

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**O.A. No.4131/2013
M.A. No.4144/2015**

New Delhi this the 27th day of April, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)**

Brij Pal
S/o Shri Doji Ram,
Gallery Attendant,
National Gallery of Modern Art,
Jaipur House,
New Delhi-110003.

Residential address

House No.487,
'H'Block,
Mangol Puri,
Delhi-110083.Applicant

(Argued by: Shri G.D. Bhandari, Advocate)

Versus

Union of India, through

1. The Secretary,
Ministry of Culture,
Shastri Bhawan,
New Delhi.

2. The Director,
National Gallery of Modern Art,
Jaipur House,
New Delhi-110003.Respondents

(By Advocate : Shri H.K. Gangwani)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The matrix of the facts and material, which needs a necessary mention for the limited purpose of deciding the

maintainability of the present Original Application (OA), is that applicant, Brij Pal, while working as Gallery Attendant is alleged to have committed grave misconduct of dishonesty and misappropriation of Government money to the tune of Rs.3,71,133/- (Rs.2,37,625/- towards sale of publication and Rs.1,33,508/- towards sale of souvenirs) with collusion and in connivance with Shri Ganga Singh, Receptionist. As a consequence thereof, he was served with the following Articles of Charge:-

“Article-I

Consequent upon physical verification of publication of sale at the Reception Counter, huge shortage of stock was found and that the said Shri Brij Pal, Gallery Attendant, in connivance with Shri Ganga Singh, Receptionist, had misappropriated Government money to the tune of Rs.2,37,625/- on this account.

Article-II

During the physical verification of Stock on 20th and 21st May, 2005, it had been found that the Sale Counter was in possession of various items of publications which had not been issued to them/or made available with them at the time when the inventory were initially computerised and fed in the Computer System. These additional/excess publications were being sold at the counter and sale proceeds were found to have been misappropriated by the said Shri Brij Pal, Gallery Attendant, in connivance with Shri Ganga Singh, Receptionist.

Article-III

The Sale Counter was stocked with large quantities of Souvenir items such as portfolios, mugs, T-Shirts etc., for sale out of which souvenir worth Rs.3,31,630/- were sold as on 20.05.2005, but the officials had deposited only Rs.1,98,122/- only in the Government account thereby misappropriating an amount of Rs.1,33,508/- as this account by Shri Brij Pal, Gallery Attendant, in connivance with Shri Ganga Singh, Receptionist.

Article-IV

That the said Shri Brij Pal, Gallery Attendant, while working at Sale/Reception Counter, manipulated the Computer software and generated duplicate entry tickets and subsequently issued

the duplicate entry tickets to the visitors thereby misappropriated Government revenue".

4. Sequelly, an Enquiry Officer (EO) was appointed and departmental enquiry was initiated against him. Having completed all the codal formalities, a penalty of reduction to a lower stage in the time scale of pay by five stages for a period of five years, was imposed on the applicant vide impugned order dated 12.02.2013 (Annexure A-1) by the Disciplinary Authority. Aggrieved by the Annexure A-1 order, the applicant filed the statutory appeal dated 18.05.2013 (Annexure A-3).

5. Instead of awaiting the decision of the statutory appeal, the applicant has straightaway jumped to file the present OA challenging the impugned order of the Disciplinary Authority (Annexure A-1) and praying for holding the impugned order illegal, arbitrary and without jurisdiction, directly invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act").

6. The contesting respondents have refuted the claim of the applicant and filed the reply, inter alia, pleading certain preliminary objections of maintainability of the OA, being premature during the pendency of the statutory appeal and hit by multiple reliefs, which according to them is contrary to Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987. The respondents have stoutly denied all the

allegations contained in the main OA and prayed for its dismissal.

7. During the pendency of OA, the contesting respondents filed M.A. No.4144/2015, wherein it was pleaded that on the one hand the applicant has filed the statutory appeal under Rule 23 of the CCS (CCA) Rules, 1965, which is still pending before the Appellate Authority, and on the other hand has filed the present OA on the similar grounds without awaiting the decision of the appeal. Hence, they prayed that Respondent-Appellate Authority be permitted to decide the appeal.

8. After hearing the learned counsel for the parties on the question of maintainability of the appeal and after going through the record with their valuable help, we are of the considered opinion that the OA has been filed prematurely and as such is not maintainable at this stage.

9. What cannot possibly be disputed here is that the applicant has already filed the statutory appeal which is still pending and without awaiting its decision, he has preferred the instant OA almost on the same grounds. Thus, the subject matter of appeal pending before the Appellate Authority is directly and substantially is the issue in the present OA.

10. Meaning thereby, applicant is simultaneously pursuing the same remedy and claiming the same relief at two fora at

the same very time, which is not legally permissible. The mere fact that the Appellate Authority has not promptly decided the appeal, ipso facto, could not be a ground much less a cogent one to by-pass the mandatory provision of Section 20 of the Act, as urged on behalf of the applicant.

11. Be that as it may, no extraordinary ground, much less any cogent one has been made out by the applicant so as to directly entertain the instant OA, even without the Appellate Authority having passed the final order, in view of the law laid down by the Hon'ble Apex Court in cases of **S.S. Rathore Vs. State of Madhya Pradesh (1989) 4 SCC 582**

and **The Govt. of A.P. and Others Vs. P. Chandra Mouli and Another (2009) 13 SCC 272.**

12. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of the hearing of the appeal, the OA is dismissed being premature.

13. Needless to mention that nothing observed hereinabove would reflect in any manner on the merits of the case while deciding the appeal, as the same has been so recorded for the limited purpose of deciding the OA at this preliminary stage.

14. However, it is made clear, that in case the applicant would be aggrieved by the order of the Appellate Authority, in that eventuality he would be at liberty to file fresh OA,

challenging the impugned order of the Disciplinary Authority and Appellate Authority.

15. At the same time, the Appellate Authority is also directed to decide the statutory appeal of the applicant, positively within a period of one month from the date of receipt of copy of this order in accordance with law. No costs.

(K.N. SHRIVASTAVA)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

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