

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **28th** day of **September, 2018**.

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

Original Application Number. 330/01500/2012.

Sri Krishn Kushwaha, S/o Ratan Singh, R/o Jijoli (Near hospital),
P.O. Makkhanpur, Tehsil Shikohabad, District Firozabad.
.....Applicant.

VE R S U S

1. Union of India through Secretary, Ministry of Communication, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Superintendent of Post Offices, Mainpuri Division, Mainpuri.
3. Sub Divisional Inspector of Post Office, Mainpuri Sub Division, Mainpuri.

.....Respondents

Advocate for the applicant : Shri S.K. Mishra
Advocate for the Respondent : Shri Himanshu Singh

ORDER

This OA has been filed for quashing the impugned orders dated 22.05.2008 (Annexure A-4), 08.12.2008 (Annexure A-5) and 08.10.2012 (Annexure A-9). The applicant had also prayed for staying the effect and operation of the order dated 08.10.2012. Vide order dated 23.10.2012, this Tribunal stayed the order dated 08.10.2012 till the next date of hearing, which was extended from time to time.

2. Heard learned counsel for the applicant, who submitted that during pendency of this OA, a disciplinary proceeding against the applicant was initiated in which the applicant has been dismissed from service vide order dated 07.08.2014.

3. The respondents' counsel submitted that a Supplementary Affidavit was filed by the respondents on 24.09.2014 in which the para 4 and 6 stated that the applicant has been dismissed after conclusion of the disciplinary proceedings vide order dated 07.08.2014, which raises fresh cause of action and the present OA has become infructuous as stated in the Supplementary Affidavit filed on 25.09.2014.

4. Learned counsel for the applicant also agreed and submitted that the OA has become infructuous since the impugned order dated 08.10.2012 ordering recovery of Rs. 2,36,619/- through Collector, Ferozabad has been merged with the order of dismissal dated 07.08.2014.

5. It is seen that the applicant had earlier filed OA No. 1083/2009 which was disposed of by this Tribunal vide order dated 06.07.2012 (Annexure A-10) and para 6 and 7 of the said order state as under : -

“6. It is clear that the OAs under section are instituted against an order and in this OA, the relief has been sought against the citation which is certainly an instrument or medium, to implement some order which is not under challenge. It is also apparent that the applicant has been directed to appear in the court of Tehsildar on 26.8.09, but instead of appearing accordingly, the applicant preferred to file this O.A. Certainly, he had the opportunity to explain the total case to the Tehsildar which could have led to the recovery certificate being sent back to the concerned authority i.e. the Superintendent of Post Office.

7. In view of the foregoing narration and analysis, I observe that no relief against the impugned citation dated 12.8.09 can be allowed by the Tribunal. This is not an order against which the O.A can be filed under section 19 of the A.T. Act. Hence, the OA is found

lacking in merit. Therefore, the same is dismissed. However, against the recovery orders, not challenged in this O.A, the applicant is at liberty to take legal recourse available. No order as to costs.”

6. It is noted that in spite of the order dated 06.07.2012 of this Tribunal, the applicant has filed this OA against a similar requisition for recovery to Collector vide order dated 08.10.2012 (Annexure A-9).

7. In view of the submissions of learned counsels of both the parties that the OA has become infructuous, OA is dismissed for being infructuous. The interim order dated 23.10.2012 stands vacated. The applicant is at liberty to move the competent authority regarding the maintainability of the order dated 08.10.2012 in view of the facts and circumstances of the case. There will be no order as to costs.

8. Registry is directed to give a copy of this order to the counsels of both the parties.

MEMBER- A.

Anand...

