

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

**ORDER SHEET
ORDERS OF THE TRIBUNAL**

14.8.2012

OA No.266/2012 with MA No.230/2012

**Mr. C.B.Sharma, counsel for the applicant
Mr. Mukesh Agarwal, counsel for respondents**

Heard the learned counsel for the parties.

**For the reasons dictated separately, the OA stands disposed
of.**

Anil Kumar
(Anil Kumar)

Admv. Member

R/

K.S.Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 14th day of August, 2012

Original Application No.266/2012

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

M.L.Sharma
s/o Shri Bodu Ram Sharma,
r/o Govindgarh, District Jaipur and
presently holding the post
Assistant Superintendent of Post Offices,
East Sub Division, Jaipur City Division,
Jaipur (under suspension),
with Headquarter at Jaipur.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through
Secretary to the Govt. of India,
Department of Posts,
Ministry of Communication and
Information Technology,
Sanchar Bhawan,
20, Ashoka Road, New Delhi.
2. Chief Post Master General,
Rajasthan Circle,
Sardar Patel Marg, Jaipur
3. Director,
Postal Services (HQ),
Office of Chief Post Master General,
Rajasthan Circle,
Sardar Patel Marg,
Jaipur

4. Assistant Post Master General (S&V)
Office of Chief Post Master General,
Rajasthan Circle,
Sardar Patel Marg,
Jaipur.

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER (ORAL)

The present OA is directed against the charge memo dated 22.3.2012 (Ann.A/1) issued by respondent No.3 on the allegation that applicant un-authorisedly visited Shivdaspura Post Office on 14.5.2010 without jurisdiction and asked the Sub Postmaster to return the documents, which were left by some miscreants relating to fake appointments in postman cadre. On the same day, Sub Post Master, Shivdaspura Post Office made complaint to the local police regarding appointment on the forged documents. The applicant was also made accused and FIR was lodged on 15.5.2010 at Shivdaspura Police Station. During investigation, the police arrested the applicant and applicant remained in judicial custody from 3.8.2010 to 12.11.2010 and released on bail vide Hon'ble High Court order dated 11.11.2010. In view of this fact, the applicant was placed under suspension w.e.f. 26.5.2010 (A.N.) vide order dated 26.5.2010 and by issuing memorandum of charge sheet dated 22.3.2012, which is under challenge in this



OA, departmental proceedings under Rule 14 of CCS (CCA) Rules, were initiated against the applicant.

2. The main challenge to the memorandum of charge sheet is on the ground that criminal case as well as departmental proceedings are pending on the same set of facts with the same witnesses and when the criminal case is pending against the applicant, there is no need of departmental action as the matter relates to forged documents and as regard forged documents, the applicant no where involved.

3. Per contra, the learned counsel appearing for the respondents referred to Rule 13(2) of the CCS (CCA) Rules, 1965, which reads thus:-

"A Disciplinary Authority competent under these rules to impose any of the penalties specified in Clause (i) to (iv) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in Clause (v) to (ix) of Rule 11 notwithstanding that such Disciplinary Authority is not competent under these rules to impose any of the latter penalties."

4. The respondents further submitted that the FIR was lodged by the Sub Postmaster in the police station, Shivdaspura on 14.5.2010 and the police registered FIR No. 192/10 under Section 420, 465, 468 and 120 IPC on 15.5.2010 against the applicant and other accused and after investigation challan has been filed before the Trial Court and



the case is pending before the Court. The departmental investigation was carried out in detail wherein involvement of applicant was established as per the material evidence/statement of witnesses. Therefore, the applicant was placed under suspension w.e.f. 26.5.2010 (A.N.).

5. It is not disputed that departmental proceedings under Rule 14 of CCS (CCA) Rules were initiated against the applicant vide memorandum dated 22.3.2012 and the charge sheet was issued and served to the applicant vide office memo dated 22.3.2012. The departmental proceedings were initiated against the applicant regarding violation of the departmental rules and not for criminal offence.

6. The learned counsel appearing for the respondents submits that even otherwise also, if the charges are same as in the criminal case, the department can initiate disciplinary proceedings in view of the ratio decided by the Hon'ble Supreme Court in the case of State Bank of Hyderabad and another vs. P.Kata Rao reported in (2008) 15 SCC 657 wherein the Hon'ble Supreme Court observed that only because delinquent employee who has also facing a criminal charge stands acquitted, the same, by itself would not debar the disciplinary authority to initiate disciplinary proceedings.



7. We have heard the rival submissions of the respective parties and perused the relevant provisions of law and the material available on record. The present controversy has already been decided by this Tribunal in OA No.472/2009 vide order dated 21.4.2011 wherein this Tribunal having considered the ratio decided by the Hon'ble Supreme Court in the case of NOIDA Entrepreneurs Association vs. NOIDA and Ors. [2007 (10) SCC 385], Kendriya Vidyalaya Sangathan and Others vs. T.Srinivas [(2004) 7 SCC 442] and the decision dated 18th February, 2011 of the Full Bench at CAT-Principal Bench in OA No.2816/2008 observed that departmental proceeding can continue even if criminal trial is pending and in view of the ratio decided by the Supreme Court in the case of NOIDA Entrepreneurs, Kendriya Vidyalaya Sangathan and by the Full Bench of the CAT-Principal Bench (supra), the OA was dismissed.

8. The order dated 21.4.2011 passed by the Tribunal in OA No.472/2009 has been assailed by the applicant before the Division Bench of the High Court. The Division Bench of the High Court in D.B.Civil Writ Petition No.6852/2011 vide its judgment dated 24.5.2011 upheld the judgment passed by this Tribunal observing as under:-

"In our opinion, the purpose of departmental enquiry and criminal proceedings is different. The burden of proof required to be proved in both the proceedings is



also different. In the criminal case, the charges have been framed and the same were denied and evidence has already commenced and most of the witnesses have been examined from the prosecution side. Thus, departmental enquiry can continue despite pendency of criminal case. No prejudice is going to be caused in the instant case if departmental proceedings are allowed to continue inspite of pendency of criminal proceedings. Thus, the order of the Tribunal refusing to stay departmental proceedings does not call for interference."

9. Upon careful considering the facts and circumstances of the present OA, we find that the present OA is squarely covered by the judgment rendered by this Tribunal in OA No.472/2009, Atulesh Sharma vs. Union of India and ors., which has been upheld by the Hon'ble High Court vide order dated 24.5.2011. Consequently, in the light of the judgment of this Tribunal dated 21st April, 2011 and the judgment of the Hon'ble High Court dated 24.5.2011 upholding the judgment of this Tribunal, this OA deserves to be dismissed being devoid of merit, which is accordingly dismissed with no order as to costs.

10. In view of the order passed in the OA, no order is required to be passed in MA No.230/12, which shall stand disposed of accordingly.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K.S.Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/