

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.**

Original Application No. 1536 of 2001.

ALLAHABAD THIS THE 8TH DAY OF AUG. 2005.

**HON'BLE MR. D. R. TIWARI, MEMBER-A
HON'BLE MR. K.B.S. RAJAN, MEMBER-J**

Avaindrea Kumar Tiwari, S/o Alopi Prasad Tiwari, R/o Village & Post Burhawan, District Fatehpur.

.....Applicant.

(By Advocate : Sri B.P. Srivastava)

Versus.

1. Union of India through Secretary to Government of India, Ministry of Communication, Department of Posts, New Delhi.
2. The Director, Postal Services, Kanpur.
3. The Superintendent of Post offices, Fatehpur.

.....Respondents.

(By Advocate : Sri S. Singh)

O R D E R

The applicant, functioning as Branch Post Master at Burhwan Post Office, Fatehpur, was slapped with a charge sheet dated 29-12-1994, containing two articles of Charges, which are as under:-

“आरोप संब्धा

श्री अवनीन्द्र कुमार तिवारी ने शाखा पोस्ट मास्टर बुढवा के पद पर कार्य करते हुये दिनांक 15.7.94 को श्रीमती फूलोदेवी पत्नी श्री बल्देव प्रसाद द्विवेदी द्वारा 5 वर्षीय सावधि जमा खाता खोलने के लिये दी गई धनराशि 15000 के अभिलेखों में हेरा फेरी करके रूपया 15000 के स्थान पर रूपया 1500 दिनांक

16.7.94 को सरकारी हिसाब लिया इस प्रकार इन्होने शाखा डाकघर नियमावली छठां संस्करण के नियम शाखा पोस्ट मास्टर को ये काम नहीं करने चाहिये के क्रमांक 10 एवं नियम 125, 129 तथा अतिरिक्त विभागीय अभिकर्त्ता आचरण एवं सेवा नियमावली 1964 के नियम 17 का उल्लंघन किया ।

आरोप संख्या -2

श्री अवनीन्द्र कुमार तिवारी ने शाखा पोस्ट मास्टर बुढवा के पद पर कार्य करते हुये श्री जगदीश प्रसाद लिपिक सर्वोदय इन्टर कालेज बुढवा द्वारा जमा करने के लिये दिनांक 13.2.1994 को दिये गये 93 आवर्ता जमा खतों की लाट की राशि रूपया 20575 दिनांक 22.2.1994 को दिये गये 98 आवर्ती जमा खतों की लाट की राशि 20575 प्राप्त किया लेकिन धनराशि को उस तिथि में डाकघर के लेखों में नहीं लिया और इस प्रकार उन्होंने शाखा डाकघर नियमावली छठा संस्करण के नियम 131 एवं अतिरिक्त विभागीय अभिकर्त्ता आचरण एवं सेवा नियमावली 1964 के नियम 17 का उल्लंघन किया ।”

2. Apart from the issue of charge sheet, the respondents had also filed a criminal case bearing No. 2187 of 1995 in the Court of Chief Judicial Magistrate, Fatehpur and the same resulted in an acquittal of the applicant from the criminal charge. The operative portion of the judgment dated 12-05-1999 of the Court is as under:-

“उपरोक्त साक्ष्य एवं पत्रावली के परिशीलन से स्पष्ट होता है कि दिनांक 15.7.94 को मुसजिम द्वारा बुढवा के डाकघर में फूलादेवी के एन० एस० सी० बान्ड के भुगतान का कोई अभिलेख नहीं है । इसी प्रकार से 1693 रुपये का कोई खाता भी उक्त तिथि का खोला जाना नहीं कहा गया है और ना ही किसी स्वतन्त्र साक्षी द्वारा यह सिद्ध कराया गया है कि मुलजिम को 15000 रुपये की रकम दी गयी है फूलादेवी साक्षी संख्या व साक्षी संख्या 2 हरिनारायण जो कि आपस में मां बेटा है ने ही पैसे दिये जाने कहे हैं इसके अतिरिक्त अन्य किसी साक्षी द्वारा पैसे लेने व देने का देखा जाना नहीं कहा गया है और ना ही किसी भी स्वतन्त्र साक्षी को ही प्रस्तुत किया गया है । साक्षी संख्या फूलादेवी द्वारा कहा गया है कि उसे एन० एस० सी० सी० का भुगतान बान्ड द्वारा किया गया फिर कहा गया कि उक्त रकम में 1693 रुपये मिलाकर खाता खोला था जिसकी पुष्टि किसी भी साक्षी द्वारा नहीं की गयी है । उक्त साक्ष्य के परिशीलन से स्पष्ट होता है कि साक्षीगण के साक्ष्य में भिन्नता है तथा मुलजिम द्वारा रंजिशन फसाये जाने की बात कही गयी है । अतः ऐसी स्थिति में अभियोजन पक्ष अभियुक्त के विरुद्ध आरोप सिद्ध करने में असफल रहा है और अभियुक्त दोष मुक्त होने योग्य है

आदेश

अभियुक्त अवनीन्द्र कुमार को धारा 419/420/467/468/218 भारतीय दं० सं० के आरोप से मुक्त किया जाता है तथा उसके जमानतदारान अपने दायित्व से मुक्त किये जाते हैं ।”

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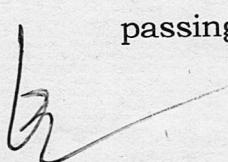
3. Independent of the above, the disciplinary proceedings continued and the applicant denied the charges vide his reply dated 01-03-1995. The inquiry officer had rendered his finding, holding that the charges stood provedAccording to the applicant, without affording adequate opportunity, the inquiry was conducted and further that even the inquiry report was not made available to the applicant prior to passing of the final order by the disciplinary authority.

4. The Disciplinary Authority had, by order dated 26-10-1995, on the basis of the inquiry report passed an order of Dismissal from service.

5. The applicant had preferred an appeal daed 02-04-1996 inter alia raising the following grounds:-

- (a) Recording of statement of witnesses in the absence of the applicant/defence assistant;
- (b) Biased attitude of I.O. and wrong application of Rules.
- (c) Non application of mind by the Disciplinary Authority.

6. The appeal was however dismissed vide order dated 03-11-1999 and against the same the applicant had filed a revision petition dated 29-11-1999, inter alia raising legal issues, especially non application of the CCS(CC&A) Rules to the E.D.B.P.M. who are governed by different set of Ruloes and that he having been acquitted by the criminal court, the Disciplinary Authority and the Appellate Authority are thoroughly wrong in passing the penalty and appellate orders respectively.



7. The Revision Authority however, affirmed the penalty order holding as under:-

- (a) No representation was filed against the I.O. Report, which was refused by the applicant;
- (b) The acquittal was on the basis of benefit of doubt.

It is under the above circumstances that the applicant has moved this O.A.

8. The respondents have contested the OA, stating that there has been no violation of principles of natural justice and the applicant has refused to receive the inquiry report.

9. Arguments have been heard and documents perused. The fundamental legal infirmity in this case is that the report of the Inquiry Authority was not received by the applicant. Though sent, it was returned undelivered and 'not refused'. In fact, in the event of such return undelivered with the remarks, "house locked" one more attempt should have been made to serve upon the applicant which the respondents have failed to do. Many a way of such attempt to serve the applicant exists, such as deputing an official to the residence of the applicant, or even by publication. This not having been resorted to, non supply of the copy of the inquiry report vitiates the inquiry, as held by the Apex Court in the landmark case of **Union of India vs Mohd. Ramzan Khan (1991) 1 SCC 588.**

10. The next equally grave legal infirmity is the misconstruing of the judgment of the Criminal Court. It has been wrongly

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understood by the authorities that the Trial Court had acquitted the applicant on the basis of "benefit of doubt". The acquittal is one of "honourable acquittal". In this regard, reference to the observation of the Apex Court in the case of *Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh*, (2004) 8 SCC 200, refers.

We have been taken through the said judgment of the criminal court and we must record that there was such "honourable" acquittal by the criminal court. The acquittal by the criminal court was based on the fact that the prosecution did not produce sufficient material to establish its charge which is clear from the following observations found in the judgment of the criminal court:

"Absolutely in the evidence on record of the prosecution witnesses I have found nothing against the accused persons. The prosecution totally fails to prove the charges under Sections 147, 353, 329 IPC."

In the instant case also, the finding of the Trial Court as recorded in the judgment was on similar lines.

11. In view of the above, the OA succeeds. The following impugned orders are quashed and set aside:-

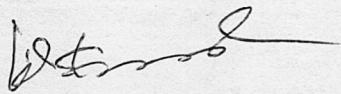
- (a) Order dated 26-10-1995 of the Disciplinary Authority (Vide Annexure A1)
- (b) Order dated 01-11-1999 of the Appellate Authority (Vide Annexure A2); and
- (c) Order dated 08-02-2001 of the Revision Authority (Vide Annexure A3)

The applicant is entitled to be reinstated in service forthwith. He is deemed to have continued as EDBPM from the date of removal till the date of his reinstatement and is also entitled to full pay and allowance for the period of his absence.



The respondents are, therefore, directed to forthwith reinstate the applicant in service, on receipt of a certified copy of this order and pass suitable orders for such reinstatement and within six months from the date of reinstatement the respondent should make the payment of arrears of pay and allowances for the period the applicant had been kept out of service.

12. Under the above circumstances, we leave the parties to bear their respective costs.



MEMBER-J



MEMBER-A

GIRISH/-