

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A. No. 116/93.

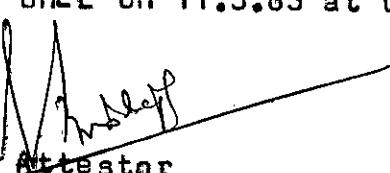
Between :

K. Laxman Rao. ... Applicant.
and
The Supdt. of Post Offices,
Sangareddy division,
Sangareddy and other. ... Respondents.

COUNTER AFFIDAVIT

I, V.S. Krishna Murthy, S/o V. Satyam, aged about 54 yrs.
Occupation Asst. Director, O/o the PMG, Hyd. Region, do hereby
solemnly and sincerely affirm and state as follows :

1. I am the Asst. Director, O/o PMG, Hyd. Region and as such I am well acquainted with the facts of the case.
2. I have read original application filed by the above named applicant and I deny theseveral material allegations made therein except those that are specifically admitted herein.
3. Before traversing in detail the several material elligations, everments and contentions made therein, I beg to submit as follows :-
4. It is submitted that Sri K. Laxman Rao, Ex-PA, RC Puram H.E., the applicant herein was involved in fraudulent embezzlement of customs duty collections on foreign parcels at RC Puram H.E. On receipt of complaint regarding embezzlement of Customs duty collection, investigation was taken up on 5.3.83. Investigation revealed that customs duty parcel bearing No.181510 of PF CED, Bombay was received at RC Puram on 3.3.83 from EXPTL RMS AD-247 duly invoiced in its parcel list dt.2.3.83. Customs duty of Rs.3088.40ps was collected on its delivery to the addressee, Sri C.D. Kumar, Sr. Purchase Officer (NST) on behalf of BHEL on 11.3.83 at window of the PD of RC Puram. Similarly


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another C.D. Parcel bearing No.181525 of CED Bombay, was received on 12.3.83 and it was delivered to Sri Thomas Moses, Purchase Officer (SG), BHEL on 16.3.83 and customs duty of Rs.3826.60ps was collected on 16.3.83. Sri K. Raghavendra Rao, Parcel Delivery Clerk, RC Puram in his statement dt. 7.8.83 given before SDI(P), Sangareddy confessed that the CD Amounts collected on 11.3.83 and 16.3.83 (Rs.3088.48 + Rs.3826.60) in respect of the above mentioned CD Parcels were made over to the applicant on the respective dates. Further, Sri Raghavendra Rao in the statement dt. 7.8.83 given before SDI(P), Sangareddy, stated that the collected customs duty amount of Rs.6469.90ps in each case in respect of CD Parcels 192285 and 192286 PF of CED, Bombay and handed over Rs.12,939.80ps to the applicant on 22.6.83 by obtaining his acquittance on the relevant receipts which are on record.

It is further submitted that the applicant did not account for these amounts in to Govt. accounts ie., Rs.19,854.80ps in total and the applicant in his statement given before the SDI(P), Sangareddy dt.5.8.83 confessed that ~~he~~ did not credit ^{(X) Not Re} ~~had received~~ the amounts of all the two CD parcels and into Govt. accounts and misappropriated the amounts for his personal use. The case was reported to police and it was registered under Cr.179/86 u/s 409 IPC and it was committed to the OFCM Court, Sangareddy on 24.7.86. It is dealt under CC No. 326187. The non-bailable warrant issued against him is pending as his whereabouts are not known. He was placed under suspens vide Memo. dt. 17.12.83 and he was ~~placed~~ proceeded against under Rule-14 of CCS (CCA) Rules, 1965 on 8.11.83. The applicant denied the articles of charges and a detailed inquiry was held. The applicant after careful examination and consideration of the IO Report and case dismissed the official vide memo. dt.

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25.11.85. Then the applicant preferred an appeal to the second respondent on 9.1.86. The latter rejected his appeal on 30.1.87. Thereafter he challenged the appellate order in the CAT, vide DA 1/88 and the Hon'ble Tribunal in its judgement dt.9.2.90 set aside the punishment on technical grounds that copy of IO Report was not supplied to him with further directions that it would not preclude the respondents to proceed further in the Disc. proceedings after supply of copy of IO Report and considering representation over it. Accordingly the representation of the applicant was called for supplying a copy of IO Report on 25.11.85. Within 30 days, on considering the gravity of offence committed by the applicant he was dismissed from service vide Memo. dt.14.5.90 by the first respondent. Again the applicant preferred an appeal to the second respondent on 18.7.90. The appellate authority rejected his appeal on 24.3.91.

It is further submitted that the applicant filed the present DA before the Hon'ble Tribunal on 10.9.93 vide DA No. 116/93 against the appellate order dt.24.3.91 and filed a MA No.114/93 in DA No.116/93 for condonation of delay. The respondents filed counter affidavit in MA No.114/93 opposing in condonation of delay, since, cause of action arose on 24.3.91 and the [redacted] applicant filed DA No.116/93 on 10.9.93. He should have filed DA before 24.3.92. There is delay in filing DA and the reasons put forth by the applicant are not genuine. In fact a non-bailable arrest warrant in CC No.326/87 before OFCM, Sangareddy in Cr.No.179/86 u/s 409 IPC of RC Puram Police station is pending against the applicant due to nonappearing and applicant is absconding as per the records and he has no loco-standi to file this DA. His non-bailable arrest warrant is to be got exempted in filing this DA in this Court as per law.

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5. In reply to para 1, 2 & 3 : Needs no comments.

6. In reply to Para-4, it is submitted that the applicant was proceeded against under Rule-14 of CCS (CCA) Rules, 1965 vide Memo. dt.8.11.83 by the first respondent for alleged non-crediting of CD amounts. On denial of charges an inquiry was ordered appointing IO. The IO submitted his report on 31.10.85 holding article of charge-I as not proved and article of charge-II as proved. The first respondent basing on the report dismissed the applicant on 25.11.85. Aggrieved by the said order, the applicant preferred an appeal to the second respondent on 9.1.86 and the latter rejected same on 30.1.87, confirming the order of dismissal. Consequently the applicant filed OA No.1/88 before the CAT, Hyderabad questioning the orders of respondents dt.25.11.85 and 30.1.87. The Hon'ble Tribunal quashed the said orders vide judgement dt.9.2.90 on technical grounds and directed to supply a copy of IO Report to the applicant, if disc. proceedings are continued. The first respondent after considering all the aspects, after supply of a copy of representation dt.16.4.90, issued punishment of dismissal on 14.5.90.

7. In reply to para-4(2), it is submitted that the applicant aggrieved by the said order of dismissal (and not removal as stated by the applicant) dt.14.5.90 preferred an appeal on 18.7.90 and the second respondent rejected the appeal vide order dt. 24.5.91.

8. In reply to para-5, it is submitted that the first respondent issued a charge sheet alleging non-credit of CD amounts under two articles of charge. The article of charge-I was not held proved and charge-II proved by the IO. The Disc. authority, first respondent, issued order of dismissal vide

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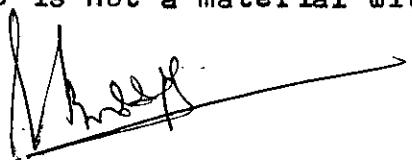
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order dt.25.11.85 and appeal preferred by the applicant was also rejected on 9.1.86 by the second respondent. When the applicant filed OA No.1/88, as per the observations of the CAT dt.9.2.90, a copy of IO Report was supplied on 13.3.90 and the applicant submitted his representation on 16.4.90.

9. In reply to para-5(2), it is submitted that the applicant has contended that the first respondent has repeated the earlier Memo. of dismissal in his order dt.14.5.90 and used word 'mockery' of orders. The applicant is forbidden to use such words in representations and even in the court, which functions as a judiciary appellate court. The first respondent after carefully going through the directions of the CAT, decided to proceed further after serving copy of IO Report and acted affording reasonable opportunity under article 311(2), he passed the order on 14.5.90.

10. In reply to para-5(3), it is submitted that the contention of the applicant that the investigating authority is barred from functioning as Disc. Authority is not tenable. The provisions of Rule-60 of P&T Man. Vol.III clearly specifies that the authority who conducts the preliminary enquiry into a case of misconduct etc. will not be debarred from functioning as a Disc. Authority in the case. Though Sri R. Rama Murthy, Supdt. of Post Offices, was the Disc. Authority. As the limit of frauds exceeded his powers of investigation of Rs.20,000/-. The investigation was taken by Director of Postal Services, AP., Hyderabad. Thus it cannot be said that Sri R. Rama Murthy was the solely investigating officer and statements recorded by him in the enquiry were not cited in the Annexure-III to the charge sheet. The applicant, with his strongly worded accusations like wordings 'mockery' etc., desires to get the Disc. Authority pulled to the ring of boxing-battle, but how can he do so, when he is not a material witness in the case and when he was not

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Statement
recorder the ~~settlement~~ of the applicant. The depositions made by the PW Sri O. Chinnavadu cannot be taken as conclusive proof, since, he fumbled and continued. to repeat that he assisted SPJs. When he recorded statement the document dt.5.8.83 statement of the applicant becomes the primary evidence. He was cited as defence witness and when he did not participate on his behalf and depose any thing in favour of the applicant, how can his evidence be taken on record. The applicant never established how the evidence of Disc. Authority became relevant. He committed vain efforts to drag the Disc. Authority to the Court.

11. In reply to para-5(4) infact the preliminary investigation report being a material document of sensitive and confidential nature cannot be made available. The IO has categorically stated that the Hand to Hand receipt book vide proceedings dt.20.3.84, was not maintained and it was not available. CD Receipts were sent to the HO for further transmission to Audit Office. The IO denied to supply a copy of the document of preliminary inquiry report as per para-6 of G.O.I. instructions (22) below Rule-14 of CCS (CCA) advantage and stated that IO permitted this documents only to mislead the Hon'ble CAT. Sri R. Rama Murthy was cited as a defence witness, the applicant could have himself ensured his presence. The IO has disallowed the three questions cited in this para, because he did not satisfy with the version of the applicant as they are useful to him and burden of proof lies on the applicant only. The questions were not only irrelevant, but clearly impress upon that the applicant wanted to confuse the issue and side track the same bringing other officials into the case.

12. In reply to para-5(5), the applicant relied upon the comments of the IO regarding non-seizing of records etc. but the IO at the same time opined that the applicant should not

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have given the statement in clear terms as he utilised Govt. money to his personal, which rise to suspicion on the applicant. The IO discussed that the plea and intimidation is no plea at all. The applicant contended that his statement dt.5.8.83 was recorded with third degree methods but failed to establish the same during the course of inquiry beyond doubt. So it holds no water.

13. In reply to para-5(6) the contention of the applicant that the case was decided on the basis of incoherent statement of some interested persons is not correct, since the case has been decided by the evidence during the inquiry. The applicant has given clear receipt in token of having received the amount on parcel receipts. Sri K. Raghavendra Rao was the official who handed over the cash to the applicant duly obtaining signature/receipt and so he was cited as witness and his statement is quite relevant and essential also.

14. In reply to para-5(7), it is submitted that the contention of the applicant that dubious methods were adopted to obtain the signatures of the applicant on the parcel receipts is not correct and tenable. This is only an after thought. It is nevertheless a disputed fact that no one can give receipt for the amount not received by him. The applicant should have not given receipt for the amount had he not received the same. The articles were delivered at window on 22.6.83, after they were shown in deposit after closure of the parcel abstract and applicant did not say anything about the corrections in the abstract. The IO in his report has ruled out any pleas of duress, fear etc. and his acquittance for the amount received by him ipsofacto is held to be direct and conclusive proof (exp.5).

15. In reply to para-5(8), it is submitted that Sri K. Raghavendra Rao, realised his responsibility and credited his share of loss sustained by the Dept. as a subsidiary offender.

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It is not true to say that the applicant was not asked to credit. The applicant had credited Rs.3100/- on 6.9.83 at RC Puram (BHEL) PO Sri K. Raghavendra Rao was proceeded against under Rule-14 of CCS (CCA) Rules, 1965 and disc. action taken. Thus the applicants misled the Hon'ble CAT by saying that he was not asked to credit, even though he credited Rs.3100/- on 6.9.83.

16. In reply to para-5(9), it is submitted that even though the IO held the article of charge as proved and held the applicant as guilty, the applicant contended that he was placed under suspension for the reasons not known to him. Third degree methods would be adopted by police only. Had the applicant faced such a situation, he could have represented to higher authorities. The statement was not recorded under duress. If the applicant did not receive the amount, why did he give acquittance in token of having received. The police case registered under Cr.179/86 u/s 409 IPC is under trial at JFCM, Sangareddy under CC No.326/87 and applicant is absconding as per the records in the court. The applicant could have proved his innocence, in the court, instead of hiding the face.

- (i) The applicant should have insisted for hand to hand receipt book instead of giving acquittance over parcel receipts.
- (ii) The applicant should have refused to give his acquittance over the parcel receipts.
- (iii) The receipt of item of CD cash is such, they are not received at several POs. The hand to hand receipt book was not maintained.
- (iv) The Disc. authority has taken cognizance of the corrections made in the parcel abstract on 22.6.83. The CD parcel were firstly entered in deposit and abstract closed on 22.6.83 and when they were delivered at window corrections were made subsequently.

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(v) The statement dt.5.8.83 contained full facts, even though the IO commented in the first instance that the statement was obtained in a hurry, he ruled out possibility of any duress, fear & etc. in view of the documentary evidence to the effect that applicant received the amounts. The IO also stressed that the SDI(P), Sangareddy 'fumbled' during the inquiry and continued to throw on some one else though he recorded the statement on 5.8.83.

(vi) The applicant's inability to bring Sri R. Rama Murthy to the defence witness cage on his behalf is other wise twisted. It is not his duty to ensure his evidence on defence side, instead of attributing motives with Disc. Authority and IO. Had he got the defence evidence of R. Rama Murthy, he could have changed the shape of inquiry.

(vii) The contention of the application that the case was decided on whims and fancies is not tenable. It was decided on merits observing rules and provisions in vogue. The repeated instances of corrections in parcel abstract are discussed.

(viii) The investigating authority was other than the Disc. authority as the frauds exceeded Rs.20,000/- and the Disc. Authority was not brought to give evidence as defence evidence on his behalf. The applicant went on to debate other points leaving the main point of misappropriation of Govt. money. The applicant could have faced the case in ^{JCFM} ~~SEGM~~, Sangareddy also in ^{Proving} providing his innocence instead of absconding from the town.

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17. In reply to para-6, it is submitted that the OA is filed with abnormal delay and MA for condonation of delay may kindly be set aside since he had suppressed the facts of ^{jeFM} this arrest warrant pending in 3FCM, Sangareddy vide CC - 326/87.

In as much as the applicant has not made out any case much less a *prima facie* case even for admission, it is submitted that the original application may be dismissed with costs.

Henry J
Dependent

Assistant Director of Postal Services
O/o. The Postmaster-General,
Hyderabad Region, Hyderabad-500 001

Sworn and signed before me

this the 25th day of Feb., 94.

Before me.

Wardle
Officer on Special Duty
(Departmental Inquiries)
O/o. The Chief Postmaster-General
A.P. Circle, HYDERABAD-500 001.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :
HYDERABAD BENCH : HYDERABAD.

O.A. No. 116/93.

Between :

K. Laxman Rao. Applicant.

and

The Supdt. of Post Offices,
Sangareddy division,
Sangareddy and another.

.... Respondents.

Counter Affidav

Received on
28-2-94



filed by
N.V. Raghava Reddy
A.I.D.L. Cr

May 1st 1994
R.P. 98729M