Shree*  
*for official use*

प्रतिलिपि

श्रीमान जिलाधिकारी महोदय, सीतापुर की सेवा में सूचनाार्थ एवं उचित कार्यवाही हेतु प्रेषित।  
संलग्नक- उपरोक्तानुसार।

प्राधानी

*Shree*

इन्तजार हुतेन ! पुत्र स्व0 श्री  
इम्तियाज हुतेन  
नि0 मो0 वाजकारी टोला कस्बा लोराबाद  
पोस्ट-लोराबाद  
तहसील व जिला सीतापुर।  
सब पोस्टमास्टर रामपुर मथुरा पो0 आफिस  
सीतापुर।

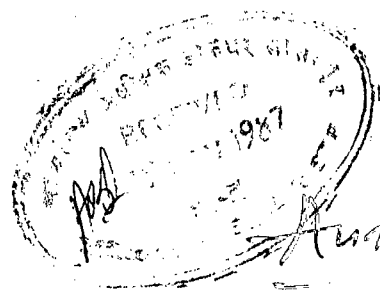
*Shree*

इन्तजार हुतेन ! उपरोक्त

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अधीक्षक डाक घर,  
सीतापुर मण्डल,  
सीतापुर।



विषय:- प्रार्थना- पत्र वास्ते रोके जाने दखली धन राशि 46899-42 पै 0 बिल्ड  
इन्तजार हुसेन पुन मिर्जा इमत्याज हुसेन निवासी वाजदारा टोला कस्बा  
छैराबाद डाकघर, परगना व धाना छैराबाद तहसील व व जिला सीतापुर।  
पोस्ट मास्टर राम पुर मथुरा जनपद सीतापुर।  
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महोदय,

विनम्र निवेदन है कि प्रार्थी के बिल्ड निसॉक 12-8-87 को धाना रामपुर मथुरा  
में एक मुकदमा नुं 46899-42 पै 0 के द्वितीय लोग के सम्बन्ध में दर्ज करवाया था। उक्त  
अभिलेख में प्रार्थी ने निसॉक 12-8-87 को न्यायालय प्रामान मुख्य न्यायिक कृष्णाधिकाारी  
सीतापुर में 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 बिल्ड नुं  
46899-42 पै 0 को पदलवादी का आदेश जारी किया गया है। जबकि उक्त मामला  
जिस अर्था विवरण न्यायालय प्रामान मुख्य न्यायिक कृष्णाधिकाारी सीतापुर में विवाराधीन  
है। इत परिलक्षित है आपके विभाग द्वारा उक्त प्रार्थना- पत्र को पदलवादी अध्याअन्य  
कोई कार्यवाही न्यायिकत में उचित नहीं है। प्रार्थी ने उक्त बाबत एक प्रार्थना- पत्र प्रामान  
आप की सेवा में दिनांक 14-10-87 को रजिस्ट्री डाक द्वारा प्रेषित किया था। परन्तु उस  
पर अभी तक कोई भी आदेश नहीं पारित किया गया है।

अतः आज से अनुरोध है कि उक्त मामले का जल्द न्यायालय द्वारा कोई  
निर्णय न हो, जाय। तब तक उक्त धन राशि को पदलवा रोके जाने के सम्बन्ध में जिला-  
अधिकाारी सीतापुर के कार्यालय में आवश्यक निर्दिष्ट हो जा कृता करें।

आप कृता हो जा।

*Handwritten signature*

निसॉक:- 19-11-87

संलग्नक:-

उपरोक्तानुसार:-

*Handwritten signatures and notes*

प्रार्थी  
*Handwritten signature*

इन्तजार हुसेन

पुन लय इमत्याज हुसेन

निवासी:- मो 0 वाजदारा टोला

कस्बाय धाना:- छैराबाद

तहसी व जिला:- सीतापुर।

सब पोस्टमास्टर राम पुर मथुरा पोस्टआफिस,  
सीतापुर।

14/20

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Annexure no 6

भारतीय डाक विभाग

कार्यालय अधीक्षक डाकघर सीतापुर मण्डल, सीतापुर 261201

जायन सं०-एफ० 10/87-88

सीतापुर दिनांक, 20.12.88

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श्री इन्तजार हुसेन नायब पोस्टमास्टर रामपुर मथुरा (निलम्बित) के विरुद्ध लोक सेवायाल चक्र अधिनियम 1850 के 12 की धारा 3 व 4 के अन्तर्गत रु० 46,899.42 पे० की वसूली के आदेश जिलाधिकारी सीतापुर को दि० 12.8.87 को दिये गये थे जिसके विरुद्ध माननीय उच्च न्यायालय इलाहाबाद लॉन्ग ब्रिडज पीठ ने स्थगन आदेश जारी किया कि कम बारी को इस सम्बन्ध में पर्याप्त अवसर नहीं दिया गया।

इस आदेश के अन्तर्गत श्री इन्तजार हुसेन को इस कार्यालय के समस्त पत्र दिनांक 25.8.88 को आरोपों का विवरण देते हुए दि० 9.9.88 तक स्वयं उपस्थित होकर बयान देने हेतु या लिखित भेजने हेतु पत्र जारी किया गया परन्तु श्री हुसेन ने प्रार्थना-पत्र दिनांक 8.9.88 द्वारा सम्बन्धित अभिलेख दिखाने का अनुरोध किया।

दिनांक 12.9.88 को पुनः श्री इन्तजार हुसेन को आदेश दिया गया कि वे 19.9.88 को कार्यालय में उपस्थित होकर बयान दें, जिसमें यह भी उल्लेख किया गया था कि जहाँ आवश्यक होगा सम्बन्धित अभिलेख दिखाये जायेंगे। दि० 19.9.88 को कार्यालय में उपस्थित होकर श्री इन्तजार हुसेन ने सम्बन्धित दस्तावेजों का अवलोकन किया तथा अपना बयान दि० 26.9.88 को मण्डलीय कार्यालय में उपस्थित होकर देने का आश्वासन लिखित रूप में दिया परन्तु वह 26.9.88 को उपस्थित नहीं हुए तथा किसी प्रकार को लिखित सूचना भी नहीं भेजी।

तत्पश्चात् दिनांक 30.11.88 को पुनः एक पत्र व्यक्तिगत रूप से दिनांक 1.12.88 को हस्ताक्षर प्राप्त करके दिया गया कि वे दि० 15.12.88 को मण्डलीय कार्यालय में बयान दें परन्तु उन्होंने किसी प्रकार को लिखित सूचना नहीं प्रेषित की।

श्री इन्तजार हुसेन को दस्तावेजों का अवलोकन भी कराया गया तथा उपरोक्त तिथियों में मण्डलीय कार्यालय में बयान देने हेतु उपस्थित होने का आदेश दिया गया परन्तु वे अपना बयान देने हेतु उपस्थित नहीं हुए।

अतः निम्नलिखित आरोपों की पुष्टि होती है क्योंकि श्री इन्तजार हुसेन के पास इन आरोपों का स्पष्टीकरण नहीं है तथा रु० 46,899.42 पे० के गबन के लिए उत्तरदायी पाये जाते हैं।

श्री इन्तजार हुसेन ने बतौर नायब पो० मा० क रामपुर-मथुरा कार्य करते हुए दि० 29.7.87 को डाकघर लेखा में प्राप्तियों का योग रु० 34,664.27 पे० तथा भुगतान का योग रु० 1195.20 पे० सही दर्शाया पर अवशेष धन रु० 33,469.07 पे० के बजाय रु० 23,469.07 पे० दिखाया गया तथा रु० 10,000/- राजकोष से निजातकर लापता कर दिया। विवेचना पूरी होने तक इस हानि को अवर्गीकृत भुगतान में डालने का निर्देश दि० 4.8.87 को देना पड़ा। दि० 10.8.87 को विवेचना के लिए पड़ने निरीक्षकों ने श्री इन्तजार हुसेन को अनुपस्थित पाया तथा श्री लल्लाराम पेंकर ने बताया कि डाकघर

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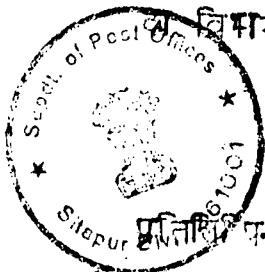
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के दरवाजे की चाभी प्राप्त: उनके शिशु पुत्र को देकर वे फरार हैं। डाकघर ओलने पर पहले से शांदापर्विणी कटी आनों में बुली पड़ी थी, डाकिया के लिय अमानत की बीमा इन्दराज था। अन्य न तो चाभी थी न उपस्थित रामग्री नकवे आदि का चार्ज किसी को दिया था। पुलिस को सूचना देने पर, पुलिस ने अधोहस्ताक्षरी, श्री रामाशंकर पादकथानाध्यक्ष रामपुर मधुरा, श्री बी. पी. सिंह सब इन्स्पेक्टर थाना रामपुर मधुरा, श्री सरयूप्रसाद मौर्य व श्री तनवीर अहमद निरीक्षक डाकघर, सर्वश्री जगदेव प्रसाद मिश्र, धीरज प्रसाद व रामप्रताप मिश्र निवासी ग्राम-रामपुरमधुरा के सामने श्री स्वामी दयाल-सोहार से सभी बन्द ताते तुड़वाकर तलाशी लिया जिसमें कुल नकदी ₹ 13,03,03, डाक टिकट ₹ 13,01,55, रसोदी टिकट ₹ 533,40 व अमानती बैरंग ₹ 1,20,20 का मिला सिपका योग ₹ 185,758 पै० हुआ और शांदाकघरों से देय बैलेन्स ₹ 10,105,62 लेकर ₹ 11,963,20 पै० मिला जबकि श्री इन्तजार हुसेन द्वारा भेजे आछारी डेलीस्काउन्ट और एफ.ओ. स्काउन्ट के अनुसार नकदी ₹ 36,891,90 पै०, डाक टिकट 1323,50 पै०, रसोदी टिकट 532/- बैरंग 1,20 व शांदा डाकघरों से देय राशि 10,105,62 पै० होना चाहिये था। इस प्रकार ₹ 36,899,42 पै० फिर से राजकोष का श्री इन्तजार हुसेन के कब्जे से पालता पाया गया। कुल नकवे धन खनि ₹ 36,899,42 पै० अन्तिम बार तथा ₹ 10,000/- उन्होंने राजकोष से गायब किया है। कुल ₹ 46,899,42 पै० के गायब करने के लिये डाकघर निष्पावकी अण्ड-6 भाग-एक नियम 203 के अन्तर्गत वे उत्तरदायी पाये जाते हैं।

अभिलेखों का निरीक्षण करने के बाद भी, बारम्बार अवसर देने पर भी, शांदाक श्री इन्तजार हुसेन कोई सफाई न लिखित प्रस्तुत कर सके न व्यक्तिगत रूप से उपस्थित होकर बयान दे सके।

अतः उपरोक्त वर्णित परिस्थितियों से स्पष्ट हो जाता है कि श्री इन्तजार हुसेन ने सरकारी धन म. 0 ₹ 46,899,42 पै० का गबन कर लिया है तथा उनसे लोक लेखापाल वृक अधिनियम की धारा 3 एवं 4 के अन्तर्गत उक्त धन की वसूली के आदेश किए जाते हैं क्योंकि लोक लेखापाल वृक अधिनियम (1850) के एक्ख 12 के धारा 3 के अन्तर्गत श्री इन्तजार हुसेन लोक लेखापाल है तथा धारा 4 के अन्तर्गत अधोहस्ताक्षरी कार्यालय विभागीय प्राधिकारी है।



अधीक्षक डाकघर,  
सीतापुर मण्डल, सीतापुर 261001

प्रतिनिधि-1. जिलाधिकारी सीतापुर को (दो प्रतियों में) इस आशय से

कि उक्त धन की वसूली शीघ्र की जाय।

श्री इन्तजार हुसेन नायब पो० मा० (निलम्बित रामपुरमधुरा को सूचनाार्थ।

355 कार्यालय प्रति एवं अतिरिक्त।

True Copy attached  
for  
for

(AS)

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.

.....

I, J.M. Sinha, aged about 51 years, son of

Shri J.S. Lal at present posted as Supdt. of Post

Offices, <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 <sup>deponent</sup> ~~applicant~~ 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, Sitarur 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

STATE COMMISSION  
13/3/89  
13/3/89

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some more time for giving his defence statement and gave in ~~writing~~ <sup>4</sup> 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 was 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 embazzled by the applicant ie. Rs.46,899.42 Paise and the said

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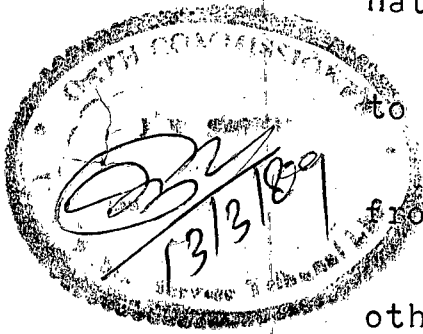
recovery orders were passed on 20.12.88. ~~Copy of the~~

~~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 embazzlement 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 embazzled 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/



GP

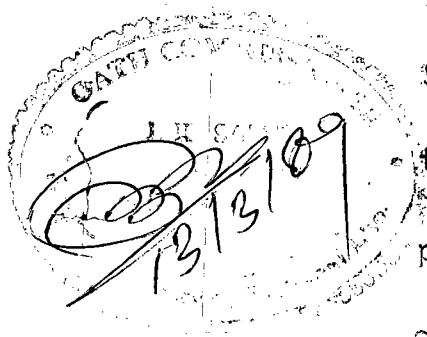


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1250/3 ~~da~~ that Sub Post Master Rampur Mathura is showing his balance loss by Rs.10,000/-. The XP was received on 3.8.87 at 17.30. hrs. Therefore the deponent proceeded to R.F. Mathura on 4.8.87 and cash and stamps as per balance of dated 3.8.87 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



*[Handwritten signature]*

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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 \*acker 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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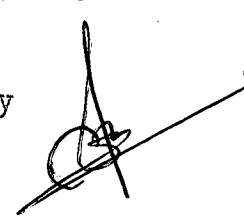
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public accountant' means any person who as official Assignee or Trustee, or as sarbarakhar, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons, 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 of 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


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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 (CCA) 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.

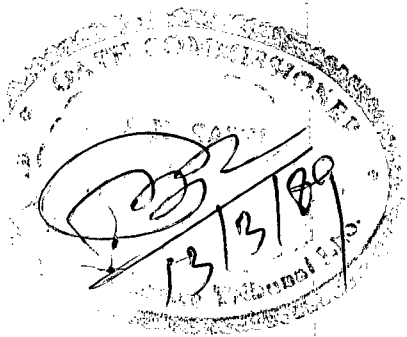
  
Deponent.

Lucknow,

Dated: 13.3.89  


Verification.

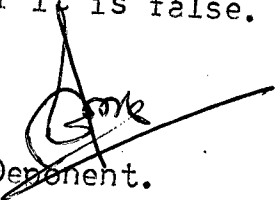
I, the above named deponent do hereby verify that the contents of paragraphs 1 & 2 are true to my personal knowledge, and those of para 3 to 13 are believed to be true on the basis of perusal of office records as well as information gathered and



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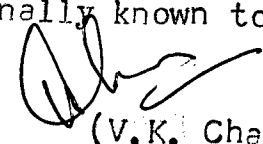
those of paras 14 to 20 are believed to be true on the basis of legal advice. Nothing material fact has been concealed and no part of it is false.

  
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-Parties)

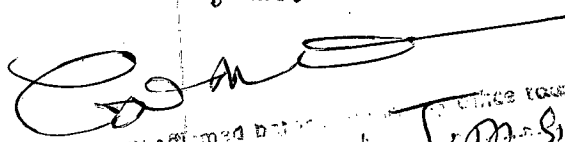
Lucknow,

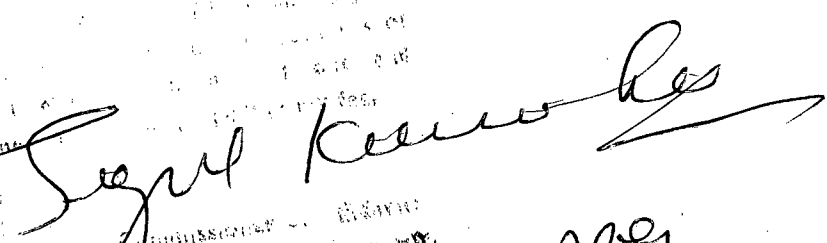
Dated: 13 Mar. 89.

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.

  
Solemnly affirmed before me on 13/3/89 at 9:30 am by the deponent Shri JM Sinha who is known to me and is personally known to me.  
Clerk V.K. Chaudhari

  
Oath Commissioner  
Court Compound, Lucknow  
13/3/89

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श्रीमानवर्ग

अपना कि 19/9/88 का अधीनस्थ का कायालय में उपस्थित होकर निम्न लिखित रिकार्ड का अवलोकन किया हुआ अपना निवेदन बयान देने के लिए 26-9-88 को मंडलाय कायालय में उपस्थित हुआ। -

1. B/S Summary Balance. 7 80 2. 02 + 2303 to
2. S/A/c R.P. Mathura dt 28/1/86 to 3/8/87
3. S/A/c dt 30/7/87 to 9/8/88
4. B/S dt 27/7/88 to 31/7/88
5. S/S dt 1/8/88 to 10/8/88
6. S/S dt 29/7/88 to 8/8/88
7. S/S dt 27/7/88 to 8/8/88

3-60  
 1300-  
 1000-  
 2303-60

Statement given in presence of

157800  
 ASR(7/1)

M. Sami

19/9/88  
 Shri R.P. Mathura V/S  
 Sitapur

Amk

अधीनस्थ डाक विभाग सीतापुर मंडल  
 सीतापुर-261001  
 SUPDT. OF POST OFFICES SITAPUR C.  
 SITAPUR-261001

GATE C  
 13/3/89



Annex B.

# Annexure No. B-2

45/13

INDIAN POSTS AND TELEGRAPHS DEPARTMENT

From

Supdt. of Post Offices, SITAPUR  
SITAPUR-261001

In reply  
Please quote

To

Shri Antizar Hussain  
S.P.O. Rampur Mathura (U.P.)

No.

F-10/87-88

Date

30.11.88

Subject

सन्दर्भ: आपका आवेदन फ़. दि. 19.9.88

आपने अपने आवेदन फ़. मे दि. 19.9.88 को सम्बद्ध प्रलेखों का निरीक्षण करने के बाद दि. 20.9.88 को उपस्थित हो कर अपना बयान देने का आश्वासन दिया था। परन्तु आप अबतक उपस्थित नहीं हुये तथा मात्रता आपके कार्यों लोभित है। वांछित अभिलेखों का निरीक्षण 19/88 के कर रहे है।

अतः आपको पुनः एक अवसर दिया जाता है कि दिनांक 15-12-88 को सम्बन्ध कार्यालय सीतापुर मे उपस्थित हो कर अपना बयान दें। आप प्रातः 10 बजे सम्बन्ध अधिकारी प्रमता के सम्मुख उपस्थित हों।

Recd

Prasanna

11/12/88

13/12/88

Supdt. of Post Offices, SITAPUR  
SITAPUR-261001

S.P.O.

श्री अन्तराष्ट्रिय नाम  
महेश्वर रामपुर  
(निवासी) बयान दे।  
उस उपस्थिति करे।

15/12/88

ASR/1

12.4.88  
Supdt. of Post Offices, SITAPUR  
SITAPUR-261001

AB

1989  
AFFIDAVIT  
52/20  
HIGH COURT  
ALLAHABAD

COURT FEE  
HARAJ  
दो रुपये  
TWO RUPEES

14/3/85  
HIGH COURT, ALLAHABAD

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

[illegible]

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 \_\_\_\_\_

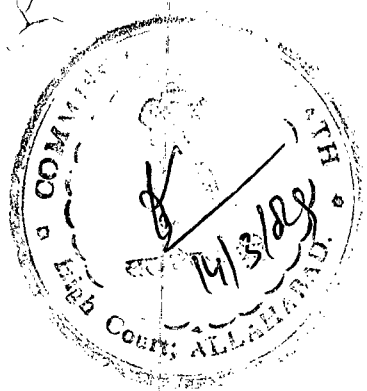
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counter affidavit in so far as those are contrary to the facts mentioned in the para 6 of the application Under section 19 of the Act are ~~emphatically~~ <sup>emphatically</sup> denied .

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<sup>has</sup> also ~~observed~~ <sup>observed</sup> " 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<sup>of</sup> 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, <sup>Only</sup> an option was given to the opp. party to make or not to make any enquiry in the matter .



*Handwritten signature*

6. That the contents of para 5 of the counter

affidavit are incorrect, wrong and <sup>✓</sup> emphatically denied, the alleged proceedings mentioned in para under reply have been vindictively started against the petitioner with utmost malafide intntion 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 <sup>✓</sup> 23 were not supplied <sup>✓</sup> and refused <sup>✓</sup> and the applicant had no alternative but to <sup>✓</sup> apply <sup>✓</sup> for inspection <sup>✓</sup> that was <sup>✓</sup> allowed <sup>✓</sup> but the applicant was not <sup>✓</sup> permitted to make notes therefrom, as such no proper inspection <sup>✓</sup> or <sup>✓</sup> 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, <sup>✓</sup> On the date fixed of which the deponent was informed <sup>✓</sup> he could not attend because he was seriously ill and was <sup>✓</sup> advised rest and for his absence he had consistently submitted <sup>✓</sup> medical <sup>✓</sup> certificate on relevant <sup>✓</sup> dates <sup>✓</sup> for his reas-<sup>✓</sup> on<sup>✓</sup> 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



*Prasanti*

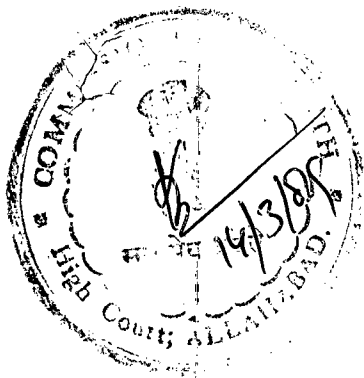
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- 4 -

excused. It is also petinant 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 ~~xxxxxxx~~ 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 ~~xxxxxxx~~ been <sup>held</sup> guilty and the matter is subjudice. The order dated 20.12.1988 has been passed with malicious motive and is illegal.

10. That the contents of para 9 of the counter affidavit are wrong and <sup>parag 10</sup> emphatically denied. The contents of <sup>under</sup> reply are mere creatures of imagination of the opp. parties', malicious mind. Neither embezzlement has been <sup>proved</sup> so far nor it can be inferred 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.



*[Handwritten signature]*

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- 5 -

of the ~~same~~ State .

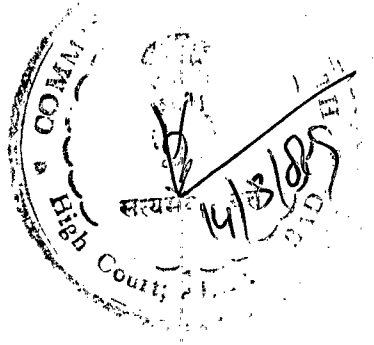
11. That the contents of para 10 of the counter affidavit are misconceived, wrong and ~~emphatically~~ denied. the amount alleged to be embezzled by the deponent can not be recovered until the guilt of embezzlement has been ~~been~~ determined in any court of law or properly initiated departmental proceedings 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 co-rrect .

15. That the contents of para 14 of the counter affidavit are highly misconceived and not applicable to the ~~extent~~ <sup>instant</sup> case. The provisions of



*Phusans*

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

21. That the contents of para 20 of the counter affidavit <sup>are</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 deserves to be admitted and ultimately allowed against the opp. parties.

Lucknow: Dated:  
March 14, 1989

*[Signature]*  
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 14th day of March 1989 at Lucknow.

*[Signature]*  
Deponent

I identify the deponent who has signed before me.

*[Signature]*  
Advocate

Solemnly affirmed before me on 14-3-89 at 10.30 am/pm by the deponent Intizar Husan who identified by Sri Ishtiaq Ahmad Advocate High Court Lucknow Bench Lucknow.

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

*K. Rehman*  
OATH COMMISSIONER  
High Court, Allahabad  
Lucknow Bench

S. No. 5120  
14/3/89

14/6

- 6 -

Public Accountants Defaults Act 1850 have been misconceived and those ~~are~~ are not applicable in the ~~extent~~ <sup>instant</sup> case.

16. That the contents of para 15 of the counter affidavit are misconceived are denied., The provisions of Public Accountants Defaults Act 1850 are not attracted in the ~~extent~~ <sup>instant</sup> 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. parties were ~~as~~ absolutely debarred from taking any departmental proceedings under para ~~12~~ 80 of Post and Telegraph Manual Vol. III <sup>v</sup> during the pendency of the above mentioned criminal case , It is ludicrous to say that the order impounded has not been passed in the ~~departmental~~ disciplinary proceedings . As a matter of fact the instant proceedings can not

14/3/89

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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

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 Raghavendrchar, 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>5</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 be 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. 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 Supreintendent 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/

*12/8/88*

TRUE COPY

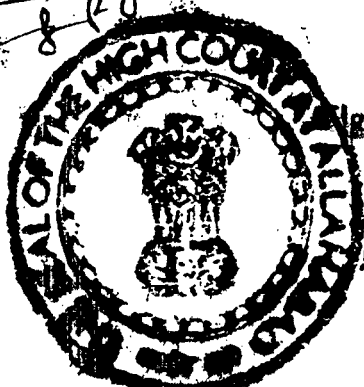
*M. Singh*

Section Officer

Copying Department

High Court, Lucknow Bench

LUCKNOW





Ishtiaq Ahmad

Advocate  
(High Court)

151  
1

SL No 16  
Phone No. 31703

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  
SPO & 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.

Ishtiaq Ahmad

Advocate

Counsel for applicant

(B3/1)

a/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)

Intizar Hussain Applicant

Versus

Superintendent of Post offices Respondent's

To  
①  
②  
10/2/89

Superintendent of Post offices

Sitapur Division Sitapur

Asstt. Superintendent of Post offices  
(T. or) Sitapur Division Sitapur

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