

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Allahabad this the 15th day of March 2011

PRESENT:

**HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER-J
HON'BLE MR. S.N. SHUKLA, MEMBER-A**

**Original Application No.217 of 2006
(U/s 19 of Administrative Tribunals Act 1985)**

Ved Pakash Mishra,
S/o Ram Niwas, R/o Village & Post Mansa Nagla,
District Banda.
Ex-Extra Departmental Branch Post Master (EDBPM),
Branch Post Office, Mansa Nagla,
Sub Post Office, Alapur. District Badun.Applicant

(By Advocate Shri V.B. Srivastava)

Vs.

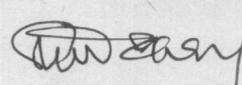
1. Union of India through Secretary, Communication & Posts. Sanchar Bhawan, New Delhi.
2. Chief Post Master General, U.P. Lucknow.
3. Post Master General, Bareilly Region, Bareilly,
4. Director Postal Services, Bareilly Region, Bareilly,
5. Superintendent of Post Offices, Badaun Division, Badaun.Respondents

(By Advocate S/Shri Srivastava/ R.D. Tiwari)

ORDER

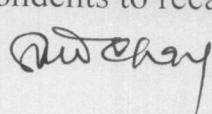
HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER-J

Instant O.A. has been instituted in order to set aside the order dated 11.10.2005 passed by the Post Master General, Bareilly Region, Bareilly and order dated 13.9.2002 passed by Director Postal Services, Bareilly Region, Bareilly & order dated 24.1.2002 passed by Superintendent of Post Offices, Badaun Division, Badaun. Further prayer has also been made in order to



direct the respondents to reinstate the applicant on the post in question with full back wages with all consequential benefits of service in accordance with law. Pleadings of the parties are summarized as follows:

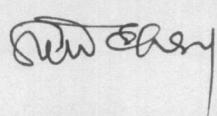
2. That the applicant was appointed as Extra Departmental Branch Postmaster, later on called as Extra Departmental Branch Post Master (EDBPM for short) and that the applicant performed the duties in the department of public at large with devotion and loyalty and had always followed the norms. In the year 1988 due to Village PARTIBANDI and enmity the applicant was falsely implicated in a Case Crime No.148 of 1988 U/s 307 IPC, P.S. Ushait, District Badaun. On 21.9.1988 he was released on bail. In the year 2001 the trial was concluded and in the Sessions Trial No.55 of 1992 was decided by the District & Sessions Judge, Banda and on 18.12.2001 the applicant was sentenced with seven years' rigorous imprisonment alongwith Rs.5000/- as fine. That aggrieved by the order of the Sessions judge the applicant approached the Hon'ble High Court in Criminal Appeal No.110 of 2002 and on 10.1.2002 the Criminal Appeal was admitted and the applicant was released on bail on 28.1.2002. That on 30.1.2002 the applicant moved an application before the Superintendent of Post Office, Badaun in order to obtain the charge of EDBPM, Mansa Nagla Branch Post Office, District Badaun and requesting the competent authority for withdrawal of the order of removal from service. The above mentioned application was rejected. The applicant moved another application before the competent authority that the mother of the applicant is more than 70 years age and seriously ill, that the applicant is the only bread-earner of the family and hence applicant's case may be considered sympathetically and the representation was made to the respondents to recall the order of removal



from service. That one Jagat Pal Singh, an employee of Post Office was also convicted in the year 1995 U/s 307 IPC for 2 and half years rigorous imprisonment but he was given charge while the appeal was pending before the Hon'ble High Court., and the applicant is also entitled to the similar treatment. That the criminal appeal is still pending and as the matter is sub-judice before the Hon'ble High Court, the order of removal is to be set aside. As the respondents are not paying any attention to the grievance of the applicant and hence this O.A.

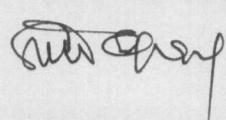
3. Respondents have contested the O.A. and filed the counter reply. Respondents denied all the allegations made in the O.A. It has further been alleged that the applicant was appointed as GDS BPM, Mansa Nagla Branch office from October 1996 under the relaxation of recruitment Rules after the death of his father . That applicant was convicted in criminal case by the District and Sessions Judge, Banda under Section 307 of IPC and sentenced to undergo for rigorous imprisonment for seven years and imposed a fine of Rs.5000 on 18.12.2001 and hence the applicant was removed from service vide order dated 24.1.2002.

4. The Hon'ble High Court passed an order dated 1.8.2005 in order to stay the operation of the judgment till the pendency of the appeal, whereas the applicant had been already removed from the service due to his conviction by the trial Court. The disciplinary authority considered the petition of the applicant and the same was rejected by a reasoned and speaking order. That all the departmental remedies were availed and the case of the applicant was not found fit for admission and the same is liable to be dismissed as lacks merit.



5. We have heard Mr. V.B. Srivastava, advocate for applicant and Mr. Pankaj Srivastava holding brief of Shri Sourabh Srivastava, counsel for respondents and perused the entire facts of the case. It is an admitted fact that the applicant was appointed as EDBPM in the year 1996. It is also an admitted fact that the applicant faced trial in criminal case No.55/92 and the trial court convicted the applicant vide judgement dated 18.12.2001 and sentenced to undergo rigorous imprisonment for seven years and imposed Rs.5000/- as fine. It is also a fact that the appeal is pending before the Hon'ble High Court and an interim bail was granted by the Hon'ble High Court.

6. Respondents admitted that the order of staying the operation of the order of the trial court was passed in the year 2005 whereas the applicant was removed from service immediately after conviction by the Trial Court. The main basis for removal of the applicant was that he was convicted in the case under Section 307 of IPC by the Trial court and on this ground the applicant was removed. Learned counsel for the applicant cited a judgement reported in [(2001) 2 LPLBEC 1424] and argued that in case the applicant released on bail after filing the appeal and the sentence has been stayed by the Hon'ble High Court then an employee who was removed from service is to be reinstated. But we have gone through the judgment of the Hon'ble High Court. The petitioner after conviction filed a writ petition before the Hon'ble High Court. The writ petition was dismissed. But it has also been held by the Hon'ble High Court that the basis for removal from service is the judgement of conviction and it will not be justified to reinstate the applicant on the ground that the order has been stayed by the Hon'ble High



Court. The Hon'ble High Court also placed reliance on the judgement of the Hon'ble Apex Court in Union of India and others Vs.Ramesh Kumar (1997) 7 SCC 514, the Court held that:

"However the conviction continues and is not obliterated and if the conviction is not obliterated, any action take against a Government Servant on a misconduct which lead to his conviction by the Court of Law does not lose its efficacy merely because the Appellate Court has suspended the execution of sentence."

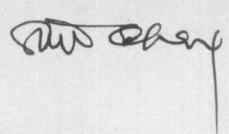
Thus, the judgement of the Hon'ble High Court is non-application to the applicant. As in the present case merely by filing an appeal and suspension of sentence, the judgement will not lose its efficacy.

7. Learned counsel for respondents cited Rule 8-A of ED Staff (Conduct & Service) Rules. It has been provided in this rule that :

- (i) where any penalty is imposed on an employee on the ground of conduct which has led to his conviction on a criminal charge; or
- (ii) where the appointing authority empowered to dismiss or remove an employee is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry; or
- (iii) where the President is satisfied that in the interest of the security of the State it is not expedient to follow the procedure prescribed in that rule; and

The appointing authority may consider the circumstances of the case and make such orders thereon as it deems fit.

8. Placing reliance on this rule counsel for respondents argued that the respondents were within their rights to pass the order of dismissal out right without conducting any formal enquiry and we are of the opinion that any such misconduct which lead to conviction of an employee can be removed



even prior to conviction by the Trial Court and in the present case the applicant was convicted and sentenced to undergo rigorous imprisonment for a period of seven years.

9. Learned counsel for the applicant argued that one similarly situated person viz., Jagat Pal Singh faced trial in the year 1995 under Section 307 IPC and he was sentenced to rigorous imprisonment for a period of two and half years and inspite of the fact that his appeal was pending before the Hon'ble High Court and that the applicant was given charge and he was not removed from service and the applicant in this case also deserves for the same treatment.

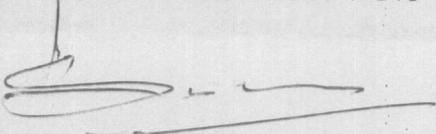
10. Firstly, in such circumstances, it will not be justified to give any benefit on the ground of parity. Moreover, in the present case, the applicant was convicted and sentenced to undergo seven years rigorous imprisonment it may be possible that the role of Jagat Pal Singh in that case might be minor whereas in the present case the role of applicant appears an active participation in the commission of offence. Moreover, learned counsel for the applicant argued that according to prosecution story applicant and one more person opened fire. This fact itself shows that the applicant had active participation in the commission of offence. In the light of the said judgment it has been shown by the learned counsel for the applicant that the applicant is entitled to be reinstated in spite of the fact that he was convicted in a criminal case under Section 307 IPC and the appeal is pending before the Hon'ble High Court. We have come across a catena of judgements of the Apex Court in which it has been held that if the applicant has been acquitted even prior to the passing of such judgement, an employee can be removed

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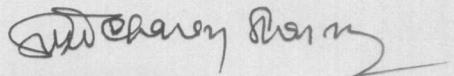
from service and more over in a case subsequent acquittal by the Appellate Court or the Sessions Court will not debar the department in continuing the Disciplinary proceedings. Hence no benefit can be granted to the applicant due to the reason that an appeal has been filed before the Hon'ble High Court and applicant released on bail, because it is for the department to consider the conduct of an employee.

11. For the reasons mentioned above, we are of the opinion that the O.A. lacks merits and it is liable to be dismissed.

12. O.A. is dismissed. No order as to costs.


MEMBER(A)

rv


MEMBER(J)