

A8

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH, LUCKNOW

Original Application No. 311 of 1989(I)

Vishwas Kumar Applicant

Versus

Superintendent of Post Offices Hardoi
and others Respondents

Hon'ble Mr. K. Obayya, Member(A)

Hon'ble Mr. S.N. Prasad, Member(J)

(By Hon'ble Mr. S.N. Prasad, J.M.)

The applicant has approached this tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer for quashing the order passed by the respondent no. 2 dated 4.10.89 whereby the applicant has been removed from service (Annexure-4), and for directing the respondents not to implement the removal order dated 4.10.1989 and to pay the salary and other consequential benefits to the applicant.

2. Briefly, stated the facts of this case, inter-alia, are that the applicant was appointed as S.D.O.A. (Extra Departmental Agent), Majhila, Hardoi on 15.2.79 and while he was serving, he was involved in a criminal case and was convicted and as a result of his conviction and sentence in a criminal case, the impugned order dated 4.10.89 was passed. The main grievance of the applicant appears to be that since he has been bailed out during the pendency of the appeal filed by him against the conviction and sentence, ~~he was granted~~ ^{he has been bailed} ~~and~~ and since he has been granted bail and since the sentence passed by the criminal court has been suspended, ~~the applicant~~ ^{there is no conviction and sentence} and as such the applicant be re-instated with all the

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A9

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consequential benefits. It has further been stated that since the above removal order dated 4.10.1989 was passed without giving any opportunity to defend him^{~ self ~} and as such the above impugned order is illegal and invalid on this ground also.

3. In the counter reply filed on behalf of the respondents, it has been contended, inter alia that the applicant was involved in a Criminal Case u/s 147/148/149/307 I.P.C., and was convicted and sentenced to undergo three years rigorous imprisonment for the offence punishable u/s. 148 I.P.C. and he was further convicted and sentenced to undergo 7 years rigorous imprisonment for the offence punishable u/s 307 read with Section 149 I.P.C. and the applicant was removed from service as a result of penalty imposed on the ground of misconduct which led to his conviction on a criminal charge (vide sub-Divisional Inspector (North) Haridoi's Memo. dated 4.10.89). The applicant appealed against the Court's order and is on bail. It has further been contended that the applicant is entitled to be taken back in service on his post, if he is exonerated from criminal charges as a result of Judicial appeal and the services of the incumbent if appointed^{~ in place of the applicant ~} will be liable to be terminated according to the condition of provisional appointment. It has further been contended that the applicant was working on the post through which the public of 13 villages was served daily and in case no arrangement is made vice Bishwas Kumar the delivery of postal articles will be held up, and as such the application of the applicant is not tenable, ~~it~~[~] lacks merit and is liable to be dismissed with costs.

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4. Rejoinder-affidavit has been filed by the applicant wherein he has re-iterated almost all those points which have already been mentioned in the main application.

5. We have heard the learned counsel for the parties and have thoroughly gone through the records of the case.

6. This is noteworthy that from the perusal of the pleadings of the parties, it is apparent that a criminal appeal which has been filed by the applicant in the Lucknow Bench of the High Court of Judicature at Allahabad is still pending and has not been decided so far. It is well settled that granting bail to accused/convicted person does not connote the exoneration of the accused from the charges by the court^{er} concerned granting bail, but only conviction and sentence is temporarily stayed till the disposal of the appeal. It is important to point out that from the scrutiny of the entire material and evidence on record, it is apparent that the above criminal appeal which has been filed by the applicant in Lucknow-Bench of the High Court of Judicature at Allahabad, is still pending and has not been decided so far and as such unless the applicant is acquitted of the charges levelled against him by the court in the above appeal, the applicant is not entitled to relief sought for; Keeping in view the provisions contained under Rule 8-A of the S.D.A. (Conduct & Service) Rules, 1964.

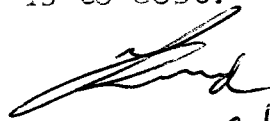
7. In the result, the application of the applicant is devoid of merit and is liable to be

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A11

:: 4 ::

dismissed and the same is accordingly dismissed without
any order as to cost.


Member (T) 21.10.92


Member (A)

Lucknow Dated 21.10.1992.

(RKA)