

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 20 th day of May 2011

Original Application No. 703 of 2006

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Musafir Ram, S/o late Mahadeo Ram, R/o House No. S-9/139D-5K1, Mukul Ganj, Nai Basti, Distt Varanasi Cantt - II.

... Applicant

By Adv: Sri Atul Kumar Pandey

V E R S U S

1. Union of India through Secretary, Ministry of Communication, Department of Postal Services, Post and Telegraph, Sansad Marg, New Delhi.
2. The Chief Post Master General, U.P. Circle, Lucknow.
3. Post Master General, Allahabad Region, Allahabad.
4. Director, Postal Services, Allahabad.
5. Superintendent of Post Offices, Western Division, Varanasi.

... Respondents

By Adv: Sri N.P. Shukla

O R D E R

By Hon'ble Dr. K.B.S. Rajan, Member (J)

The applicant, working as a Postal Assistant at the material point of time, was proceeded under section 302 of IPC and awarded sentence of life imprisonment by the Fast Track Court, District Varanasi on 14.02.2002. This resulted in the applicant's suspension w.e.f. 18.02.2002. On 27.02.2002 the respondents issued a show cause notice to the applicant under Rule 19 of CCS (CCA) Rules, 1965 as to why on the basis of conviction by Criminal Court, the applicant be not dismissed from service. The applicant

responded stating that since the matter is pending before Hon'ble High Court in appeal it would be appropriate to pend the matter. On 22.03.3002 the respondents had imposed major penalty of dismissal from service without holding the inquiry on the basis of conviction by the Criminal Court. Meanwhile, the Hon'ble High Court granted bail to the applicant by staying the execution of sentence. The applicant filed a representation as well as appeal, but the same was rejected. Revision petition filed was also rejected by respondent No. 3. On the basis of the said order, the applicant once again requested for reinstatement. Under a similar circumstance another individual by name Sri Lal Chand Tiwari was allowed to be continued in service on the basis of stay of sentence granted by the Hon'ble High Court. The applicant has filed this OA challenging the penalty order and rejection of appeal and prayed for the following reliefs:-

- i. *The Hon'ble court may be pleased to set aside the impugned order Dt. 22.02.2002 (Annexure 1 to the Compilation 1 of OA) passed by respondent No. 5, the order Dt. 09.11.2002 (Annexure No. 2 to the Compilation 1 of OA) passed by respondent No. 4, the order dated 25.05.2004 (Annexure 3 to the Compilation 1 of the OA) passed by respondent No. 2 and the order dated 14.03.2002 (Annexure 4 to the Compilation 1 of the OA) passed by the respondent No. 5.*
- ii. *The Hon'ble court may be pleased to direct the respondent No. 5 to reinstate the applicant as Postal Assistant in the Postal Services with full arrears of salary."*

2. Respondents have contested the OA. They have stated that the action taken by the respondent is in conformity with various rules and regulations in this regard. Other factual averments made in the OA have not been rebutted. In so far as the case of Sri Lal Chandra Tiwari is concerned the respondents have stated that the case relied upon by the applicant is entirely different to the facts of the controversy involved in the present case and suitable reply will be given at the time of hearing.

3. The applicant has filed his rejoinder affidavit. In which it has been stated that the case of the applicant and that of Sri Lal Chand Tiwari are identical, whereas in so far as reinstatement is concerned the respondents have discriminated.

4. Written argument was, with permission of the Tribunal, filed by the parties. Counsel for the applicant, after extracting the dates and events in this case, has in the written arguments referred to the decision of the Apex Court in the case of Navjot Singh Sidhu, who was permitted to participate in General Election. Counsel for the respondents has filed the written arguments giving briefly the facts of the case.

5. Written arguments and the pleadings were considered. The alleged offence of both the applicant as well as Lal Chand Tiwari is covered under Sec. 302 IPC (Annexure 1 to the Counter, dated 09-09-2002 and RA 1 dated 26-07-2002 and in both the cases, execution of sentence had been stayed and bail granted. Thus, the contention of the respondents that the two cases are different cannot be accepted and the contention of the applicant that his case is identical to that of Shri Lal Chandra Tiwari is found correct. When the respondents have, in the case of Lal Chandra Tiwari chose to retain him in service on the basis of the bail granted and stay of execution of sentence, there is no reason to mete out a different treatment to the applicant under identical circumstance. It may not be that the respondent's decision in respect of Lal Chandra Tiwari is one of mistake and as such a mistake cannot be allowed to be perpetuated by giving identical treatment to the case

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of the applicant. In their counter, they were emphatic that the reason for continuance of the said Lal Chandra Tiwari is on the basis of a positive order of the High Court granting bail to the said Tiwari. As such, an identical treatment has to be given to the applicant as well. If the decision to allow the said Tiwari to continue in service is considered as a mistake, then the respondents should take remedial action in this regard in accordance with law. That has to be considered by the competent authority in the Respondents' organization. What is emphasized is that there cannot be dissimilar treatment to two persons in identical situations. As referred to in the case of **State of Mysore v. R.V. Bidap, (1974) 3 SCC 337,**

'It is apt to remember the words of Rich, J.:

"One of the tasks of this Court is to preserve uniformity of determination. It may be that in performing the task the Court does not achieve the uniformity that was desirable and what uniformity is achieved may be uniformity of error. However in that event it is at least uniformity".

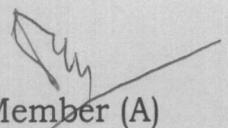
6. In so far as the law relating to dismissal without inquiry under Art. 311(2) of the Constitution and Rule 19 of the CCS(CC&A) Rules, the Apex Court has, in the case of **Dy. Director of Collegiate Education (Admn.) v. S. Nagoor Meera, (1995) 3 SCC 377,** held as under:-

“8. We need not, however, concern ourselves any more with the power of the appellate court under the Code of Criminal Procedure for the reason that what is relevant for clause (a) of the second proviso to Article 311(2) is the “conduct which has led to his conviction on a criminal charge” and there can be no question of suspending the conduct. We are, therefore, of the opinion that taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal.”

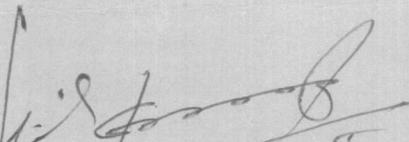
7. The case of Navjot Singh Sidhu is a matter relating to disqualification in contesting in a general election governed by an entirely different act.

8. In view of the above, the **OA is disposed** of with a direction to the respondents to consider the case of the applicant for reinstatement treating his case as identical to that of Shri Lal Chandra Tiwari and communicate the decision to the applicant, within a period of three months from the date of communication of this order.

No cost.



Member (A)



Member (J)

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